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Anthony Lamarca v. State of Florida

MARSHAL: PLEASE RISE . HEAR YE.HEAR YE.HEAR YE.THE SUPREME COURT OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD BLESS THESE UNITED STATES, THIS GREAT STATE OF FLORIDA AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING , LADIES AND GENTLEMEN. WELCOME TO THE FLORIDA SUPREME COURT. THE FIRST CASE ON THIS MORNING'S DOCKET IS LAMARCA VERSUS STATE OF FLORIDA. MR . CANNON OF.

MADAM CHIEF JUSTICE , ASSOCIATE JUSTICES, MY NAME IS PETER CANNON FROM CCRC , THE MIDDLE REGION. I AM HERE ON BEHALF OF MR . ANTHONY LAMARCA. MAY IT PLEASE THE COURT . ANTHONY LAMARCA IS INNOCENT OF THESE OFFENSES. HE WAS CONVICTED BY THE PERJURED TESTIMONY OF TWO JAILHOUSE SNITCHES AND THE FABRICATED STORY OF TAN YAFLYNN. THE TESTIMONY OF JAMES MICHAEL EWES , THE FIRST SNITCH, EXCUSE ME , JAMES MICHAEL EWES IS A PROTOTYPICAL JAILHOUSE SNITCH. HIS TESTIMONY WAS FALSE .

CHIEF JUSTICE: LET'S GO , WHICH POINT ARE YOU , ARE YOU GOING TO ARGUE ?

THIS IS GOING TO BE THE PROSECUTORIAL MISCONDUCT OF BRADY AND GIGOLO , MADAM CHIEF JUSTICE.

CHIEF JUSTICE: ISSUES, 2 , 12 AND 14.

SEVEN, I HAVE.

CHIEF JUSTICE: OKAY. I WANT TO MAKE SURE.

HOW ABOUT GETTING RIGHT TO IT. YOU KNOW , WE HAVE THIS LIMITED AMOUNT OF TIME , AND ALL OF THIS STUFF ABOUT GETTING RIDE TO -- RIGHT TO THE JUGULAR OR WHATEVER , IS ESPECIALLY IMPORTANT IN A CASE LIKE THIS. TELL US WHICH ISSUE IT IS, AND THEN IF YOU , PLEASE , WOULD DEMONSTRATE HOW YOU BELIEVE THE TRIAL COURTERED IN TREATING THE ISSUE.

CORRECT. WITH REGARD TO THE THREE MAIN WITNESSES, THE THREE MAIN WITNESSES IN THIS CASE , I AM GOING TO ATTEMPT TO COVER. JAMES MICHAEL EWES , HIS TESTIMONY WAS FALSE , FABRICATED, AND IT WAS PRESENTED BY THE STATE IN THAT MANNER. JAMES MICHAEL EWES , AGAIN, IS A TYPICAL JAILHOUSE SNITCH.

HOW DO WE KNOW , WHAT EVIDENCE WAS PRESENTED THAT WOULD LEAD US TO THE CONCLUSION THAT THIS EVIDENCE IS FALSE?

MR . EWES WAS INCARCERATED IN CHARLOTTE COUNTY. DURING THE POSTCONVICTION PROCESS , DURING THE ADDITIONAL RECORDS SEARCH , WE DISCOVERED RECORDS DOWN IN CHARLOTTE COUNTY, THAT THERE WAS AN ACTIVE COOPERATION BETWEEN THE STATE ATTORNEY IN PINELLAS COUNTY AND THE STATE ATTORNEY IN CHARLOTTE COUNTY, AND IN AN ATTEMPT TO TRY AND REDUCE MR. EWES EXPOSURE. MR. EWES IS A LIFELONG FELON. HE HAS GOT NUMEROUS FELO NIES .

WHEN DID THIS ACTIVE PARTICIPATION TAKE PLACE?

DURING THE PENDENCY OF MR. LaMARCA'S TRIAL. MR. EWES WAS IN PRISON, EXCUSE ME, IN CHARLOTTE COUNTY, IN CUSTODY SOMETIME AROUND SEPTEMBER. MR. LaMARCA'S TRIAL WAS IN NOVEMBER, AND DURING THAT TIME WHICH WAS NEVER REVEALED TO THE STATE, THERE WAS AN ACTIVE COMMUNICATION BETWEEN CHARLOTTE COUNTY AND PINELLAS COUNTY.

NEVER REVEALED IS -- REVEALED TO THE STATE?

EXCUSE ME. NEVER REVEALED TO THE DEFENSE BY THE STATE OF THIS COMMUNICATION. HOWEVER, WHAT IS MORE IMPORTANT IS DURING DEPOSITION, MR. EWES AND DURING HIS TESTIMONY, WAS ASKED BY THE STATE ATTORNEY, DID YOU RECEIVE ANY DEALS, ANY BENEFITS WHATSOEVER IN EXCHANGE FOR YOUR TESTIMONY? MR. EWES SAID, NO, I DID NOT.

WHAT YOU SEEM TO BE DOING IS MAKING AN ARGUMENT LIKE YOU WOULD MAKE IT TO THE FACTFINDER OF THE TRIAL JUDGE AT THE HEARING BELOW. TELL US HOW THE TRIAL JUDGE TREATED THIS ISSUE AND WHERE THE TRIAL JUDGE WENT OFF THE TRACKS, AS YOU CLAIM IT.

CORRECT. IN THE LOWER COURT'S ORDER, IN ANALYZING MR. EWES'S CLAIM, OUR CLAIM AGAINST MR. EWES, THE TRIAL TOOK A VERY NARROW MEANING OF WHAT A "DEAL" IS. THE STATE ATTORNEYS WERE SAYING THERE IS NO DEAL. THERE IS NO DEAL. HOWEVER, THAT IS A NARROW READING OF THE CASE LAW, WITH REGARDS TO A BENEFIT THAT IS CONFERRED UPON A PERSON WHO IS GOING TO TESTIFY, ESPECIALLY UNDER GIGLIO AND BRADY. THE POLESTAR OF THAT IS NOT SO MUCH WHAT IS THE END RESULT, DID MR. EWES GET AN END RESULT. IT IS THE IMPRESSION THAT WAS CONVEYED TO THE JURY AND TO THE JUDGE THAT MR. EWES WAS THERE ON HIS OWN ACCORD AND TESTIFYING, JUST AS A GOOD, SOLID CITIZEN, WHICH IS ABSOLUTELY FALSE. AND THIS WAS BROUGHT OUT BY THE STATE. NOW, THE LOWER COURT, THEY NEVER CONDUCTED ANY SORT OF MATERIALITY ANALYSIS. NEVER GOT TO THAT APPOINTMENT, BECAUSE THEY FOUND THAT THERE WAS NO DEAL, BECAUSE THE COURT FOUND THAT THERE WAS NO DEAL. QUOTE/UNQUOTE. BECAUSE THE STATE ATTORNEYS TESTIFIED WE NEVER HAD A DEAL, BUT THAT IS NOT THE STANDARD. THE COURT DOES AGREE WITH ALL OF THE FACTS IN THE COURT'S ORDER. IT AGREES THAT, YES, THERE WAS THIS RUN SHEET, THIS DOCKET SHEET THAT WAS DOWN IN CHARLOTTE COUNTY. IT DOES SHOW THIS COMMUNICATION, AND IT IS NOT JUST ONCE, IT IS NOT TWICE. FOUR OR FIVE TIMES, BEFORE AND AFTER.

IT SHOWS THE COMMUNICATION, AND WHAT WAS THE NATURE OF THE COMMUNICATION? I SEE WHAT WE NEED IS THE EVIDENCE THAT DEMONSTRATES CLEARLY, THAT THERE WAS SOME DEAL BETWEEN THE STATE AND THIS WITNESS PRIOR TO THE WITNESS TESTIFYING OR IN CONSIDERATION OF THE TESTIMONY.

