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James Guzman v. State of Florida

MARSHAL: PLEASE RISE.

CHIEF JUSTICE: GOOD MORNING.

MARSHAL: PLEASE BE SEATED.

CHIEF JUSTICE: APPRECIATE YOUR BEING READY WITH GUZMAN VERSUS STATE. YOU MAY PROCEED.

GOOD MORNING. I AM ERIC PINKARD FROM CCRC MIDDLE ON BEHALF OF MR. GUZMAN, AND THE FIRST ARGUMENT I WOULD LIKE TO ADDRESS THIS MORNING IS THE FIRST ARGUMENT CONTAINED WITHIN THE APPELLATE BRIEF, AND THAT IS THE GIGLIO CLAIM, AND THE GIGLIO CLAIM IN THIS CASE, INVOLVES THE UNDISCLOSED PAYMENT OF $500 BY THE LEAD DETECTIVE IN THE GUZMAN CASE, DETECTIVE ALISON SYLVESTER, TO --

IS THIS, LET ME UNDERSTAND WHERE THE $500 WAS. WAS THIS A REWARD THAT WAS POSTED FOR ANYONE TO COME FORWARD WITH INFORMATION ABOUT THIS CASE?

IT WAS TERMED A REWARD BY DETECTIVE SILVERVES ITTER. -- BY DETECTIVE SYLVESTER. BASICALLY WHAT HAPPENED WAS THE DAYTONA POLICE DEPARTMENT ON AUGUST 16, 1991, TWO DAYS AFTER THEY DISCOVERED THE BODY OF DAVID COLVIN, OFFERED TO TWO MAJOR NEWSPAPERS WITHIN THE VOLUSIA COUNTY AREA, A AWARD IN THE AMOUNT OF $500 FOR INFORMATION LEADING IT TO THE INFORMATIONATION ABOUT THE STABBING THAT OCCURRED IN THE IMPERIAL HOTEL, AND, IN VOLUSIA COUNTY ANY THE DAYTONA BEACH AREA.

SO OSTENSIBLY THIS IS MONEY THAT WOULD HAVE BEEN GIVEN TO ANY PERSON, NOT JUST TO THIS PERSON, BUT TO ANYONE WHO HAD COME FORWARD WITH THE INFORMATION.

PRESUMABLY, ALTHOUGH THIS WAS THE ONLY PERSON THAT WAS ACTUALLY GIVEN ANY MONEY THE GUZMAN CASE. OR AS YOU TERM IT, COMING FORWARD, BUT IT IS COUCHED IN TERMS OF A REWARD, A GENERAL REWARD, PRESUMABLY ANYBODY WHO HAD HAD INFORMATION AND COME FORWARD, THAT THE POLICE DEEMED VALID, WOULD HAVE RECEIVED THIS $500. THANK IS A FAIR ASSESSMENT OF THE FACTS OF THE CASE.

WHO WAS THIS PERSON AND HOW DID THE STATE, IF IT DID, AS YOU ALLEGE, MISREPRESENT OR CONCEAL THIS INFORMATION?

WELL, THE GIGLIO CLAIM IN THIS CASE, REALLY, IT MANIFESTED ITSELF PRIOR TO THE TIME MR. GUZMAN'S CASE EVEN GOT BROUGHT TO TRIAL, BECAUSE PRIOR TO TRIAL, THE DEFENSE ATTORNEY IN THE CASE FILED A WRITTEN SPECIFIC MOTION TO THE STATE, REQUESTING WHETHER OR NOT THERE HAD BEEN ANY BENEFIT OR CONSIDERATION GIVEN TO A SERIES OF STATE WITNESSES, INCLUDING MARTHA CRONIN, AND SPECIFICALLY DEFINED A BENEFIT AS ABSOLUTELY ANYTHING OF VALUE, GIVEN TO ANY OF THESE WITNESSES, AND THE STATE FILED WHAT WE NOW KNOW TO BE A FALSE BILL OF PARTICULARS. A WRITTEN BILL OF PARTICULARS, AFTER A MOTION BEFORE THE CIRCUIT COURT, WHERE THEY SAID THAT THIS WITNESS WAS NOT GIVEN ANY BENEFIT WHATSOEVER AND HAD ONLY BEEN OFFERED USE IMMUNITY, AND THEN THE GIGLIO VIOLATION IN THIS CASE CULMINATED AT THE ACTUAL TRIAL OF MR. GUZMAN, WHEN

BOTH ALISON, THE LEAD DETECTIVE IN THE CASE ALISON SYLVESTER AND MARTHA CRONIN, I BELIEVE, TESTIFIED, I BELIEVE FALSELY, BEFORE THE COURT THAT, THEY DID NOT REVEAL THAT THIS $500 PAYMENT HAD BEEN MADE, AND ALL IT SAID WAS THE ONLY THING THAT HAD HAPPENED TO HER, THE ONLY AGREEMENT THAT SHE HAD WITH THE POLICE DEPARTMENT WAS WHEN SHE WAS ARRESTED ON NOVEMBER 23 OF 1991 ON THIS PROSTITUTION CHARGE AND RIGHTING YOUR PROBATION, SHE WAS PLACED NOT IN JAIL BUT IN A HOTEL ROOM IN VOLUSIA COUNTY. OSTENSIBLY THE REASON GIVEN AT THE TRIAL WAS TO PROTECT HER FROM MR. GUZMAN, SO NEITHER OF THESE WITNESSES REVEALED THAT THIS $500 PAYMENT WAS MADE, WHICH I THINK MEETS THE CRITERIA OF BEING FALSE OR MISLEADING, AND THEN THE PROSECUTING ATTORNEY IN THE CLOSING ARGUMENT TO THE CIRCUIT COURT JUDGE IN THIS CASE, SAID THE ONLY AGREEMENT THAT THE STATE HAD WITH MARTHA CRONIN WAS FOR A FREE HOTEL WHEN SHE WAS PICKED UP AND THAT WAS THE EXTENT OF IT, SO I THINK --

WHO WAS THIS WITNESS?

THIS WITNESS, I THINK, THE MOST IMPORTANT WITNESS IN THE STATE'S CASE. THE KEY WITNESS IN THE CASE, I THINK, IF THE COURT LOOSE AT THE OPINION THAT WAS PUT FORTH IN THE DIRECT APPEAL ON THIS CASE. SHE IS PROMINENTLY MENTIONED IN THAT, AND I THINK THAT THE DEFENSE ATTORNEY TESTIFIED AT THE EVIDENTIARY AREA THAT, SHE WAS A KEY WITNESS IN THE CASE, BUT BASICALLY I THINK THAT, WHEN YOU ARE ANALYZING THE GIGLIO VIOLATION, YOU HAVE TO TAKE A LOOK AT THE TIMING OF WHEN THIS REWARD MONEY WAS PAID AND WHO THIS REWARD MONEY WAS PAID TO. THIS IS AN ADMITTED CRACK COCAINE ADDICT, PROSTITUTE MARTHA CRONIN, WHO WAS ENTER VIEWED BY THE POLICE -- WHO WAS INTERVIEWED BY THE POLICE, THE DETECTIVE, ON AUGUST 19, 1991, BY THE DAYTONA BEACH POLICE DEPARTMENT. SHE GAVE NO INFORMATION WHATSOEVER THAT IMPLICATED MR. GUZMAN IN ANY WAY. SHE WAS LATER, ON SEPTEMBER 24 OF 1991, AGAIN CONFRONTED BY DETECTIVE ALISON SYLVESTER OF THE DAYTONA BEACH POLICE DEPARTMENT AND SHE, AGAIN, GAVE NO INFORMATION WHICH IMPLICATED MR. GUZMAN IN ANY WAY, AND THEN LATER ON, IT WAS NOT UNTIL SHE WAS ARRESTED ON NOVEMBER 23 OF 1991, THAT SHE CHANGED HER STORY.