CORRECT. THE EVIDENCE WAS THAT, AGAIN, THERE WAS THE COMMUNICATION. MR. EWES'S SENTENCING WAS DELAYED UNTIL AFTER MR. LaMARCA'S TESTIMONY. HE WAS SUPPOSED TO BE SENTENCED BEFOREHAND, AND THE TRANSCRIPTS FROM CHARLOTTE COUNTY THAT WERE INTRODUCED AT THE EVIDENTIARY HEARING, THEY HAD POSTPONED THAT UNTIL AFTER MR. LaMARCA'S TRIAL AND MR. EWES'S TESTIMONY IN THAT TRIAL, TO SEE WHAT WAS THE EXTENT OF HIS COOPERATION, WHO SEE HOW HE DID COOPERATE. AGAIN --

IS THAT PART OF THE, REFLECTED IN THE RECORDS? THAT IT WAS SPECIFICALLY HELD OFF SO THEY COULD MAKE THIS DETERMINATION, AND THERE IS EVIDENCE SUPPORTING THAT?

OH, ABSOLUTELY. ABSOLUTELY.

AND THIS CAME THROUGH THE STATE ATTORNEY?

THE STATE ATTORNEY DOWN IN CHARLOTTE COUNTY. IF I COULD JUST , REAL K BI K QIK , INTERCEDE WHAT - - REAL QUICK, ENTER VEE D WHAT HAPPENED. THIS WITH REGARD TO MR . EWES WAS QUITE INTERESTING DURING THE POSTCONVICTION PROCESS. WE ASKED FOR THOSE RECORDS AND WERE TOLD THAT THEY DID NOT EXIST. I WENT DOWN THERE PERSONALLY TO CHARLOTTE COUNTY TO REVIEW MR. EWES'S FILE. THERE WERE NO RUN NOTES IN THE FILE. THEY HAD TAKEN THEM OUT. I ASKED THE STATE ATTORNEY DOWN THERE WHY THAT HAPPENED , AND JUST PRIOR TO TRIAL , DAYS BEFORE THE EVIDENTIARY HEARING, WE RECEIVED THESE RUN NOTES, AND ASKING MR . BURNS, THE STATE ATTORNEY DOWN THERE , WHY THEY WERE TAKEN OUT. HE COULD NOT GIVE US AN EXPLANATION. COULD NOT GIVE US EVEN A REASON WHY. WE ARGUED BEFORE THE TRIAL COURT IN PINELLAS COUNTY. WE KNOW THERE ARE RECORDS THERE. WE WANT THOSE RECORDS AND THIS IS WHAT WE ARE LOOKING FOR SPECIFICALLY , RUN NOTES , ANY SORT OF DOCKET NOTES INDICATING THAT THERE MAY HAVE BEEN A DEAL. THEY HAD PURPOSEFULLY TAKEN THOSE NOTES OUT AND THEN REALIZED WE HAD BETTER GO AHEAD AND GIVE THEM OVER , BUT IT WAS JUST DAYS BEFORE , AND THIS IS SORT OF A PATTERN OF PROSECUTORIAL MISCONDUCT.

CHIEF JUSTICE: NOW, LET'S JUST GO , AGAIN, UNDERSTANDING WHETHER , UNDER THE GILIO CLAIM , ALLEGING THAT MR . EWES GAVE FALSE TESTIMONY.

CORRECT.

CHIEF JUSTICE: WHAT ABOUT ACCEPTING THE ISSUE ABOUT THERE BEING SOME CONSIDERATION. WHAT ABOUT WHAT HAVE YOU ESTABLISHED IN THIS RECORD TO SHOW THAT MR . EWES'S TESTIMONY WAS FALSE?

AGAIN, HE WAS ASKED BY THE STATE , DID YOU RECEIVE ANY BENEFIT , TWOTIMES DURING DEPOSITION AND DURING TESTIMONY, IN EXCHANGE FOR YOU COMING BEFORE THE JURY. HE SAID NO.

CHIEF JUSTICE: SO NOW WE HAVE A CHICKEN AND THE EGG, WHICH WE SEE A LOT OF TIMES HERE, SO WE FIRST HAVE TO ACCEPT THAT WHAT YOU HAVE NOW DISCOVERED IS EVIDENCE OF CONSIDERATION . CORRECT?

CORRECT .

CHIEF JUSTICE: ALL RIGHT. SO NOW LET'S GO BACK TO WHAT , SINCE OBVIOUSLY THIS IS A BIG ISSUE , AN IMPORTANT ISSUE IF IT WAS SUPPRESSED AND HE GAVE FALSE TESTIMONY ON THIS , WHAT IS YOUR BEST EVIDENCE THAT THERE WAS CONSIDERATION GIVEN , AND IS IT THE RUN NOTES? IS THAT THE --

IT WOULD BE THE RUN NOTES AND, ALSO, THE TESTIMONY OF THE STATE ATTORNEY , SHAWN CRANE , WHO -- SHAWN CRANE , WHO TESTIFIED THAT WE WERE IN COMMUNICATION. I DID GO AHEAD AND MR . LAMARCA TESTIFIED. HE COOPERATED. HE TOLD THEM. AND AFTER THAT, THAT IS WHEN MR. EWES , WHO WAS A HFO , WHOSE EXPOSURE TO PRISON WAS EXTREME , RECEIVED A BELOW-GUIDELINES, AND IT SAYS IN THE RUN NOTES THAT HE RECEIVED A BELOW-GUIDELINES SENTENCE , BASED ON HIS COOPERATION IN THE LAMARCA CASE !

WHAT ABOUT THE INTERNAL GUIDELINES. PART OF THE TESTIMONY OF THE STATE ATTORNEY IN CHARLOTTE COUNTY WAS THAT HE WAS NOT HABITUALLY BECAUSE IT WAS , HE HAD -- EVEN THOUGH HE MAY HAVE TECHNICALLY QUALIFIED, IT WOULD HAVE BEEN INCONSISTENT WITH HIS POLICY AS A STATE ATTORNEY?

RIGHT. HE DID TESTIFY TO THAT , AND APPARENTLY WHAT IS APPARENT FROM THE RUN NOTES AND SO FORTH, EVEN THOUGH HE WAS POSSIBLY NOT HFO ELIGIBLE , THE DATES AFTER THAT

SHOW THAT THEY WERE STILL ACTIVELY PURSUING A HFO, AND EVEN DURING THE PLEA AND ON THE PLEA SHEET, IT SAYS POSSIBLE HFO, SO THEY HAD GONE THROUGH THE ENTIRE PROCESS, OBTAINED ALL THE NECESSARY CERTIFIED COPIES OF CONVICTION. HEAVE CHIEF YOU ARE SAYING, THOUGH, THE DOWNWARD DEPARTURE SAYS THAT IT WAS A RESULT OF HIS COOPERATION IN THE LaMARCA CASE?

ABSOLUTELY. IT IS VERY CLEAR. VERY CLEAR FROM THOSE NOTES THAT WE DISCOVERED OR WERE GIVEN.

THIS WAS AFTER THE FACT THAT HE, BUT THE TRIAL COURT IS DEALING WITH WHETHER THERE WAS AN AGREEMENT BEFORE THE FACT, CORRECT?

WELL, THE TRIAL COURT --

THAT IS WHAT THE TRIAL COURT WAS DEALING WITH.

THE TRIAL COURT, AGAIN, TOOK A VERY NARROW AND TECHNICAL --

WELL, THE TRIAL COURT MADE THE SPECIFIC FINDING THAT BURNS WAS UNEQUIVOCAL IN HIS TESTIMONY THAT HE NEVER CONTACTED ANYONE IN THE SIXTH CIRCUIT, ABOUT AN AGREEMENT, AND THAT NO PROMISES WERE EVER MADE TO HUGHES. JUDGE SHAWN CRANE TESTIFIED TO THE SAME EFFECT. I MEAN, THAT IS WHAT THE TRIAL COURT FOUND, RIGHT?

THAT IS A --

YES?

WITH THOSE FACTS, YES. THEY WERE VERY CLEAR, OVER AND OVER AGAIN. IT WAS ALMOST ON PURPOSE -- IT WAS ALMOST ON PURPOSE. THESE ARE SMART PROSECUTORS NOW. THEY ARE NOT GOING TO GIVE A DEAL BEFORE HAND, BUT THAT IS NOT WHAT THE CASE LAW, THE VARIOUS ESTABLISHED CASE LAW STATES. GIGLIO AND SO FORTH, HAPU AND SO FORTH. IT IS NOT THE END RESULT BUT THE DEAL THAT WAS MADE. IT IS THE INTERVENTION ON BEHALF OF THE STATE ATTORNEY AND SMITH. IF THERE IS NO RELEVANCE OF A STATE ATTORNEY --

GIGLIO IS THAT THE STATE STOOD BEHIND TESTIMONY THAT IT KNEW THAT IT WAS FALSE, AND IF THERE HAD, WAS NOT AN AGREEMENT PRIOR TO THE TESTIMONY, THEN HOW COULD THAT TESTIMONY BE FALLS?

IT WAS FALSE, BECAUSE IT IS NOT BASED ON A TECHNICAL DEAL. YOU DON'T HAVE TO HAVE, IN THE CASE LAW IT IS CLEAR, YOU DON'T HAVE TO HAVE A WRITTEN AGREEMENT FOR THERE TO BE FALLS TESTIMONY. THE ACTUAL POLESTAR -- TO BE FALSE TESTIMONY. THE ACTUAL POLESTAR, WHAT WE ARE LOOKING FOR IS WHETHER THERE WAS TESTIMONY GIVEN TO THE COURT AND TO THE JURY THAT WAS CONTRARY, THAT CREATED A CONTRARY IMPRESSION. AS FAR AS WE KNOW, WHEN YOU READ THE TRANSCRIPT, THE JURY IS BELIEVING THAT MR. EWES, WHO IS A LIFELONG FELON --

YOU SEEM TO BE SAYING THAT, IN FACT THERE WAS A DEAL, BUT IT WAS SORT OF IN THE FORM OF, WELL, LET'S WAIT AND SEE JUST HOW GOOD YOUR TESTIMONY IS FOR THE STATE, AND IF IT TURNS OUT TO BE REALLY SUPER GOOD, THEN, YOU KNOW, MAYBE SOMETHING GOOD WILL HAPPEN TO YOU. ALL RIGHT. BUT IF IT DOESN'T, THEN, MAYBE YOU KNOW, NOTHING GOOD WILL HAPPEN FOR YOU. NOW, WHERE IS THE EVIDENCE TO SUPPORT? IS THAT WHAT YOU ARE SAYING?

RIGHT.

ALL RIGHT. WHERE IS THE EVIDENCE TO SUPPORT THAT THAT WAS GOING ON? THAT IS THAT

OBVIOUSLY THE BEST EVIDENCE OF THAT WOULD BE EITHER THE JAIL HOUSE SNITCH OR THE ASSISTANT STATE ATTORNEY OR WHO EVER , SAYING, WELL, THAT IS WHAT I TOLD HIM NOW , WHAT IS YOUR , WHAT IS YOUR CONTENTION , FIRST OF ALL , AS I PARAPHRASED IT? HOW WOULD YOU PHRASE IT? AND THEN WHERE IS THE PROOF OF IT?

I WOULD PROBABLY NOT IMPROVE UPON YOUR PARAPHRASING, BECAUSE I THINK THAT IS CORRECT . BUT THE BEST EVIDENCE WOULD BE THE RUN NOTES , WHICH CLEARLY STATE AT THE END , THE DOWNWARD DEPARTURE , BASED ON MR . LAMARCA 'S COOPERATION WITH , YOU KNOW, THESE NOTATIONS , CALLED SHAWN CRANE, AND SHAWN CRANE --

CHIEF JUSTICE: LET'S GO BACK, THOUGH, TO, BECAUSE A LOT OF THIS WOULD BE WHAT MR . EWES'S PERCEPTION IS OF WHAT WAS GOING TO HAPPEN TO HIM WITH RESPECT TO HIS CHARGES, IF HE TESTIFIED FAVORABLY . NOW, DID MR . EWES TESTIFY IN THE EVIDENTIARY HEARING?

NO, HE DID NOT .

CHIEF JUSTICE: SO WHAT IS THE EVIDENCE OF WHAT CONTACT, WHAT DISCUSSIONS THERE WERE? WHAT DID THE PROSECUTOR SAY THAT THEY DISCUSSED WITH MR . EWES, CONCERNING HIS SENTENCING, BEFORE MR . HUGHES TESTIFIED?

IT WAS THE EVIDENCE NOT SO MUCH OF THE CONTACT WITH MR. EWES , ALTHOUGH THERE WAS BETWEEN MR. EWES AND MR . COOPER, AND THAT IS MENTIONED - -

CHIEF JUSTICE: WHAT WAS THAT CONTACT? WHAT WAS SAID?

WELL , HE WAS , HE CAME OUT AND SAID I AM SHOOTING FOR A DEAL. I AM SHOOTING FOR SOME SORT OF CONSIDERATION IN THE DEPOSITION . AND THEN IN THE RUN NOTES --

CHIEF JUSTICE: WELL , IN THE DEPOSITION THAT HE GAVE BEFORE THIS TRIAL?

CORRECT .

CHIEF JUSTICE: ALL RIGHT. WELL, SO , THAT , WAS HE CROSS-EXAMINED ON THAT AT TRIAL, THAT HE WAS HOPING FOR A DEAL? IN OTHER WORDS THE JURY KNEW THAT HE HAD PENDING CHARGES , KNEW THAT THE SENTENCING HAD NOT TAKEN PLACE .

CORRECT.

CHIEF JUSTICE: AND SO HE WAS CROSS-EXAMINED AS TO WHETHER HE WAS HOPING THAT , IF HE TESTIFIED FAVORABLY , HE WOULD HAVE LESS OF A SENTENCE?

CORRECT.

CHIEF JUSTICE: WELL , , SO THEN, WHAT WAS, WHAT DID THE JURY NOT HEAR?

WELL, THE JURY DID NOT HEAR THAT THERE WAS AN ACTUAL NEGOTIATION BETWEEN THESE TWO STATE ATTORNEYS AND THAT THERE WAS THIS COMMUNICATION BACK AND FORTH.

CHIEF JUSTICE: THAT IS WHERE, AGAIN, WE HAVE TO GO BACK TO WHETHER THE TRIAL COURT'S FINDING THAT THERE WAS NO ACTUAL NEGOTIATION , SO TO SPEAK , IS ENTITLED TO DEFERENCE

WELL, NO , BECAUSE THE TRIAL COURT FOUND , AS A MATTER OF FACT, THAT THESE EVENTS DID TAKE PLACE , THAT THERE WAS , SHAWN CRANE TESTIFIED THAT THERE WAS COMMUNICATION THAT HE DID GO AHEAD AND CALL THE STATE ATTORNEY IN CHARLOTTE AND THAT HE DID FULLY COOPERATE AND HE DID A FINE JOB. THE EXISTENCE OF A DEAL IS MORE OF A

CONCLUSION OF LAW , WHETHER THAT DEAL DID EX IST. IT IS , CASES HAVE COME BAC K AND FORTH TO DE FINE IT .

WELL, DOESN'T THE D EAL HAVE TO INCLUDE T HEDEFENDANT AND NOT JUST TWO STATE ATTORNEYS? I THIN K THAT IS THE MISSING LINK HERE , IS WAS THIS INFORMATION THAT WAS G OINGBACK AND FORTH BET WEEN THE TWO STATE ATTORNEYS , BEING COMMUNICATED TO MR . HUGHES?