ISN'T THAT EXACTLY THE PROBLEM WITH THE PRONG OF GIGLIO WHICH TALKS ABOUT MATERIALITY, LET'S ASSUME YOU MEAN THAT -- LET'S ASSUME THAT ALTHOUGH THIS WAS A GIGLIO VIOLATION, IT WAS IMPEACHMENT. IT WOULD COME IN AS IMPEACHMENT.

RIGHT.

IT WOULD SEEM TO ME THAT THIS PARTICULAR WITNESS, PARTICULARLY IN A JUDGE TRIAL, WAS SIGNIFICANTLY IMPEACHED, JUST IN WHAT YOU HAVE RELATED WHICH THE JUDGE HEARD, WHICH IS THAT SHE DENIED IT. SHE DENIED IT. AND IT WASN'T UNTIL SHE WAS ARRESTED THAT SHE THEN COMES FORWARD WHEN SHE WANTS TO STAY OUT OF JAIL, AND ISN'T THAT REALLY THE PROBLEM THAT YOU HAVE HERE, IS THAT IT SEEMS TO ME THAT ALTHOUGH IT IS CERTAINLY A FACT THAT YOU WOULD HAVE ADDED ON, DIDN'T YOU GET $500, IT SORT OF APPEALS IN COMPARISON TO THE FACT -- IT SORT OF PALES IN COMPARISON TO THE FACT THAT THIS STATEMENT IS MADE ONLY AFTER SHE IS ARRESTED AND WANTS TO SAVE HERSELF.

WITH ALL DUE RESPECT, I THINK IT IS MORE THAN JUST A FACT. IT IS A FAIRLY FERTILE AREA OF IMPEACHMENT FOR HER, BECAUSE IT GIVES THE REASON AS TO WHY SHE CHANGED HER STORY. THERE WAS TESTIMONY AT THE EVIDENTIARY HEARING THAT THERE WAS A DISCUSSION BETWEEN THIS WITNESS AND DETECTIVE SYLVESTER BETWEEN THE TIME SHE INITIALLY GAVE HER STATEMENT ON AUGUST 12 AND WHEN SHE WAS PAID THE MONEY JANUARY 3 OF 1992, SO IT GIVES THE WHOLE CONTEXT AS TO WHAT --

WHAT WAS THE CONVERSATION?

DETECTIVE SYLVESTER NEVER AND TATED IN ANY OF HER POLICE REPORTS THAT THIS

CONVERSATION HAD EVER TAKEN PLACE, BUT SHE JUST SAID THAT THERE WAS A CONVERSATION BETWEEN HER AND MARTHA CRONIN AND I THINK MARTHA CRONIN'S MOTHER HAD EVEN CALLED TO INQUIRE ABOUT WHEN THE REWARD MONEY WAS GOING TO BE PAID, SO HERE WE HAVE TO TAKE A LOOK, AS FAR AS IMPEACHMENT VALUE, WHICH I THINK THIS COURT SAID IN ALTERA, WHAT IS THE IMPEACHMENT VALUE OF THE $500? I DON'T THINK IT IS JUST AN ADDITIONAL FACT.

TELL ME WHAT GIVES MORE SIGNIFICANCE, BECAUSE MOST ORDINARILY PEOPLE WOULD THINK A PAYMENT OF $500 IS HARDLY A SIGNIFICANT PAYMENT IN EXCHANGE FOR GIVING TESTIMONY THAT IS GOING TO PUT SOMEBODY ON DEATH ROW, SO TELL US WHAT IS GOING TO MAKE, IN THE CONTEXT OF THIS CASE, TO UNDERSTAND WHY THE STATE WOULD NOT HAVE REVEALED THIS TO BEGIN WITH, BUT HOW, IN FACT, THIS FACTORED INTO THE TIMING OF HER TESTIMONY AND HER FAVORABLE TESTIMONY.

WELL, I WOULD SAY THAT MARTHA CRONIN IS NO ORDINARY PERSON IN REGARD TO MONEY, BECAUSE SHE WAS, IN FACT, A CRACK COCAINE ADDICT AND HAD BEEN A DAILY USER OF CRACK COCAINE BETWEEN 1989 AND 1993 AND ADMITTED THAT, DURING HER TRIAL TESTIMONY, THAT SHE WAS IN FACT TESTIFIED THAT SHE WAS ENGAGING IN ACTS OF PROSTITUTION, IN ORDER TO GET MONEY TO BUY COCAINE WITH, SO THIS IS A WITNESS WHO IS NOT AN ORDINARY PERSON, WHO YOU WOULD JUST GIVE $500 TO. WHEN YOU THINK OF A REWARD, YOU THINK YOU ARE GOING TO OFFER A REWARD AND SOMEBODY NEW WHO HADN'T ALREADY TALKED TO THE POLICE IS GOING TO COME FORWARD, WITH NEW INFORMATION IN REGARD TO A REWARD. HERE WE HAVE A CHANGE IN TESTIMONY, AFTER THE OFFERING OF THE REWARD, SO I THINK YOU HAVE TO TAKE A LOOK --

IS THAT THE TESTIMONY THAT, IN OTHER WORDS, THAT SHE GETS ARRESTED AND THEN THE OFFICER ACTUALLY SAYS TO HER, NOW WE HAVE GOT YOU ARRESTED ON PROSTITUTION, AND I HAVE SOMETHING ELSE TO TELL YOU. IF YOU ARE GOING TO GIVE YOUR STATEMENT, WE HAVE GOT $500 TO PAY YOU? IS THAT WHAT THIS TESTIMONY IS IN THE EVIDENTIARY HEARING?

THE TESTIMONY IS NOT THAT CLEAR ABOUT WHAT THE DISCUSSION WAS BETWEEN THE DETECTIVE SYLVESTER AND MARTHA CRONIN, BUT WHAT WE DO KNOW IS THAT SHE SAID IT WAS DISCUSSED SOMETIME BETWEEN THE TIME OF HER FIRST INITIAL STATEMENT AND WHEN THE TIME THE MONEY WAS PAID, BUT THE REASON I CAN'T GIVE YOU A DIRECT DATE ABOUT THAT IS DETECTIVE SYLVESTER NEVER AND TATED ANYWHERE THAT SHE HAD, NUMBER ONE PAID THE MONEY OR NUMBER TWO, WHEN THIS CONVERSATION BETWEEN HER AND MARTHA CRONIN TOOK PLACE, SO WHEN YOU ARE TAKING A LOOK AT THE IMPEACHMENT VALUE, I THINK THE IMPEACHMENT VALUE OF THIS IS TREMENDOUS, BECAUSE THIS WITNESS --

WHAT IS THE EXPLANATION FOR WHY DETECTIVE SYLVESTER DID NOT TESTIFY TO THE $500 PAYMENT?

I DON'T BELIEVE THERE WAS ANY EXPLANATION.

GOING BACK TO WHAT JUSTICE QUINCE SAYS, AND NOT THAT MAYBE IT IS, YOU KNOW, IN TERMS OF WHETHER IT IS ACTUALLY GIGLIO OR INSTEAD OF IT BEING BRADY, IN THAT IT WAS BEING PAID AS A REWARD AS OPPOSED TO EXCHANGE FOR TESTIMONY. DID ANYONE MAKE THAT ARGUMENT THAT THEY JUST DIDN'T THINK OF IT AS BEING PART OF THE DEAL BUT IT WAS JUST WHAT WOULD HAVE BEEN PAID TO ANYBODY THAT GAY TESTIMONY?

-- THAT GAVE TESTIMONY?

I DON'T RECALL WHAT DETECTIVE SYLVESTER SAID ABOUT THAT, JUST THAT SHE DIDN'T RECALL WHETHER SHE HAD DISCUSSED IT WITH THE PROSECUTOR AND THE PROSECUTOR CAME FORWARD AND SAID HE HAD NEVER BEEN TOLD BY DETECTIVE SYLVESTER THAT THAT HAD TAKEN PLACE. THEREFORE YOU HAVE THE WRITTEN MOTION BY THE DEFENSE ATTORNEY IN THIS

CASE ASKING WHETHER ANY COMPENSATION HAS EVER BEEN PAID TO THIS WITNESS OF ANY KIND WHATSOEVER AND A SPECIFIC WROIN DENIAL BY THE PROSECUTING ATTORNEY IN THE CASE PRIOR TO THE TRIAL, SO THE DEFENSE ATTORNEY TRIED TO FERRET THIS OUT, TO SEE WHETHER THIS HAD EVER BEEN PAID, BUT I DON'T THINK THAT DETECTIVE SYLVESTER CAN EXCUSE THIS WHEN SHE NEVER PUT IT IN THE POLICE REPORT, WHEN SHE SAID IT WAS JUST REWARD MONEY, WHEN WE ARE DEALING WITH THIS CRACK COCAINE ADDICT WITNESS.

THE TRIAL JUDGE IN THIS CASE, SAT AS THE FINDER OF FACT, RIGHT, AT THE TRIAL.

THAT'S CORRECT, SIR, YES.

AND THERE WASN'T ANY JURY. THE JURY WAS WAIVED. THERE ISN'T ANY CONTEST ABOUT THAT.

THAT'S TRUE.

AND HEARD THE TESTIMONY, AND THEN, AT THE, IT WAS THE SAME TRIAL JUDGE AT THE POSTCONVICTION HEARING, GRANTED AN EVIDENTIARY HEARING, HEARD THE EVIDENCE, ONCE AGAIN, AND THEN ENTERS AN ORDER IN WHICH IT SPECIFICALLY SAYS THIS COURT WAS AWARE OF THE FACT THAT CRONIN HAD MADE AN AGREEMENT WITH THE STATE TO TESTIFY AGAINST DEFENDANT. AND SO IT GOES ON AND THE STATEMENT THAT SAYS THIS COURT FINDS THAT THERE IS NOT A REASONABLE PROBABILITY THAT THE INFORMATION REGARDING THE $500 REWARD PAID TO CRONIN HAD BEEN DISCLOSED. THE RESULT OF THE TRIAL WOULD HAVE BEEN DIFFERENT. NOW, ARE WE JUST TO DISAGREE WITH THE TRIAL JUDGE ON THAT AND SAID YOU WOULD HAVE THOUGHT DIFFERENTLY ABOUT IT OR THAT IT WOULD HAVE MADE A DIFFERENCE TO YOU? WHAT ARE WE TO DO WITH THAT?

I BELIEVE THAT THERE IS AED BODY OF JURISPRUDENCE FROM THIS COURT AND A GIGLIO VIOLATION AS TO THE MATERIALITY PRONG OF DOING A DE NOVO REVIEW OF THE MATERIALITY PRONG THAT WAS DONE CERTAINLY INVENT YOUR, A WHEN THIS COURT DISMISSED THE -- IN VENTURA, WHEN THIS COURT DISMISSED WHAT WAS DONE AND BASED UPON THE IMPEACHMENT VALUE YOUTHFUL THE WITNESS AND WHETHER OR NOT THERE WAS EXTENSIVE KROR RATING EVIDENCE IN THIS CASE, AND THE -- CORROBORATING EVIDENCE IN THIS CASE, AND IT IS NOT A REASONABLE PROBABILITY BUT THE STANDARD IS WHETHER THERE IS ANY REASONABLE LIKELIHOOD, AND ALSO THE COURT DOES NOT, AS THIS COURT DID IN VENTURA, GO TO TALK ABOUT WHETHER WHEN OF HIS THERE -- ABOUT WHETHER THERE WAS EXTENSIVE CORROBORATION. IT JUST GOES AS TO WHETHER THERE WAS OTHER EVIDENCE AGAINST MR. GUZMAN. THAT IS NOT IN THE WAY OF A GIGLIO VIOLATION. BUT DEFINITELY I THINK THIS COURT DEFINITELY IN THE VENTURA AND THE ROSE CASE.

VENTURA, WAS THERE A JURY RECOMMENDATION?

A JURY TRIAL IN THE VENTURA CASE, YES, BUT I DON'T THINK THAT A GIGLIO VIOLATION, THIS COURT'S RESPONSIBILITY TO DO A DE NOVO REVIEW OUGHT TO CHANGE FROM THE STANDPOINT OF WHETHER OR NOT THERE IS A BENCH TRIAL OR WHETHER OR NOT THERE IS A JURY TRIAL, BECAUSE WHAT WE ARE --

EXCEPT THAT, AND I AM CONCERNED THAT THE JUDGE USED THE REASONABLE PROBABILITY LANGUAGE, RATHER THAN THE MORE LIBERAL STANDARD, DEFENSE-FRIENDLY STANDARD OF GIGLIO, BUT I GUESS FOLLOWING UP ON WHAT JUSTICE WELLS IS SAYING, IT SEEMS TO ME THAT WE ARE TRYING TO ASSESS THE EFFECT ON THE TRIER OF FACT, AND ORDINARILY WE, THE JURY IS ALREADY DISCHARGED, SO WE REALLY DON'T KNOW, SO WE ARE ALL IN SORT OF EQUAL POSITIONS, ALTHOUGH WE DO GIVE SOME DEFERENCE IF THE TRIAL JUDGE IS THERE, BUT HERE THE TRIAL JUDGE, THE FINDER OF FACT, AND FRANKLY IT SEEMS TO ME THAT, IF I AM SITTING THERE AS, OBJECTIVELY AS A TRIAL JUDGE, IT IS MORE SIGNIFICANT TO ME THAT SHE CHANGES HER TESTIMONY AFTER SHE GETS ARRESTED AND SHE HAS GOT A CHARGE, NOT THAT I WOULDN'T

ALSO BE IMPRESSED WITH THE $4500, BUT I DON'T THINK THAT IN -- WITH THE $500, BUT I DON'T THINK THAT, IN TERMS OF THE IMPEACHMENT VALUE, THAT IT IS AS TRONK STRONG AS THE TIMING -- AS STRONG AS THE TIMING OF HER STATEMENT, SO WHAT A JUDGE MAY BE LOOKING AT IS SOMETIMES LESS IMPRESSED WITH IMPEACHMENT THAN A JURY, JUST LIKE A JUDGE MAY BE ABLE TO SET ASIDE COLLATERAL CRIME EVIDENCE, WHEREAS A JURY MAY BE MORE INFLUENCED, SO WHY ISN'T THAT IN THE MIX OF WHEN WE ARE LOOKING AT THIS CASE THAT, IS THAT IT WAS A JUDGE TRIAL, IN TERMS OF ASSESSING THE PREJUDICE OR MATERIALITY PRONG? YOU SAY IT HAS NO EFFECT, THAT IT WAS A JUDGE TRIAL, OR SHOULD WE TAKE THAT INTO CONSIDERATION?

I DON'T THINK IT WOULD BE FAIR TO TAKE THAT INTO CONSIDERATION, BECAUSE I THINK WHAT YOU WANT TO DO, THE REASON FOR THE DE NOVO REVIEW IS TO HAVE CONSISTENCY AND CLARITY AROUND THE STATE, AS TO THE MATERIALITY STANDARD OF GIGLIO, AND THE ONLY WAY TO DO THAT IS A DE NOVO REVIEW, AND THAT IS WHAT THE STEPHENS V STATE GUESS WAS ABOUT, AS FAR AS STRICKLAND, AND THAT IS WHY YOU RECEDED FROM GROSSMAN, SO THAT THIS COURT AS THE COURT THAT HEARS ALL THE DEATH PENALTY CASES AND READS ALL THE TRANSCRIPTS, CAN MAKE CONSISTENT MATERIALITY FINDINGS FROM CASE TO CASE.