IT WAS AND IT IS IN T HERUN NOTES THAT IT WAS BEING COMMUNICATED TO MR. EWES , BECAUSE THEY ATTEMPTED TO FIND ONE DEAL , WH ICH WAS A DEAL THAT WOULD KE EP HIM ENTIRELY OUT OF PRISON AND THEN THAT SORT OF FELL THROUGH, SO THERE WERE THESE DEALS GOING BACK AND FORTH . HOWEVER --

WHO IS "THE Y" HER E? IS THAT HIS PU BLIC DEFEND ER?

CORRECT. HOWEVER, HIS SENTENCING, CLEARLY WE KNOW THAT THERE WAS COMM UNICATION , BECAUSE HIS SENTENCING AT THE BE HEST OF HIS PUBLIC DEFE NDER , IS DELAYED U NTIL AFTER HIS TESTIMONY IN MR . LaMARCA 'S CASE.

SO HOW DO WE KNOW THAT THIS IS N'T JUST APARTMENTENT OF THE PUBLIC DEFENDER -- ISN'T JUST ATTE MP T OF THE PUBLIC DEFEND ER TO GET THE BEST POSSIBLE DEAL FOR HIS CLIENT, WHICH IS THE PRIMARYPURPOSE OF HIS ATTORNEY? HOW DO WE KNOW T HERE W ASMORE THAN THAT?

BECAUSE IT WAS COMMUNICATED BY H ISATTORNEY.

WHAT WAS INDICATED?

THESE CALLS BAC K AND FORTH ABOUT THE LE VEL O F COMMUNICATION, HOW IS HE DOING AND SO FORTH.

BEFORE OR AFTER?

BOTH. BOTH BEFORE THE TRIAL AND AFTER.

WAS IT IN ANY RELATIONSHIPS TO H UGHES REQUESTING A CONTINUA NCE?

ABSOLUTELY. THAT IS EXACTLY WHY T HEY REQUESTED A CONTINUANCE, TO SEE WHAT LEVEL OF HIS COOPERATION --

CHIEF JUSTICE: I FEEL IMUST RE MIND YOU , YOU ARE USING YOUR REBUTTAL TIME IN ANSWERING OUR QUESTIONS. THANK YOU VERY MUCH . MR. BRO WNE.

GOOD MORNINGT. SCOTT BROWNE FOR THE STATEOF FLORIDA. YOUR HONORS, ONE THING THAT IS ABSO LUTELY CLEAR , B ASEDUPON THIS RECORD , IS T HAT THERE WAS NO DEAL BETWEEN THE STATE IN EXCHANGE FOR MICHAEL HUGHES'S TESTIMONY.

CHIEF JUSTICE: LET'S GO BACK. I THINK WE HAVE GOT A CONTINUUM , OF COUR SE, A DEAL BEING SOMETHING EXPLICITLY IF YOU DO THIS, YOU WILL RECEIVE A CERTAIN SENTENCE. THE OT HER END , WHICH IS WHAT THE JURY KNEW , WAS THAT HE WAS HOPI NG THAT IF HE TESTIFIED FAVORABLY , HEWOULD HAVE A REDUCED SENTENCE. IN BETWEEN THERE IS T HEQUESTION OF WHETHER THERE IS THINGS THAT WERE HAPP ENING THAT WAS MORE THAN JUST MR . HUGHES'S HOPE THAT THERE WAS AN ACTUAL DISCUS SION THAT WAS TAKING PLACE, THAT WOULD LEAD SOMEBODY TO A REASONABLE EXPECTATION THAT THE STATE WAS GOING TO M AKE SURE THAT MR. HUGHES HAD A LESSER SENTENCE, AND THAT IS WHERE WE ARE, IT IS THAT GRAY

ZONE. COULD YOU HELP US CLARIFY AS TO WHAT, EXACTLY, WAS DISCOVERED AFTERWARDS, THROUGH THESE RUN NOTES, THAT WEREN'T, THAT THE DEFENDANT DIDN'T KNOW AT THE TIME, ABOUT THE COMMUNICATIONS BETWEEN THE PROSECUTORS. JUST AT LEAST HELP US TO WHAT THE BARE FACTS ARE THAT ZEMUN DISPUTED ABOUT WHAT WAS BEING DISCUSSED.

YES, YOUR HONOR -- BARE FACTS ARE THAT ARE NOT DISPUTED, ABOUT WHAT WAS BEING DISCUSSED.

YES, YOUR HONOR. THE RUN NOTES, SPECIFICALLY REFERRING ANY DELAY IN SENTENCING WAS TO DETERMINE OR CHECK ON HIS LEVEL OF COOPERATION.

CHIEF JUSTICE: BUT WOULDN'T THAT MAKE SENSE? IT WOULD MAKE SENSE BECAUSE IF THE PUBLIC DEFENDER IS FIGURING IF HE COOPERATES, THAT HE IS GOING TO GET A BETTER SENTENCE, THEN THAT IS WHAT HAPPENED.

YES, YOUR HONOR.

CHIEF JUSTICE: BUT IS THERE ANY MEANT TO THAT EXPECTATION, AS FAR AS DISCUSSIONS, I MEAN, WHAT WERE THESE DISCUSSIONS BETWEEN THE TWO STATE ATTORNEYS?

YOUR HONOR, THE RECORD ESTABLISHES, NUMBER ONE, THAT PROSECUTOR SHAWN CRANE, IF HE DID TALK TO ANYONE, WOULD HAVE STATED SIMPLY AND DID STATE THAT THERE WERE ABSOLUTELY NO DEALS, AND IF HE DID TALK TO ANYONE IN CHARLOTTE COUNTY, IT WOULD HAVE BEEN THAT THERE WERE NO DEALS, NO BENEFITS, NOTHING PROMISED IN EXCHANGE FOR HIS TESTIMONY. AND YOU HAVE THE PROSECUTOR FROM CHARLOTTE COUNTY COMING IN HERE. WE DO NOT HAVE TO SPECULATE. IF WE LOOK AT HIS TESTIMONY, HE SAID, LOOK, IF THERE HAD BEEN ANY BENEFIT, AGREEMENT OR DEAL IN MY CASE, I WOULD HAVE PUT IT IN THE FILE. IN FACT, HE NEVER TALKED TO ANYONE FROM PINELLAS COUNTY DURING THE PLEA NEGOTIATIONS, AND REGARDING --

CHIEF JUSTICE: WHO, WHAT WAS -- WHAT WAS THE COMMUNICATION THAT MR. CANNON IS TALKING ABOUT, THAT HE SAID DID OCCUR? WAS THERE ANY COMMUNICATION?

THE ONLY COMMUNICATION WAS THAT, AND, AGAIN, THIS IS FROM MEMORY, THAT PROSECUTOR CRANE DID -- PROSECUTOR CRANE DID NOT RECALL TALKING TO ANYONE FROM CHARLOTTE COUNTY, BUT IF HE DID, HE WOULD HAVE SIMPLY NOTED THAT HE COOPERATED, AND THAT THERE WERE NO DEALS, NOTHING WAS PROMISED TO HIM IN EXCHANGE FOR HIS TESTIMONY, AND THEN YOU HAVE MICHAEL HUGHES TESTIFYING AT TRIAL. HE TESTIFIED TRUTHFULLY THAT, HAY, LOOK, I HAVE NO BENEFIT -- HEY, LOOK, I HAVE NO BENEFIT, NOTHING FOR AGREEMENT. NOTHING BUT SOME HOPE. I HAVE PENDING CHARGES. NOTHING COME OUT, THE JURY KNOWS THAT. THAT WAS DISCLOSED.

COUNSEL IS MAKING REPRESENTATIONS THAT THERE ARE OTHER THINGS, NOT NECESSARILY THE STATE ATTORNEY'S TESTIMONY, BUT OTHER THINGS OTHER EVIDENCE, SHOWING CONTACT AND SHOWING STATUS OF CASES AND WHAT IS PENDING. THAT IS WHERE WE KEEP GOING. YOU KEEP GOING BACK TO DEAL AND WE UNDERSTAND THAT THERE IS NO DEAL. I THINK WHAT COUNSEL IS ARGUING IS THAT THERE IS OTHER EVIDENCE, SO IS THERE OR IS THERE NOT?