SURE, BUT THERE IS NEVER GOING TO BE A COOKIE CUTTER OF A CASE. YOU HAVE GOT, AGAIN, THIS ISN'T A SITUATION WHERE THIS WITNESS WASN'T SUBSTANTIALLY IMPEACHED. I MEAN, YOU AGREE WITH THAT, THAT THE DEFENSE ATTORNEY DID A PRETTY GOOD JOB OF IMPEACHING MISS CRONIN.

I WOULD HAVE TO SAY SO, YES.

SO NOW WE ARE TALKING ABOUT WHETHER, IS IT ICING ON THE CAKE OR A WHOLE OTHER, YOU KNOW, SLICE THAT WOULD HAVE BEEN TAKEN WITH THIS $500? I AM JUST NOT, AND I UNDERSTAND THAT, WHAT HER CIRCUMSTANCES WERE THAT I GUESS $500 COULD HAVE PUT HER OFF THE STREET FOR A COUPLE OF DAYS OR A WEEK, AND ON, YOU KNOW, CRACK COCAINE, BUT IT IS NOT LIKE IT IS, YOU KNOW, $10,000 PAYMENT OR NOT LIKE, YOU KNOW, AGAIN, I JUST THINK THAT THE FACT THAT SHE DIDN'T GET JAIL TIME AND THAT SHE OFFERED HER TESTIMONY AFTER SHE GOT ARRESTED, SEEMS LIKE THE MOST SIGNIFICANT IMPEACHMENT FACTOR.

ONCE AGAIN I WOULD HAVE TO RESPECTFULLY DISAGREE, JUST BECAUSE OF THE BASIS OF WHERE THIS WOMAN CAME FROM, WHAT SHE WAS DOING. SHE WAS OBVIOUSLY ENGAGING IN PROSTITUTION. SHE WAS SELLING HER BODY FOR MONEY. THIS AMOUNT OF MONEY WAS VERY IMPORTANT TO HER AND $A 00 WOULD BE A LOT OF MONEY TO -- $500 WOULD AND LOT OF MONEY TO MARTHA CRONIN AND THE CONTEXT OF IMPEACHMENT VALUE WOULD BE CONSIDERABLE, AND JUST BECAUSE A WITNESS IS IMPEACHED ON OTHER MATTERS AND THEIR CREDIBILITY DAMAGED, SHOULD NOT NEGATE OR BE DISPOSITIVE OF A GIGLIO CASE. I JUST KNOW THAT YOU HAVE TO MAKE AN ASSESSMENT OF THE IMPACT AND DECIDE, IN FACT, WHETHER OR NOT WE CAN VIEW THIS ERROR AS HARMLESSco ERROR BEYOND A REASONABLE DOUBT UNDER CHAPMAN, BECAUSE I THINK WHAT WE HAVE GOT HERE IS WE HAVE GOT CLEAR GIGLIO ERROR, SO WHAT YOU HAVE TO DO IS TAKE A LOOK IN A DE NOVO FASHION AND SAY CAN YOU SAY BEYOND A REASONABLE DOUBT THAT THIS IS HARMLESS ERROR, AND I DON'T THINK THAT YOU CAN WHEN THE GLARINGNESS OF THIS FALSE TESTIMONY IS VIEWED IN THE LIGHT OF THE IMPEACHMENT VALUE AND THE FACT THAT THERE IS NO EXTENSIVE CORROBORATING HE HAVE IN THIS CASE -- CORROBORATING EVIDENCE IN THIS CASE, INDEPENDENT OF MARTHA CRONIN'S TESTIMONY, AND THE TRIAL COURT SAID THERE WAS SOME OTHER EVIDENCE. THEY POINT TO THE RING. THE RING IS NOT EXTENSIVE CORROBORATING EVIDENCE OF MARTHA CRONIN'S TESTIMONY, BECAUSE MR. GUZMAN TESTIFIED THAT HE GOT THE RING FROM CURTIS WHAT WILLS, WHO WAS ALSO A SUSPECT IN THIS CASE, AND THAT HE SOLD THE RING AFTER MARTHA CRONIN AND CURTIS WALLACE HAD COME BACK TO THE HOTEL ROOM WITH IT, SO IT IS NOT EXTENSIVE CORROBORATION. I SEE I AM INTO MY REBUTTAL AND I WILL HAVE A SEAT.

CHIEF JUSTICE: THANK YOU. GOOD MORNING.

GOOD MORNING, YOUR HONOR. MAY IT PLEASE THE COURT. I AM KEN NUNNELLEY AND I REPRESENT THE STATE OF FLORIDA IN THIS APPEAL. AT THE OUTSET, THE STATE SHOULD HAVE DISCLOSED THE SPAMENT OF THE $500 REWARD TO THE WITNESS MARTHA CRONIN. HOWEVER, THE FACT THAT THIS WAS NOT DISCLOSED DOES NOT UNDERMINE THE EFFORT.

IS ISN'T THAT WHAT THE US SUPREME COURT CASES HAVE REQUIRED, THAT WHEN IT IS WITHHOLDING AS OPPOSED TO A BRADY VIOLATION, THAT THE MATERIALITY STANDARD IS AKIN TO THE HARMLESS ERROR STANDARD?

WELL, YOUR HONOR, IN VENTURA, THIS COURT QUOTED FROM ROUTELY AND CITED BACK TO GIGLIO AND HELD A STATEMENT IS MATERIAL, THAN IS WHAT WE ARE TALKING ABOUT IN THE CONTEXT OF THIS CASE, IF, AND I QUOTE THERE, IS A REASONABLE PROBABILITY THAT THE FALSE EVIDENCE MAY HAVE AFFECTED THE JUDGMENT OF THE JURY.

MAY HAVE.

MAY HAVE AFFECTED THE JUDGMENT OF THE JURY. IN --

WHAT DO WE DO WITH THE FACT THAT, WHAT DO YOU SAY AS TO THE FACT THAT IT IS A JUDGE TRIAL?

I THINK WE ARE IN AN ANALOGOUS SITUATION, AND I WAS UNABLE TO FIND ANY CASE THAT SQUARELY CONFRONTS THE ISSUE THAT WE HAVE, THAT IS A BENCH TRIAL WITH A GIGLIO ISSUE, BUT I WOULD SUGGEST THAT THIS CASE OR THIS ISSUE IS ANALOGOUS, IF YOU WILL, TO THE LAST OBA CHANDLER CASE THAT WAS BEFORE THIS COURT, WHERE WE HAD THE CHANGE OF VENUE ISSUE WAS IN THE CASE AND JUDGE SHAFER MADE VARIOUS FINDINGS WITH RESPECT TO WHETHER OR NOT SHE WOULD HAVE GRANTED A SECOND MOTION FOR A CHANGE OF VENUE AND WHAT THE EFFECT OF SUCH A CHANGE OF MOTION WOULD HAVE BEEN ON HER ULTIMATE PROCEEDINGS IN THE CASE, AND I WOULD SUGGEST THAT WE ARE IN AN UNUSUAL CIRCUMSTANCE, IN THE SENSE THAT WE HAVE THE TRIER OF FACT AT THE GUILT STAGE OF THIS PROCEEDING, ALSO SITTING AS THE TRIER OF FACT IN THE POSTCONVICTION PROCEEDING. THIS, HOWEVER, IS NOT THE CIRCUMSTANCE WHERE WE HAVE TO SPECULATE ABOUT WHAT EFFECT THIS EVIDENCE MIGHT OR MIGHT NOT HAVE HAD ON A JURY, BECAUSE WE DON'T HAVE A JURY. WE HAVE THE MAN WHO MADE THE ORIGINAL DECISION IN THE ORIGINAL TRIAL, COMING BACK OPPOSE THE CONVICTION, AND SAYING IT IS NOT MATERIAL, BECAUSE, AND AGAIN HE QUOTES FROM VENTURA, THERE IS NOT A REASONABLE PROBABILITY THAT THE FALSE EVIDENCE WOULD PUT THE WHOLE CASE IN SUCH A DIFFERENT LIGHT AS TO UNDERMINE CONFIDENCE IN THE VERDICT. THAT IS A VERBATIM QUOTE FROM VENTURA, AND ANY SUGGESTION BY THE DEFENSE THAT JUDGE JOHNSON APPLIED THE WRONG LEGAL STANDARD IN EVALUATING THE GIGLIO CLAIM, SIMPLY INCORRECT. THIS ISSUE IN THE FINAL ANALYSIS, COMES DOWN AS JUSTICE WELLS COMMENTED, TO A DISAGREEMENT WITH THE RESULT REACHED BY THE TRIAL COURT.