YOUR HONOR, I DON'T BELIEVE THERE IS. IN FACT, MR. CANNON'S BRIEF DOESN'T PROVIDE MANY RECORD CITES THROUGHOUT HIS BRIEF, AND I COULDN'T FIND ANY EVIDENCE OF THAT BELOW AT ALL, THAT THERE WAS ANY SUBVERSE AGREEMENT OR ANY NEGOTIATION WHATSOEVER GOING ON BETWEEN --

HE IS INDICATED THAT THERE WERE SOME KIND OF RUN NOTES THAT INDICATE THERE WAS COMMUNICATION, BOTH BEFORE AND AFTER BETWEEN THESE INDIVIDUALS THAT A YES OR A NO?

. YES , THERE WERE COMMUNICATIONS BUT ALL OF THOSE COMMUN ICATIONS RE VEAL --

ARE THERE NOTES THAT REFLECT THAT OR NOT?

YES, YOUR HONOR.

WHAT DO THEY TELL US?

A NOTE QUES TIONING HIS COOPERATION IN PINE LLAS COUNTY.

SO THERE IS A NOTE.

YES, YOUR HONOR, AND A NOTE SA YING ABSOLUTELY NO DEALS OR BENEFITS WERE MADE , QUESTION MARK, AND THEN HE TESTIFIES AT T RIAL AND HERE IS THE CHRONOLO GY.

CHIEF JUSTICE: WHAT DO YOU MEAN ABSO LUTELY NO DEA LS , BENEFITS , QUESTION MARK?

THAT IS HOW IT IS REFLECTED IN THE RECORD.

CHIEF JUSTICE: WHEN WAS THAT NOTE MADE?

THAT WAS MADE, I THINK AFTER HUGHES HAD ALREADY TESTIFIED, AND I HAVE TO REFRESH MY RECOLLECTION ON THAT.

CHIEF JUSTICE: YOU SE E, WHAT WE ARE CONCERNED ABOUT IS THAT OBVIOUSLY IT IS SORT OF LIKE THE QUESTION OF H OWYOU GET AR OUND MILES AN HOUR AND, A WHETHER YOU DE CIDE TO -- AROUND MIRA NDA , WHETHER YOU DECIDE TO SAY WHEN SOMEONE IS IN CUS TODY . "DEAL" HAS THIS MA GIC CONCEPT OF , OKAY , IF THERE IS A DEAL, THEN THE J URY IS GOING TO RE ALLY DISCRE DIT THE TESTIMONY , AND SO WHAT WE ARE REALLY , YOU KNOW, IF THERE WERE THESE DISCUSSIONS , AND TO SAY , L ISTEN , YOU DON'T HAVE TO TELL ME NOW , WINK-WINK, THAT YOU ARE GOING TO T REAT THIS G UY FAVORABLY, BUT I NEED T O KNOW THAT YOU WILL SO I CAN TELL HIM THAT , AND OF COUR SE THAT IS THE BIG IS SUE IS WHAT MR. HUGHES KNEW , AT THETIME THAT HE TESTIFIED , SO THAT IS WHY I WANTED TO FOCUS ON THAT, SO GIVE US FROM THE BEST V IEW , FROM THE DEFENDANT , WHAT WAS REVEALED THAT MAYBE THEY COULD HAVE USED A LITTLE BIT M ORE HEY ON, AT THE T IME OF T HETRIAL?

ABSOL UTELY NOTHING. BECAUSE AT THE TIME OF THETRIAL, HIS PUBLIC DEFENDER WAS TRYING TO NEGO TIATE A PLEA FOR HIM, AND THEN AT THE TIME OF TRIAL , WHEN THIS IS GOING ON, WHAT MR . HUGHES TESTIFIED TO IS ABSOLU TELY TRUE, AND ABSOLUTELY NOTHING PRESENTED AT THE EVIDENTIARY HEARING CONTRADICTS HIS TESTIMONY. SO NUMBER ONE , YOU HAVE N O FALSE TESTIMONY PRESEN TED. YOU DON'T HAVE A VI OLATION OF BR ADY, BECAUSE THERE IS NO BENEFIT, NO DEAL, N O AGREEMENT.NOW, THE APPELLANT , HE H I NTS AT SOME THING SIN ISTER , T HAT AFTER HE TESTIFIED, HIS PUBLIC DEFENDER USED THAT TESTIMONY IN AN ATTEMPT TO GET A FAVORABLE SENTENCE. WELL, THAT, THERE IS NO AGREEMENT THERE THAT HAD TO BE DISCLOSED. EVERY PUBLIC DEFENDER, EV ER, KNOWS THAT, AND THE JURY WAS EXPOSED TO. THAT THE JURY KNEW T HAT HUGHES HAD PEN DING CHARGES , THAT HE WAS HOP ING TO GET SOME KIND OF BENEFIT.

CHIEF JUSTICE: WHAT WAS THE MAXIMUM SENTENCE HE FACED?

THERE WAS A POTENTIA L AT LEAST FOR HABITUAL FELONY OFFENDER STAT US. HOWEVER, AS JUSTICE B ELL POINTED OUT, HE DID NOT MEET THE INTER NAL GUIDELINES FOR HABITUAL OFFENDER STATUS, S O HE COULD NOT B E HABITUALIZED. SO, AGAIN, THE QU ESTION --

HOW MUCH BELOW THE GUIDELINES WAS HIS SENTENCE?

NOT MUCH. I BELIEVE HE RECEIVED 36 MONTHS IN THE ORIGINAL OFFER FROM THE STATE ATTORNEY , WAS 42 MONTHS, AND MR. COOPER, THERE IS A CONTINUING NEGOTIATION WITH THE PUBLIC DEFENDER, AND ULTIMATELY THE STATE ATTORNEYS OFFICE , NOTING THAT HE DID COOPERATE IN THE La MARCA CASE, BUT, AGAIN, WITHOUT ANY DEALS , AND UNLESS YOU HAVE SOME DEAL, YOU CAN'T JUST INFERR THAT THERE WAS A BENEFIT PROMISED TO MR . HUGHES AT THE TIME HE TESTIFIED.

WHAT IS OF CONCERN AND I HAVEN'T LOOKED AT THESE RUNNING NOTES. I ASSUME THAT THEY ARE APART OF OUR RECORD?

THERE ARE SOME RUNNING NOTES, YES.

SO DO THESE NOTES DEMONSTRATE COMMUNICATIONS BETWEEN THE STATE ATTORNEYS OFFICE THAT WAS PROSECUTING THIS DEFENDANT AND THE STATE ATTORNEYS OFFICE THAT WAS PROSECUTING MR . HUGHES, AND HOW OFTEN WAS THAT COMMUNICATION?

I THINK THERE WAS ONE NOTE IN THERE , AND IT IS THE ONE I REFERENCED EARLIER, NOTING THAT HE COOPERATED, BUT THERE WERE NO BENEFITS , NO DEALS. THAT IS IT.

WHAT ABOUT BEFORE THE ACTUAL TESTIMONY, BECAUSE IF I UNDERSTAND MR . CANNON'S ARGUMENT, IT IS THAT THERE WERE COMMUNICATION BETWEEN THESE TWO STATE ATTORNEYS, PRIOR TO THE ACTUAL TESTIMONY .

I DON'T BELIEVE THAT TO BE NECESSARILY TRUE IN THE RECORD, AND , AGAIN , I WOULD HAVE TO TAKE A LOOK AT THE RUNNING NOTES , BUT WE DON 'T HAVE TO SPECULATE. WE HAVE THE ASSISTANT STATE ATTORNEY WHO TRANSPORTED MR . HUGHES -- WHO PROSECUTED MR . HUGHES, AND HE TESTIFIED, LOOK, IF ANYONE HAD REQUESTED ANY KIND OF CONSIDERATION , I WOULD HAVE REQUIRED IT.

HE DID SAY THAT THERE WAS NO COMMUNICATION, DIDN'T HE?