IN THIS CASE, CAN WE REALLY SAY THAT IT DID NOT, DOES NOT UNDERMINE CONFIDENCE IN THIS PROCEEDING? BECAUSE WE HAVE A SITUATION WHERE MS. CRONIN, YOU WOULD AGREE MS. CRONIN WAS ONE OF THE MAIN WITNESSES IN THIS CASE, WAS SHE NOT?

SHE WAS NOT THE ONLY WITNESS BUT SHE WAS THE MAIN WITNESS.

I DIDN'T SAY THE ONLY WITNESS BUT SHE WAS ONE OF THE MAIN WITNESSES, IS THAT CORRECT?

THAT'S RIGHT.

AND THEN WE HAVE ANOTHER WITNESS. MS. CRONIN SAYS THAT THIS DEFENDANT CAME BACK

TO THE HOLTH AT AROUND THREE O'CLOCK AND MADE -- TO THE HOTEL AT AROUND THREE O'CLOCK AND MADE STATEMENTS THAT HE HAD KILLED THE VICTIM.

YES, MA'AM.

WHEREAS WE HAD OTHER PEOPLE WHO SAID THEY SAW THIS VICTIM MUCH LATER THAN THREE O'CLOCK, LIKE THAT NIGHT, AND WE HAVE SOMEONE ELSE WHO HAS ALSO SAID THAT THEY CONFESSED TO SOMEONE THAT THEY ACTUALLY KILLED THE VICTIM. I MEAN, THIS CASE IS NOT ONE OF THOSE CASES WHERE WE HAVE A LOT OF EVIDENCE THAT REALLY POINTS TO THIS DEFENDANT AS BEING THE MURDERER HERE.

WELL, DID, I AM NOT SURE I UNDERSTOOD A STATEMENT THAT YOU MADE IN YOUR, IN PART OF YOUR QUESTION, JUSTICE QUINCE. DID I UNDERSTAND YOU TO STAY THAT THERE WERE OTHER -- TO SAY THAT THERE WERE OTHER WITNESSES WHO HAD SEEN THE VICTIM ALIVE AT SOME POINT IN TIME?

YES. DIDN'T THEY SAY THAT THEY SAW THE VICTIM ALIVE AT, LIKE, TEN O'CLOCK THAT NIGHT AT A COKE MACHINE?

I BELIEVE, IF MY MEMORY FROM THE DIRECT APPEAL SERVES, THAT AS IN THE EVENT, IT TURNED OUT, IF I AM NOT MISTAKEN, AND I WOULD CERTAINLY --

IS MR. COLVIN THE VICTIM IN THIS CASE?

YES, MA'AM. MR. COLVIN IS THE VICTIM.

AND THERE WERE NOT TWO WITNESSES WHO SAID THEY SAW MR. COLVIN LATER THAT NIGHT?

I BELIEVE AS THAT DEVELOPED, THAT WITNESS OR WITNESSES, AND I DON'T REMEMBER IF IT WAS ONE OR TWO, BUT I BELIEVE THEY WERE CONFUSED ON THE DATE AT WHICH THEY SAW MR. COLVIN AT THE COKE MACHINE. IF, AGAIN, I WOULD CERTAINLY DEFER TO THE RECORD, BUT I WOULD, ALSO, POINT OUT THAT THIS COURT HAS ALREADY AFFIRMED THE CONVICTION AND SENTENCE AGAINST A CHALLENGE TO THE SUFFICIENCY OF THE EVIDENCE, AND I WOULD ALSO POINT OUT THAT THERE WAS ANOTHER WITNESS WHOSE TESTIMONY --

THIS ISN'T REALLY A MATTER OF THE SUFFICIENCY OF THE EVIDENCE, BUT WHEN WE TALK ABOUT, I MEAN, WHEN WE HAVE A CASE WHAT THERE IS CONFLICTING -- WHERE THERE IS CONFLICTING EVIDENCE LIKE, THIS THEN WHEN YOU HAVE SOME OTHER PIECE PUT IN THE MIX, DOESN'T THAT REALLY CHANGE THE DYNAMICS OF THE CASE?

THE TRIAL COURT EVALUATED MARTHA CRONIN'S TESTIMONY, WHEN HE HEARD HER TESTIFY AT THE ORIGINAL GUILT PROCEEDINGS. MARTHA CRONIN WAS NOT CALLED TO TESTIFY IN THE POSTCONVICTION PROCEEDINGS. IN THE TRIAL COURT IN HIS ORDER, FINDING THAT THERE WAS NO BASIS FOR RELIEF BASED UPON THE COMPOSITE GIGLIO, BRADY OR INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS ARISING OUT OF THE $500 REWARD ISSUE, STATED TRIAL COUNSEL EXTENSIVELY CROSS-EXAMINED CRONIN FOR OVER 88 PAGES OF TRIAL TRANSCRIPTS REGARDING HER ADDICTION TO CRACK COCAINE, HER MANY ARRESTS FOR PROSTITUTION, HER TRUTHFULNESS, HER FAILURE TO INITIALLY TELL POLICE ABOUT DEFENDANT'S CONFESSION, HER ADOPTION OF LANE'S PERJURY, AND LANE IS AN INDIVIDUAL WHO, AS I RECALL, SOMEHOW OR ANOTHER OBTAINED THE UNIFORM OF AN ARMY OFFICER AND I AM% NATURE ADD ARMY OFFICER, IN AN EFFORT TO OBTAIN CRONIN'S RELEASE. HE CLAIMED HE WAS HER BROTHER AND MADE THE MISTAKE OF DOING THIS IN FRONT OF A JUDGE WHO WAS A FORMER JAG OFFICER. I DON'T MAKE THEM UP, JUDGE. THEY COME IN THE MAIL. AND HE WENT ON. THERE WAS A LATER WRITTEN FROM CRONIN TO THE DEFENDANT ABOUT HER JEALOUSY. CRONIN CALLED SYLVESTER AND TOLD SYLVESTER WHAT SHE WANTED TO HEAR ABOUT THE DEFENDANT. SHE MADE A DEAL

WITH THE STATE IN EXCHANGE FOR HER TESTIMONY AGAINST THE DEFORMITY INCLUDING FOOD, LODGING, THE UNARRESTS AND DISMISSAL OF CHARGES, ALLEGED STATEMENTS THAT SHE HAD, FROM ANOTHER WHITE MALE THAT SHE HAD LIED, TOLD HIM SHE LIED ABOUT THE DEFENDANT COMMITTING THE MURDER, AND THE DETAILS OF HER TESTIMONY RARTH DAVE THE MURDER, ITSELF.

THIS IS -- REGARDING THE DAY OF THE MURDER, ITSELF.

THIS IS A CONCERN I HAVE RELYING ON THE JUDGE'S ORDER AND YOU SAID THESE WERE BROUGHT, INEFFECTIVE ASSISTANCE, BRADY, GIGLIO, MY CONCERN IS THAT, IN THE JUDGE'S FINDING OF THE MATERIALITY PRONG, IT APPEARS THAT, ALTHOUGH THERE IS CITATION TO VENTURA, THAT THE STANDARD THAT HE IS USING FOR MATERIALITY IS HAD, IN FACT, EITHER THE BRADY OR THE STRICKLAND CLAIM, BECAUSE WHAT HE SAYS IS "FINDS THERE IS NOT A REASONABLE PROBABILITY THAT THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT." HE THEN SAYS THAT IT IS BECAUSE, THAT THE FALSE EVIDENCE WOULD PUT THE WHOLE CASE IN SUCH A DIFFERENT LIGHT AS TO UNDERMINE CONFIDENCE IN THE VERDICT, AND THAT IS NOT THE STANDARD FOR GIGLIO, SO MY CONCERN IS THAT AT THE, THAT, SHOULD WE AT LEAST REQUIRE THE TRIAL JUDGE TO SEPARATE OUT THE, IF WE ARE GOING TO RELY ON HIS SUPERIOR VANTAGE POINT, THE IDEA THAT, CAN YOU SAY, THOUGH, THAT THIS WAS ESSENTIALLY, IT MAY HAVE AFFECTED THE CREDIBILITY TO SUCH AN EXTENT THAT IT WOULD HAVE MADE A DIFFERENCE IN WHETHER YOU BELIEVE OR DISBELIEVED CRONIN'S TESTIMONY, BECAUSE THAT IS REALLY THE KEY, BECAUSE THE OTHER WITNESSES, YOU HAVE GOT THE JAILHOUSE SNISM, AND WE -- SNITCH, AND WE, YOU KNOW, KNOW ABOUT JAILHOUSE SNITCHES, AND, AGAIN, THE FACT THAT HE IS IN POSSESSION OF THE RING IS NOT IN ITSELF, EVIDENCE OF THE MURDER. THERE IS NO PHYSICAL EVIDENCE THAT LINKS HIM, AND BACK TO WHAT JUSTICE QUINCE SAYS, IS THAT SHE IS THE WITNESS THAT PLACES HIMNi AT THE SCENE OF THE CRIME AND ALLEGELY CONFESSES TO HER, SO SHE IS THE STRONG GUILT WITNESS THAT WE HAVE IN THIS CASE.

SHE IS THE STRONG GUILT WITNESS, BUT ROGER'S TESTIMONY IS ALSO CONSISTENT WITH CORROBORATIVE OF AND INTERLOCKING WITH CRONIN'S TESTIMONY.

WHAT ABOUT THIS IDEA THAT THE JUDGE'S ORDER DOES NOT MAKE A DISTINCTION BETWEEN THE GIGLIO AND THE BRADY CLAIM, YET WE, YOU WOULD AGREE THAT THERE IS AN EASIER BURDEN FOR THE DEFENDANT IN GIGLIO THAN IN BRADY.

YES, MA'AM, I WOULD AGREE WITH THAT, AND AGAIN I GO BACK TO THE TRIAL COURT'S ORDER THAT DEALS WITH THIS COMPONENT OF THE ISSUE, AND THE TRIAL COURT STATED, BEGINNING ON PAGE 930 OF THE RECORD, UNDER GIGLIO, A STATEMENT IS MATERIAL IF, QUOTE, THERE IS A REASONABLE PROBABILITY THAT THE FALSE EVIDENCE MAY HAVE AFFECTED THE JUDGMENT OF THE JURY. HE HAS A CITE OF ID AT THAT JUNCTURE IN HIS ORDER. THAT IS A CITATION BACK TO VENTURA, AND HE SETS OUT THE INTERNAL CITE TO THE ROUTELY DECISION.

RIGHT, BUT WHEN HE APPLIES, IT HE DOESN'T USE THAT. HE DOESN'T SAY WHETHER IT MAY HAVE AFFECTED HIS JUDGMENT. HE SAYS THERE IS NOT A REASONABLE PROBABILITY THAT THE RESULT WOULD HAVE BEEN DIFFERENT.

WELL, YOUR HONOR, AGAIN, TO FOLLOW UP ON WHAT THE TRIAL COURT SAID IN HIS ORDER, WHICH IS WHAT WE HAVE TO RELY UPON, HE SETS OUT THE QUOTE, AGAIN, FROM VENTURA, WHERE THIS COURT SAID, QUOTE, AND THIS IS ALSO QUOTED WITHIN THE TRIAL COURT'S ORDER, IN ANALYZING THIS ISSUE, COURTS MUST FOCUS ON WHETHER THE FAVORABLE EVIDENCE COULD REASONABLY BE TAKEN TO PUT THE CASE IN SUCH A DIFFERENT LIGHT AS TO UNDERMINE CONFIDENCE IN THE VERDICT.

THAT IS A DIRECT QUOTE FROM THE VENTURE.

THAT IS A DIRECT QUOTE FROM VENTURE, A WHICH IS ALSO, IN TURN, A DIRECT QUOTE FROM WHITE FROM THIS COURT IN 1999, AND THEN, IN THE PEN ULTIMATE DISPOSITIVE PARAGRAPH, THE TRIAL COURT SAID THIS COURT FINDS THAT THIS STATEMENT REGARDING THE $500 REWARD BEING PAID TO CRONIN IS IMMATERIAL, BECAUSE THERE IS NOT A REASONABLE PROBABILITY THAT THE FALSE EVIDENCE WOULD PUT THE WHOLE CASE IN SUCH A DIFFERENT LIGHT AS TO UNDERMINE CONFIDENCE IN THE VERDICT'S CITE TO VENTURE.

DO YOU SEE THE DIFFERENCE BETWEEN WOULD AND COULD?

I BEG YOUR PARDON?

REASONABLE PROBABILITY THAT FALLS EVIDENCE MAY HAVE AFFECTED THE JUDGMENT, COULD BE REASONABLY BE TAKEN, WHEREAS THE, AND IT IS NOT, IT IS A DISTINCTION WITH A VERY IMPORTANT DIFFERENCE. THAT "WOULD HAVE" AND "COULD HAVE", WOULD IS A OUTCOME DETERMINATIVE STATEMENT. COULD MEANS IS THERE A POSSIBILITY OF, IT AND THAT IS WHERE THE HARMLESS ERROR -- AND THAT IS WHERE THE HARMLESS-ERROR ANALYSIS WOULD APPLY TO THE GIGLIO CLAIM.

AND MY RESPONSE WOULD BE THAT I WISH JUDGE JOHNSON WOULD HAVE QUOTED VENTURA AND WHITE, AND WE WOULDN'T BE HAVING THIS ARGUMENT AND THIS DISCUSSION, BUT AT THE SAME TIME I THINK WE HAVE TO LOOK AT IT IN THE CONTEXT OF PERHAPS IT IS A WOULD IN PLACE AFTER COULD, BUT AT THE SAME POINT, THE POINT BEING WE CANNOT ASSUME THAT THE TRIAL JUDGE CORRECTLY SET OUT THE LAW IN HIS ORDER AND THEN FORGOT WHAT IT WAS TWO PARAGRAPHS LATER. HE OBVIOUSLY, BASED UPON THE ORDER ITSELF, WAS WELL AWARE OF WHAT THE STANDARD WAS THAT HE WAS REQUIRED TO APPLY, AND HE DILIGENTLY UNDERTOOK TO APPLY THAT STANDARD. IF THIS IS PERHAPS SLIGHTLY INARTFUL DRAFTING OR, I WOULD SUGGEST THAT THAT IS PROBABLY WHAT THAT IS WHAT THIS IS, BECAUSE IT IS OBVIOUSLY AN INTENT BASED UPON THE CITATION TO VENTURA, A DIRECT REFERENCE TO THE STANDARD THIS COURT HAS ANNOUNCED THAT MUST BE FOLLOWED BY TRIAL JUDGES IN ANALYZING THE GIGLIO CLAIM!