YOUR HONOR , IF THERE IS COMMUNICATION DOES THAT MEAN THERE IS A BRADY VIOLATION? ABSOLUTELY NOT! IF THERE WAS, SIMPLY HE IS IN TRIAL.

I MEAN , REALISTICALLY , WHAT REASON WOULD THE STATE ATTORNEY IN THE SIXTH JUDICIAL CIRCUIT HAVE TO COMMUNICATE WITH THE STATE ATTORNEY IN THE 20th JUDICIAL CIRCUIT, ABOUT THIS DEFENDANT, EXCEPT AS IT RELATES TO THEIR MUTUAL CASES?

YES. EXACTLY THAT. THEY CAN CALL , I THINK THERE WAS ONE CALL WHERE HE SAID, AS A RESULT OF THAT CALL , YEAH, HE DID COOPERATE BUT THERE WERE NO DEALS. THAT IS IT! AND I THINK THAT NOTE CAME AFTER.

THE TRIAL COURT, IN HIS ORDER, SAYS THAT BURNS WAS UNEQUIVOCAL IN HIS TESTIMONY THAT HE NEVER CONTACTED ANYONE IN THE SIXTH CIRCUIT ABOUT AN AGREEMENT AND THAT NO PROMISES WERE EVER MADE TO HUGHES . JUDGE CRANE TESTIFIED TO THE SAME EFFECT.

THAT IS ABSOLUTELY TRUE .

IS THAT, THE RECORD SUPPORTS THAT?

THAT IS ABSOLUTELY TRUE. NOW, WHAT MR . CANNON IS TALKING ABOUT IS A RUN NOTE FROM AN INDIVIDUAL WHO WASN'T CALLED TO TESTIFY , DURING TRIAL, THAT SIMPLY REFLECTED THAT SOMEONE HAD TALKED TO MR . CRANE AND NOTED THAT HE WAS COOPERATING AND THAT THERE WERE NO DEALS AND NO BENEFITS MADE.

ABOUT AN OTHER WITNES S?

NO. ABOUT MR. HUGHES.THERE WAS A RUN NOTE .

ABOUT HUGHES.

AND ULTIMATELY , AGAIN , YOU HAVE TO RECOGNIZE T HAT MR. HUGHES WAS CROSS-EXAMINED ON HIS PENDING CHARGES. THERE WAS NO DEAL OUT THERE TO BE DISCLOSED, NO BENEFIT, AND I THINK YOU DON'T GET BEYOND BRADY, BECAUS E THERE IS ABSOLUTELY NOT A BENEFIT CONFERRED IN THIS CASE , AND YOU HAVE IF ANYTHING THAT WAS ESTABLISHED BELOW DURING THE EVIDENTIARY HEARING, IT IS JUST THAT FACT. SHAWN CRANE TESTIFIED ABSOLUTELY NO DEAL.

WOULD YOU COMM EN T ON THE PART OF THE SINI STER DEAL THAT YOUR OPPO NENT AL L UDZ TO , IS THE -- ALLUDES T O , IS THE -- THAT YOUR OPPO NENT ALLUDES TO, IS THE AVAILABILITY OF THE RECORDS. WHAT WOULD THE RECORD TELL US ABOUT, I S THERE SOMETHING , HOW DID THE RUN NOTES SURFACE AND WAS THERE A TIME WHEN THEY WEREN'T AVAILAB LE AND THEN THEY WERE AVAILABLE OR WHAT , TELL , IN OTHER WORDS GIVE ME AN OVERVIEW OF THAT.

YES, YOUR HONOR. INITIALLY, I BELIEVE THAT THERE WERE SOME, THERE WAS A QUESTION REGARDING WHETHEROR NOT THOSE WERE EVEN DISCOVERABLE OR NEED ED TO BE TURNED OVER, BUT EVEN TUALLY THEY WERE TURNED OVER, PR IO R TO THE HEARING. I DON'T BELIEVE MR. CANNON WAS PREJUDICED IN HIS PRESENTATION OF ANY CLAIM. FURTHERMORE , HE , THE DEFENSEDID NOT CALL MR. HUGHES TO TESTIFY D URING THE EVIDENTIARY HEARING. I MEAN, WE ARE SPECULATING THAT, EVEN IF THERE WAS SOME KIND OF A DEAL AND IF ANYTHING, THE RECORD REF UTES THAT, WHAT IMP ACT WOULD THAT HAVE HAD ON MR. HUGHES'S CREDIBILITY? HE WAS AL READY CROSS-EXAMINED ON HIS PENDING CHARGES AND THAT HE HOPED TO GET A BENEFIT. THERE IS NOTHING EL SE TO BE GAINED BY -- ISN'T THERE A DIFFERENCE , REALLY, BETWEEN A DEFENDANT WHO HO PES THAT HISCOOPERATION WILL BENEFIT HIM , AND A DEFENDANT WHO KNO WS IF I AM UP HERE AND I SAY THE RIGHT THINGS, THAT I AM GOING TO GET A BENEFIT.

EXACTLY, AND THE CASE LA W IS PRETTY CL EAR ON THAT A S WELL, IF A DEFENDANT MERELY HOPES OR SPECULATES THAT HE MIGHT RECEIVE A BENEFIT , THAT IS NOT BRADY, BEC AUSETHERE IS REALLY NOTHING TO DISCLOSE AND THAT DID COME OUT .

CHIEF JUSTICE: WAS HE REPRESENTING HUGHES AT THE T IME OF THE TRIAL? THE PUBLIC DEFENDER.

YES, YOUR HONOR.

SO , THEN , HIS TESTIMONYWOULD BE PRETTY IMPORT ANT. TELL US, AGAIN , WHAT DOES HE SAY ABOUT ANY NEGOTIATIONS BEFORE THE TRIAL , WITH THE STATE ATTORNEY IN CHARLOTTE ?

YOUR H ONOR , MR. COOPER WAS NOT CALLED TO TESTIFY DURING THE EVIDENTIARY HEARING. WE SIMPLY HAVE THE TESTIMONY OF THE PROS ECUTOR S , WHO, AGAIN, STATED UNAMBIGUOUSLY , THERE WAS NO DEAL, NO BENEFIT, NOTHING PROM ISED , AND WE HAVE THE ASA WHO HANDLED THE CASE AND TOOK THE PLEA AND HE SAID NO DEAL .

CHIEF JUSTICE: SO WE ARE NOW BACK TO SOME SPEC ULATION ABOUT HOW IT WOULD HAVE IMPACTED HUGHES, EVEN ASSUMING THERE WAS SOME DISCUSSION THAT HAD TA KEN PLACE , THEY HAVEN'T LINKED IT UP BA CK TO HO W IT WOULD HAVE IMPACTED HUGHES .

YES, YOUR HONOR. THERE IS NO L IN K BECAUSE N O PROMISE WAS MADE. WE ARE SPECULATING T HAT THERE MIGHT HAVE BEEN AN AGREEMENT. WE CAN'T FIND REVER SIBLE ERROR BASED ON

SPECULATION. THE CASE LAW IS QUITE CLEAR.

CHIEF JUSTICE: LET'S GO BACK, IF YOU HAVE GOT 36 MONTHS, WHEN DID THE PROSECUTOR SAY HE WAS WILLING TO HAVE PLED HIM TO 42 MONTHS? WAS THAT HIS INITIAL PLEA OFFER BEFORE

--

I THINK THAT WAS THE INITIAL OFFER, 42 MONTHS.

CHIEF JUSTICE: EVEN BEFORE HE TESTIFIED?

I DON'T KNOW.

CHIEF JUSTICE: THAT WOULD BE PRETTY SIGNIFICANT, BECAUSE THAT IS OBVIOUSLY NOT A GREAT DEAL, IF THAT IS --

I BELIEVE THAT OCCURRED AFTER HIS TRIAL, THE INITIAL PLEA OFFER OF 42 MONTHS, AND THEN MR. COOPER CAME BACK WITH, KNOWING THE ASA TESTIFIED AND KNOWING MR. COOPER, HE PROBABLY SAID 24 MONTHS AND 36 WAS ARRIVED AT IN BETWEEN.

CHIEF JUSTICE: IT WOULD BE MORE IMPORTANT, THOUGH, TO KNOW THAT HE WAS FACING, WHAT WAS, WHAT DID THE JURY KNOW AT THE TIME OF THE TRIAL, ABOUT WHAT HE WAS POTENTIALLY FACE SOMETHING.

THE JURY KNEW HE WAS FACING SERIOUS JAIL TIME, AND HAD PENDING CHARGES. AND THAT WAS FULLY DEVELOPED DURING THE TRIAL, AND DURING THE DEPOSITION, HUGHES, ALSO, STATED I HOPE TO GET A BENEFIT BY TESTIFYING, SO, AGAIN, THERE IS NOTHING SINISTER HERE, IN THAT A DEFENDANT TESTIFIES OR A WITNESS TESTIFIES THAT HE MIGHT SPECULATE THAT HE COULD RECEIVE A BENEFIT.

CHIEF JUSTICE: AND RIGHT NOW, WE DON'T HAVE ANY INDICATION THAT MR. HUGHES HAS CHANGED HIS, I MEAN, THIS ISN'T A SITUATION OF A RECANTATION OF TESTIMONY.

NO, ABSOLUTELY NOT.

CHIEF JUSTICE: BUT THE ONLY WAY THAT HUGHES KNEW ANYTHING ABOUT THE CASE IS BECAUSE THEY WERE SUPPOSEDLY IN THE SAME CELL TOGETHER, RIGHT?

THEY WERE IN THE SAME PRISON.

CHIEF JUSTICE: THAT'S RIGHT. BEFORE HE WAS RELEASED. AND THAT IS WHEN HE ALLEGEDLY TOLD THE M HE WAS PLANNING TO KILL HIS SON-IN-LAW.

YES, YOUR HONOR. AND EVEN IF WE SPECULATE THAT THIS WOULD HAVE SOMEHOW UNDERMINED, THIS NONAGREEMENT SPECULATION -- SPECULATION, WOULD HAVE INCLUDED THIS TESTIMONY, THE STATE PRESENTED OVERWHELMING EVIDENCE OF PREMEDITATION -- PREMEDITATION, SIMPLY BECAUSE OF THE EVIDENCE. WE HAVE TWO GUNSHOTS FIRED TO THE HEAD FROM TWO DIFFERENT ANGLES. WHAT FURTHER EVIDENCE DO YOU NEED AND HIS ARGUMENT SUPPORTING WOULD HAVE ONLY GONE BACK TO THAT IS SUE.

WHAT SUPPORTING EVIDENCE DO WE SEE IN THE RECORD THERE? WAS IT, JUDGE HEARING THE GUIDELINES AND HE IS KICKED, OR WAS IT UP TO THE JUDGE, OR WAS -- AND HE IS, OR WAS IT UP TO THE JUDGE, WAS THERE A PLEA IN THE RECORD?

WE HAVE ASABURNS FROM CHARLOTTE COUNTY TESTIFIED TO IT, NOTING THAT HE DIDN'T COOPERATE IN THE LAMARCA CASE, AND THIS IS AFTER THE LAMARCA'S TRIAL.

THERE WAS NO PLEA TO A DOWNWARD DEPARTURE THAT WAS INTRODUCED INTO EVIDENCE BEFORE THIS TRIAL COURT?

I DON'T BELIEVE ANY PLEA WAS ENTERED, BUT WE HAVE A DOWNWARD DEPARTURE FROM THE ASA, NOTING HIS COOPERATION IN THE LAMARCA CASE, SO WE DO HAVE THAT. WE DON'T HAVE THE TRANSCRIPT OF THAT HEARING, IF YOU WILL, WHEN THE PLEA WAS ACCEPTED, AND NOT INTRODUCED INTO EVIDENCE. I WOULD JUST LIKE TO INTRODUCE, I KNOW COUNSEL TALKED ABOUT LIMITED ISSUES, AND IN HIS REBUTTAL, HE HAS ISSUES THAT HE IS NOT GOING TO ADDRESS BECAUSE HE DID HAVE 20 ISSUES IN HIS LEAVE. I WOULD LIKE TO -- IN HIS BRIEF. I WOULD LIKE TO NOTE THAT TANYA LAMARCA SHOWED NO EVIDENCE OF FALSE TESTIMONY, AND THERE WAS NO EVIDENCE THAT WAS PRESENTED BELOW, NO CREDIBLE EVIDENCE.

CHIEF JUSTICE: WOULD YOU JUST, THIS IS MORE AFTER PROCEDURAL ISSUE, WERE YOU THE ATTORNEY HANDLING THE CASE THROUGHOUT THE POSTCONVICTION?

YES, YOUR HONOR.

CHIEF JUSTICE: WAS THIS EVIDENTIARY HEARING DONE UNDER OUR NEW RULE, THE 3.851 RULE?

YES, YOUR HONOR.

CHIEF JUSTICE: BECAUSE IT DOES APPEAR, THIS IS ONE OF THE FIRST TIMES WE HAVE SEEN THAT HIS CONVICTION WAS FINAL IN 2001, AND IT LOOKS LIKE THE, EVERYTHING PROCEEDED ACCORDING TO SCHEDULE, AND I COMMEND BOTH OF YOU FOR THAT, AND IT LOOKS LIKE A FULL EVIDENTIARY HEARING WAS GIVEN, WITH A FULL COMPREHENSIVE ORDER, SO --

THANK YOU, YOUR HONOR. I ALSO NOTE THAT JUDGE DOWNEY, GIVEN HIS HEAVY TRIAL SCHEDULE, HAD THE EVIDENTIARY HEARING GO INTO THE WEEKEND, SATURDAY AND SUNDAY.

CHIEF JUSTICE: WE PREFER, WE LIKE TO SEE -- WE APPRECIATE, WE LIKE TO SEE THAT MAYBE THINGS WE ARE DOING WILL EXPEDITE THE PROCESS IN A WAY THAT STILL GUARANTEES THAT THE DEFENDANT GETS A FULL HEARING, SO THANK YOU, MR. BROWNE.

THANK YOU.

I WOULD LIKE TO JUST BEGIN, AGAIN, REAL QUICK. THE OFFER WAS NOT BY THE PUBLIC DEFENDER. THE NOTES CLEARLY STATE, ON THE 30th, TWO THINGS, THAT HE WAS GOING TO BE HFO AP SD -- HFOED AND, TWO, 36 MONTHS, DUE TO THE COOPERATION IN THE PINELLAS COUNTY CASE. REASON FOR DOWNWARD DEPARTURE. THAT IS CLEAR IN THE RECORD AND CLEAR IN THE EVIDENCE. ANOTHER EXAMPLE WOULD BE JEREMY SMITH WHO PLED BEFOREHAND, JERRY ANY SMITH, WHO TESTIFIED -- JERRY SMITH, WHO TESTIFIED THAT HE HAD NO SPECIFIC BENEFIT, WITH BOTH THE LEAD DETECTIVE AND THE STATE ATTORNEY IN THIS CASE --

YOUR HONOR, I AM SO RRY BECAUSE I AM GOING TO HAVE TO OBJECT. HE DID NOT RAISE JERRY ANY SMITH IN HIS ARGUMENT I HAVE NO OPPORTUNITY TO REBUT HIS ARGUMENT.

CHIEF JUSTICE: I THOUGHT HE DID MENTION MR. SMITH BUT DIDN'T SPEND TIME. IF YOU ARE GOING TO CONTINUE WITH MR. SMITH, OTHERWISE I DO NEED TO GIVE MR. BROWNE --

I DID MENTION IN THE BEGINNING, ATTEMPTED TO MENTION ALL THREE. AGAIN, THESE ARE --

CHIEF JUSTICE: I AM GOING TO GIVE MR. BROWNE, YOU HAVEN'T USED ALL YOUR TIME.