WAS THIS AN ORDER DRAFTED BY THE JUDGE OR DRAFTED BY THE STATE?

2 IT WASN'T DRAFTED BY THE STATE -- IT WASN'T SDRASTED BY THE STATE, YOUR HONOR. IT WAS -- IT WASN'T DRAFTED BY THE STATE, YOUR HONOR. IT WAS DRAFTED BY THE JUDGE, AS FAR AS I KNOW.

THERE WAS EVIDENCE THAT CRONIN DID NOT MAKE VERY MUCH MONEY AT ALL, CORRECT?

I DON'T RECALL THAT EVIDENCE ABOUT HER.

AND THAT SHE WAS ADDICTED TO CRACK COCAINE.

THAT'S RIGHT.

MY RECOLLECTION OF THE RECORD HAVING TO DO WITH INCOME WAS THAT SHE SEEMED TO OBTAIN DRUGS IN SOME FASHION WHENEVER SHE WANTED THEM, AND WHAT HER INCOME WAS, I HAVE NO IDEA.

GIVEN HER DRUG ADDICTION AND THE FACT THAT SHE WAS GIVEN THIS $500, WHY DON'T WE VIEW HER CREDIBILITY AS STANDING ON A CLIFF AND THE OTHER ITEMS OF IMPEACHMENT THAT YOU MENTIONED IN THE ORDER ARE THING THAT IS ARE PUSHING HER TOWARD THE EDGE OF THAT CLIFF, AND THIS $500 PAYMENT IS SOMETHING THAT WOULD HAVE PUSHED HER CREDIBILITY OVER THE CLIFF?

WELL, FIRST OF ALL, CRONIN ROLLED OVER IN NOVEMBER OF 1991, WHEN SHE WAS PICKED UP ON A VOP CHARGE. THERE IS NO INDICATION AT THAT TIME, THERE IS NO INDICATION IN THE RECORD. THERE IS NO TESTIMONY IN THE RECORD FROM THE 3.850 PROCEEDING TO ESTABLISH THAT CRONIN EVEN GNAW ABOUT THE REWARD AT -- CRONIN EVEN KNEW ABOUT THE REWARD AT THAT POINT IN TIME. SHE KNEW IN NOVEMBER, AFT REWARD WAS POSTED IN AUGUST, AND MAINTAINED HER ORIGINAL STATEMENT OF LACK OF KNOWLEDGE ABOUT THE OFFENSE. IT APPEARS, FROM THE EVIDENCE IN THE RECORD, AND THERE WAS A FULL AND FAIR EVIDENTIARY PROCEEDING IN THE CIRCUIT COURT IN THIS CASE, THAT MARTHA CRONIN ROLLED OVER ON GUZMAN IN NOVEMBER OF 1991, IN AN EFFORT TO KEEP FROM GOING TO JAIL ON A VOP. AND IN RETURN, WHAT SHE DID RECEIVE FROM THAT WAS LODGING IN A BEACH SIDE HOTEL AND VARIOUS OTHER MATTERS THAT WE HAVE DISCUSSED AND THE FACT OF THE MATTER IS SHE CONTINUED ENGAGING IN PROSTITUTION AND IN DRUG USE, EVEN THOUGH SHE WAS HOUSED OR SUPPOSEDLY, SEMIPROTECTIVE CUSTODY, IF YOU WILL.

SO WHEN DID THEY PAY THE $500?

IN JANUARY, WHEN SHE WAS IN JAIL. SO IF SHE WAS, IF SHE --

WHY WOULD THEY HAVE DONE THAT? IN OTHER WORDS IF THEY WERE GOING TO PAY IT BECAUSE SHE CAME FORWARD IN NOVEMBER, WOULD COULD HAVE LED TO THIS ADDITIONAL PAYMENT IN -- WHAT COULD HAVE LED TO THIS ADDITIONAL PAYMENT IN JANUARY, OTHER THAN SOME, I MEAN, THERE ANY EXPLANATION FOR IT?

HER TESTIMONY HAS BEEN CONSISTENT FROM THE NOVEMBER STATEMENTS.

IN THE RECORD THERE, IS NOTHING TO SAY WHAT MOTIVATED THE STATE TO, IN JANUARY, PAY PAY OUT OF THE GOODNESS OF THEIR HEART AND SAY WE FORGOT THERE WAS THIS REWARD MONEY. WE NEED TO DELIVER HER $500 BUCKS? NOTHING ABOUT THAT?

SHE WAS, THE REWARD, AND IT WAS MEARLE -- MERELY A REWARD TO GO BACK TO SOME OF THE QUESTIONS FROM MY BROTHER'S OPENING ARGUMENTS, IT WAS MERELY A REWARD AND IT WAS ACCORDING TO THE TESTIMONY FROM ALISON SYLVESTER, WHO WAS THE LEAD INVESTIGATOR IN THE CASE, A WE REGARDED -- A REWARD THAT WAS PAID FOR INFORMATION LEADING TO THE ARREST.

DID CRONIN KNOW ABOUT THIS REWARD AT THE TIME THAT SHE MADE HER STATEMENT, INCRIMINATING STATEMENTS?

THERE IS NO INDICATION, ONE WAY OR THE OTHER.

IS THERE ANY INDICATION OF WHETHER THE DETECTIVE INFORM HER ABOUT THE AWARD?

THERE IS NO EVIDENCE THAT THAT OCCURRED. YOUR HONOR.

WHAT ABOUT GUZMAN'S TESTIMONY, THE 3.850, THAT HE SENT A LETTER TO COUNSEL IN FEBRUARY OF '95 REGARDING LANE'S STATEMENT REGARDING CRONIN RECEIVING A $500 REWARD?

THAT THROWS YET ANOTHER WRINKLE INTO IT, YOUR HONOR, WHICH I WOULD SUGGEST TAKES US OUT OF GIGLIO ALL TOGETHER. BECAUSE IF THE DEFENDANT KNEW OR HAD REASON TO BELIEVE THAT A REWARD HAD BEEN PAID TO MARTHA CRONIN, THEN WE ARE IN STRICKLAND VERSUS WASHINGTON. AND NOT UNDER GIGLIO. BECAUSE AT THAT, THEN WE FALL BACK INTO THE INEFFECTIVE ASSISTANCE OF COUNSEL ANALYSIS FOR NOT USING THAT, IN IMPEACHMENT. AND I WOULD SUGGEST THAT WE CLEARLY HAVE A SITUATION WHERE MR. GUZMAN CANNOT SHOW PREJUDICE, BASED UPON THAT, BASED UPON THE FINDINGS OF THE TRIAL COURT.

DID YOU ARGUE THAT, THAT THEY KNEW ABOUT IT BACK IN 1995?

YES, MA'AM.

AND WHAT DID THE JUDGE FIND ABOUT THAT?

I DON'T REMEMBER SPECIFIC FINDINGS ONE WAY OR THE OTHER, WITH RESPECT TO THAT, BUT THERE WAS EVIDENCE THAT A LETTER WAS SENT FROM GUZMAN TO DEFENSE COUNSEL, REFERRING TO A WITNESS, THE WITNESS WHO I HAVE REFERRED TO EARLIER, THIS THOMAS LANE, WHO ALSO SOMETIMES APPEARS AS LANG, LANG, IN THE RECORD, AND ONE OF, AGAIN, GUZMAN'S TESTIMONY BEGINS 338 OF THE RECORD. ON 339, HE TESTIFIED THAT ONE OF THE STATEMENTS TWO, SWORN STATEMENTS, THOMAS LANE MADE REGARDING MARTHA CRONIN INDICATED THAT MARTHA CRONIN HAD RECEIVED A $500 REWARD AND MR. GUZMAN TESTIFIED THAT HE SENT A LETTER TO HIS ATTORNEY TO THAT EFFECT.