THAT IS FINE, WITH REGARDS TO JEREMY SMITH, AGAIN, THESE ARE RECORDS RECEIVED DURING POSTCONVICTION. BILLING NOTES BY HIS PRIVATE ATTORNEY INDICATING THAT HE WAS ASKED,

THAT THE PRIVATE ATTORNEY ASKED, BOTH THE PROSECUTOR AND MR. LaMARCA 'S CASE, AND THE LEAD DETECTIVE , TO COM E TO MR . SMITH'S SENTENCING AND TESTIFY ABOUT HIS COOPERATION IN THE CASE. AND THAT , THEY DID , AND THAT WAS NE VER REVE ALED , EITHER TO THE DEFENSE OR T O THE JURY, AND THAT WAS ASKED SPECIFICALLY BY THE STATE , DID YOU RECEIVE ANY BENEFITS IN EXCHANGE FOR YOUR TESTIMONY?

AND THIS , ALL , OCC URRED BEFORE THE AC TUAL LaMARCATR I AL?

CORR ECT. THIS OCCURRED WELL BE FORE THE TESTIMONY BY THE STATE ATTORNEY, AND THE LEAD DETECTIVE OCCURR ED IN MARCH. HE WAS SENTENCED IN APRIL. AGAIN, THIS IS A BENEFIT , AN INTERVENTION. THERE HIS CASE LA W THAT WE KNOW IS VERY CLEAR THAT , AGAIN , THIS DOE SN'T , THIS IS NOT RESU LT -ORIENTED . IT IS WHAT THE STATE DID AND WHAT WAS THE IMPRESSION THAT WAS CONVEYED THIS. IS POWERFUL EVIDENCE TO A JURY THAT THE STATE ATTORNEY WHO IS SITTING RIGHT THERE PROSECUTING THE DEFENDANT, WENT AND SP OKE ON THE BEHALF OF A DEFENDANT WHO I S IN PRISON, TO TRY AND HE LP HIM THE BEST HE CAN, AND THAT I S VERY CLEAR. THAT WAS NEVER , EVER PRESENTED TO THE JURY , A ND THAT WAS WITHHELD. IT WAS ONLY DUE T O THE POSTCONVICTION PROCESS THAT WE DISCOVERED THOSE RECORDS , THAT THAT ACTUALLY HAPPENED , AND , AGAIN , THE TESTIMONY OF SHAWN CRANE, HE AD MITS , YES , T HAT IS WHAT HE DID. I DID -- THAT IS WHAT I DID . I DID GO AHEAD AND TELL THE COURT THAT HE DID COOPERATE AND MADE A STATEMENT WITH REGARDS TO MR. LaMARC A'S CASE, AND , AGAIN , THE TRIAL COURT IN ITS ORDER , FOUND --

HE ACTUALLY GOT THE BENEFIT OF WHAT EVER IT IS THE STATE HAD PROMISED HIM , EVEN BEFORE HE TESTIFIED ON THE STATE'S BEHALF.

CORRECT. CORRECT. HE RECEIVED THE BENEFIT. BEFOREHAND. ABSOLUTELY. AND --

HE RECEIVED THE GUIDELINES DISPOS ITION ?

HE , THEY SA ID THAT H E RECEIVED THE DEAD LINES , BUT THERE WAS OTHER CHARGE THAT IS COULD HAVE BEEN BRO UGHT UP THAT WERE NEVER BROUGHT UP. HE WAS AN ABS COND ER , HE WAS ON VIOLATION OF PROB ATION. HE RECEIVED 29 MONT HS I N PRISON. HOWEVER, IT IS NOT THE END RESULT THAT IS IMPORTANT. IT IS WHAT WAS THE CONSIDERATION IN THE INTERVENTION, AND THAT WAS NEVER REVEALED TO THE STATE. AGAIN , BECAUS E THERE WAS ONLY THREE WITNESSES IN THIS COURT'S DIRECT OPINION , THAT ARE CRITICAL. HUGHES, SMITH , AND TANYA FLYNN, AND THIS COURT ESTABLISHES THAT THOSE THREE WITNESSES WERE CRUCIAL IN UPHOLDING THE ERROR THAT W ASCOMMITTED BY THE LOWER COURT .

AND WHAT WAS THE TESTIMONY BY SMITH OR SMITH'S ATTORNEY AS TO THIS ISSUE?

WITH RE GARD S TO?

A DEAL.

A DEAL. AGAIN , THERE WAS , TESTIFIED THERE IS NO DEAL. HOWEVER, HE DID C OME IN AND TESTIFY FOR HIM .

SMITH'S ATTORNEY TESTIFIED THERE WAS NO DEAL?

YES . HE IS NO W A JUDGE , HE DID COME IN AND TESTIFY --

AND JUDGE CRANE , THE PROSECUTOR AT THE TIME, ALSO SAID THAT THERE WAS NO DEAL?

SAID THAT THERE WAS NO SPECIFIC DEAL. HOWEVER, DID STATE THAT THERE WAS AN AGREEMENT. THERE WAS THIS PROMISE OF INTERVENTION ON BEHALF OF THE STATE. THEY CAME

IN. THEY WEREN'T STAND POINT . -- THEY WEREN'T SUBPOENAED. THEY CA ME IN ON THEIR O WN TO THE COURT AND TESTIFIED FAVORABLY FOR MR . SMITH.

CORRECT ME IF I AM WRONG. IT WAS UP TO THE J UDGEWHETHER TO GIVE MR . SMITH ANY BENEFIT ON THIS , RI GHT?

UP TO THE JUDGE AND THE STATE ATTORNEY, AND THE STATE ATTORNEY DECLINED T O GO AHEAD AND OF FER THE D EAL,BUT , AGAIN , THAT I S RESULT-DRIVEN, AND THAT I S NOT WHAT THE SU PREME COURT --

CHIEF JUSTICE: ALL RIGHT , MR. CAN NON , YOU HAVE USED UP YOUR TIME AND I AM GOING TO GIVE MR . BROWNE A COUP LE OF MINUTES TO RESPOND TO THIS.

RIGHT AND I WOULD LIKE TO F INISH , YOUR HONOR, THAT THIS CASE IS V ERY SLA FER TO THE FLOYD CASE - - VERY SIMILAR TO THE FLOY D CASE , IN WHIC H IT WAS A DIRECT EVIDENCE CASE.

CHIEF JUSTICE: YOU HAVE USED UP YOUR TIME.

FIRST OF ALL I WANT T O CORRECT THE STATEMENT MADE BY MR . CANN ON. THERE WERE NO CHARGES EVER THAT WERE DROPPED THAT MR . SMITH WAS FA CING. I DON'T KNOW WHERE HE IS FINDING.THAT IT WASN'T IN THE RECORD ESTABLISHED BELOW. JUDGE CRANE TESTIFIED AND THE DEFENSE ATTORNEY, TESTIFIED THAT , JUDGE IAM, TESTIFIED THAT THERE WAS NO DEAL, NO BENEFIT, N O AGREEMENT. AFTER THE CAME IN AND MADE A SIMPLE DEAL THAT HE COOPERATED , HE EVEN TOLD THE JUDGE THERE IS NO DEAL , NO WINK, NO NOD, NO NOTHING. THE PROSE CUTOR OBJECTED T O THE DEPARTURE BENEFITS. HE RECEIVED NO BENEFIT. HE O B JECTED THAT D AY THAT JUDGE CRANE CAME IN , THAT HE ULTIMATELY ACCEPTED 29 MONTHS IN PRISON AND THAT HE TESTIFIED DURING THE TRIAL , AND FULLY SE RVED HIS 29-MONTH SENTENCE. HE HAD NO DEAL TO FALS IFY HIS TESTIMONY AT THIS TIME . THANK YOU.I DO APPRECIATE THE TIME.

CHIEF JUSTICE: THANK YOU, MR. BROWNE. THE COURT WILL TAKE THAT INTO CONSIDERATION AND WILL CALL THE NE XT CASE