AND THEN TRIAL OCCURRED AFTER THAT POINT?

YES, MA'AM.

WHAT DID THE DEFENSE LAWYER SAY ABOUT THAT?

HE DID NOT REMEMBER THE LETTER, YOUR HONOR. AS WE INQUIRED ABOUT THE LETTER, MR. KEATING, WHO REPRESENTED GUZMAN AT TRIAL, HAD NO REC LICKS OF IT, ONE WAY -- NO RECOLLECTION OF IT, ONE WAY OR THE OTHER.

SO, BUT, HE HAD A DEMAND FOR DISCOVERY ON THE STATE THAT SAID NO REWARDS NEW YORK CITY MONEY HAD BEEN PAID.

THAT IS CORRECT, YOUR HONOR, AND I WILL ABSOLUTELY CONCEDE RIGHT NOW THAT THEY SHOULD HAVE TOLD HIM ABOUT IT, AND I DON'T KNOW WHY THEY DIDN'T. I DON'T KNOW WHY THE ASSISTANTS STATE ATTORNEY THAT HANDLED THIS CASE -- THE ASSISTANT STATE ATTORNEY THAT HANDLED THIS CASE DID NOT KNOW ABOUT THE REWARD. I DON'T KNOW WHY THE CHIEF INVESTIGATOR WHO IS A FORMER LAW ENFORCEMENT OFFICER NOW, DID NOT TELL THE STATE ATTORNEY ABOUT IT. I DON'T KNOW HOW THAT HAPPENED OR WHAT BROKE DOWN, BUT I DO KNOW THIS, THAT THIS DEFENDANT WAS NOT PREJUDICED AS A RESULT OF THIS AND THIS DEFENDANT'S CONVICTION SHOULD NOT BE DISTURBED, BASED UPON THIS ERROR UNDER THESE FACTS UNDER THE UNIQUE CIRCUMSTANCES OF THE BENCH TRIAL THAT WE HAVE IN THIS CASE. I WOULD ASK THE COURT TO AFFIRM THE CONVICTION AND SENTENCE AND DENY ALL RELIEF ON THE HABEAS PETITION. THANK YOU.

CHIEF JUSTICE: COUNSEL. MR. MARSHAL, HOW MUCH TIME?

COUNSEL, WOULD YOU GO INTO, AND PLEASE EXPLAIN UNDER GIGLIO, BRADY, STRICKLAND, WHATEVER WE ARE LOOKING AT IN, COLLATERALLY, IT IS ALWAYS A 20/20 HINDSIGHT. AND THE DIFFERENCE THAT HAS BEEN DISCUSSED BY ANY COURTS WITH REGARD TO A BENCH TRIAL AND JURY TRIAL. WOULD YOU GIVE US YOUR BEST EDUCATED APPROACH TO WHERE YOU GO WITH REGARD TO THAT DILEMMA.

I DON'T THINK THIS DILEMMA HAS EVER PARTICULARLY BEEN ADDRESSED WHEN YOU HAVE A BENCH TRIAL BEFORE THE JUDGE AND THEN THE JUDGE THAT HEARS THE BENCH TRIAL IS THE ONE THAT HEARS THE 3.850 MOTION. WE DID HAVE A SITUATION IN THE CARDONA CASE, WHICH WAS A BRADY VIOLATION CASE, WHERE THE JUDGE HAD HEARD THE 3.850 MOTION AND WAS THE JUDGE WHO HAD HEARD THE ORIGINAL TRIAL, AND I THINK THERE IS EVEN A DISSENTING OPINION IN THAT THAT WE OUGHT TO GIVE MORE DEFERENCE TO THAT TRIAL JUDGE BECAUSE OF

THAT, BUT THIS COURTANT MAJORITY WENT AHEAD AND CONDUCTED THE DE NOVO REVIEW, AND MY POSITION IS YOU HAVE TO CONDUCT A DE NOVO REVIEW, WHETHER YOU HAVE A BENCH TRIAL OR WHETHER OR NOT YOU HAVE A JURY TRIAL, IN ORDER TO HAVE CONSISTENCY.

BUT THAT FLIES IN THE FACE OF COMMON SENSE, AS JUSTICE WELLS SAID. YOU ARE SUPPOSED TO TELL THE TRIAL JUDGE THIS WOULD HAVE AFFECTED YOU, WHEN THE TRIAL JUDGE PUTS IN AN ORDER IT DID NOT?

I DON'T THINK IT FLIES IN THE FACE OF COMMON SENSE, BECAUSE THE WHOLE PURPOSE AFTER STEPHENS V STATE TO DO THE DE NOVO REVIEW IS TO HAVE CONSISTENCY BETWEEN CASES SO THAT THE STANDARD IS APPLIED AND SO THE CIRCUIT COURT APPLIED THE STANDARD WHICH WOULD HAPPEN IN A STRICKLAND SITUATION, THIS COURT IS DEFINITELY A WHOLE BODY OF JURISPRUDENCE ABOUT APPLYING DE NOVO REVIEW TO THE MATERIALITY PRONG OF GIGLIO. THAT IS ALL I AM ASKING TO DO IN THIS CASE, AND I DON'T THINK MR. GUZMAN OUGHT TO BE PUNISHED FOR HAVING A PERCH TRIAL IN THIS CASE AND THE STANDARD OUGHT TO BE DIFFERENT.

DO YOU THINK THE JUDGE USED THE WRONG STANDARD BY PUTTING ALL THREE STANDARDS TOGETHER? DO YOU HAVE THAT AS A CONVENTION?

I THINK THAT IS IN THE BRIEF THAT HE DID USE THE WRONG STANDARD.

WHY WOULDN'T, THEN, THE APPROPRIATE THING ABOUT AT THE MOST, TO ALLOW THE JUDGE TO RECONSIDER THE GIGLIO CLAIM UNDER THE, WHETHER IT MAY HAVE MADE A DIFFERENCE? BECAUSE IT DOES SEEM TO ME THAT WE HAVE TO TAKE INTO REALITY, THAT, WHEN THE DEFENDANT GAVE UP HIS RIGHT TO A JURY TRIAL AND TO GO IN FRONT OF THE FINDER OF FACT AS A JUDGE, THAT AS A PROFESSIONAL FACT FINDER, THAT THERE IS GOING TO BE DIFFERENT WAY THAT IS A JUDGE IS GOING TO LOOK AT IMPEACHMENT EVIDENCE JUST OBJECTIVELY THAT IS GOING TO BE THE CASE, JUST AS I SAID THERE IS COLLATERAL CRIME EVIDENCE, HOPEFULLY THE JUDGE WOULD BE MORE ABLE TO PUT THAT ASIDE, AND SO WHY SHOULDN'T, WHY WOULDN'T THAT BE THE, IF THERE IS ANY REMEDY IN THIS CASE, THE REMEDY, LET THE JUDGE LOOK AT IT UNDER THAT STANDARD?

THAT WOULD BE ENTIRELY INCONSISTENT AND DIFFERENT THAN WHAT HAPPENED IN VENTURA, WHERE THE COURT DID APPLY THE WRONG STANDARD AND THEN THIS COURT WENT AHEAD AND DID THE DE NOVO REVIEW, AND ONCE AGAIN I DON'T THINK IT OUGHT TO CHANGE FROM BENCH TRIAL TO JURY TRIAL. THANK YOU VERY MUCH.

CHIEF JUSTICE: THANK YOU.