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James Guzman v. State of Florida Docket Number: SC04-2016

THE COURT WILL HEAR THE LAST CASE OF THIS MORNING, WHICH IS GUZMAN VERSUS STATE OF FLORIDA. ARE THE PARTIES READY? MR. PINKARD, YOU MAY PROCEED.

GOOD MORNING. I'M ERIC PINKARD ON BEHALF OF MR. GUZMAN FROM CCRC.

CHIEF JUSTICE: AND WHO IS WITH YOU AT COUNSEL TABLE?

THAT'S MR. DAVID GIMMER WITH OUR OFFICE, ALSO.

CHIEF JUSTICE: MR. PINKARD, WE ALLOWED YOU 20 MINUTES AND 20 MINUTES. THIS IS SO WE ARE CLEAR THE COURT REMANDED TO THE TRIAL COURT WHO HEARD THE CASE AS A NONJURY TRIAL FOR ONE SPECIFIC PURPOSE, WHICH WAS THE THIRD PRONG OF GIGLIO. SO THAT'S THE ONLY ISSUE BEFORE US TODAY.

THAT'S CORRECT. THAT'S THE ONLY ISSUE.

CHIEF JUSTICE: AND IS THIS A MIXED QUESTION OF LAW AND FACT IN TERMS OF OUR REVIEW OF THE TRIAL COURT'S FINDINGS?

I BELIEVE IT REQUIRES A DE NOVO REVIEW AND THAT'S THE STATUS OF THE LAW. THAT'S WHAT WAS DONE IN THE OTHER CASES THAT HAVE COME BEFORE THIS COURT ON THE ISSUE OF BRADY/GIGLIO VIOLATION'S RECENTLY IN MORDENTI AND THIS COURT HAS ALWAYS CONDUCTED A DE NOVO REVIEW OF THE MATERIAL PRONG OF GIGLIO.

CHIEF JUSTICE: AND THIS IS ABOUT THE \$500 THAT MISS CRONIN WAS GIVEN AS A, QUOTE, REWARD THAT WAS NOT KNOWN TO THE DEFENDANT AND AT THE TIME OF THE TRIAL MISS CRONIN TESTIFIED THAT THERE HAD BEEN NO PAYMENT TO HER?

THAT'S CORRECT, MISS CRONIN TESTIFIED THERE HAD BEEN NO PAYMENT AND ALSO A LEAD DETECTIVE IN THE CASE INDICATED AT THE TRIAL THERE HAD BEEN NO DEAL OR PAYMENT MADE TO MISS CRONIN AND, IN FACT, BEFORE THE TRIAL BEGAN THERE WAS A SPECIFIC DISCOVERY MOTION FROM THE DEFENSE IN THIS CASE ASKING WHETHER ANY COMPENSATION WHATSOEVER IN ANY FORM HAD BEEN GIVEN TO MARTHA CRONIN SPECIFICALLY NAMING HER AND WAS TOLD BY THE STATE ATTORNEY'S OFFICE THAT THERE HAD NOT BEEN WRITTEN OR ORALLY BEFORE THE COURT.

CHIEF JUSTICE: SO IT WAS ALREADY FOUND THAT THAT WAS FALSE TESTIMONY? WE ARE NOT REVIEWING THAT?

BOTH OF THE WITNESSES.

CHIEF JUSTICE: WE ARE REVIEWING WHETHER IT IS HARMLESS, BAKELY WHETHER IT IS HARMLESS ERROR BEYOND A REASONABLE DOUBT?

UNDER THE CHAPMAN STANDARD WHETHER OR NOT THE FACT THERE WAS FALSE TESTIMONY PRESENT, YOU COULD REVIEW THE RECORD AND DETERMINE FROM THE RECORD THAT IT ESTABLISHES BEYOND A REASONABLE DOUBT.

CHIEF JUSTICE: AND IT IS YOUR BURDEN TO PROVE IT?

IT IS THE STATE'S BURDEN TO PROVE IT IS HARMLESS ERROR.

CHIEF JUSTICE: UNDER GIGLIO, I THINK IT IS YOUR BURDEN, ISN'T IT?

I THINK UNDER CHAPMAN IT IS THE STATE'S BURDEN. >> CHIEF JUSTICE: BUT WE ARE IN GIGLIO, NOT CHAPMAN.

BUT IT HAS BEEN FOUND TO BE THE SAME AS THE CHAPMAN STANDARD AND I THINK ON THE DEAL IN THE GUZMAN CASE WHEN YOU REMANDED IT BACK YOU INDICATED THOSE TWO STANDARDS ARE IDENTICAL SO IT WOULD BE THE BURDEN WOULD BE ON THE STATE TO PROVE BEYOND A REASONABLE DOUBT THAT THERE IS NO LIKELIHOOD THAT SUCH COULD HAVE AFFECTED A JUDGMENT AND SENTENCE OR A JUDGMENT IN THIS CASE.

JUSTICE: THIS WOULD HAVE GONE TO IMPEACHMENT OF THE WITNESS, CORRECT, OF CONIEN?

THAT'S ONE ASPECT OF IT. IT IS ALSO TRUE THAT YOU HAVE TO CONSIDER BOTH OF THESE WITNESSES TESTIFIED FALSELY SO THE FALSITY ITSELF ALSO HAS TO BE CONSIDERED BUT IT WOULD GO TO IMPEACHMENT BUT THAT IS MORE OF A BRADY VIOLATION, I THINK. WHEN YOU ARE TALKING ABOUT GIGLIO YOU ARE TALKING ABOUT THE FACT THAT THE WITNESSES TESTIFIED FALSELY WHAT IMPEACHMENT DOES HAVE ON THE TRIAL AND THE FAIRNESS OF THE PROCEDURE. THAT'S WHAT IS UNDERSTOOD IN BAGLEY AND THE CASES BEFORE THE U.S. SUPREME COURT ON THE ISSUE OF GIGLIO. IT IS THE FAIRNESS OF THE PROCEEDING IS THAT ISSUE.

JUSTICE: IF SHE WOULD HAVE TESTIFIED TRUTHFULLY THAT SHE RECEIVED THE \$500 PAYMENT, THAT WOULD HAVE GONE TO HER CREDIBILITY AS A WITNESS.

OH, ABSOLUTELY THAT WOULD HAVE GONE TO HER CREDIBILITY AS A WITNESS.

JUSTICE: OKAY. WHAT OTHER IMPEACHMENT WAS MADE OF HER AS A WITNESS AT THE TRIAL? I THINK WE NEED TO CONSIDER ALONG WITH THIS, TO DETERMINE WHETHER THIS WAS HARMLESS BEYOND A REASONABLE DOUBT.

I AGREE WITH THAT. WELL, IT WAS BROUGHT UP THAT SHE WAS A PROSTITUTE. IT WAS BROUGHT OUT THAT SHE WAS A COCAINE ADDICT. IT WAS BROUGHT OUT THAT SHE HAD PREVIOUSLY SAID THAT WHEN SHE WAS FIRST INTERVIEWED THAT SHE DIDN'T MAKE A STATEMENT THAT IMPLIED MR. GUZMAN IN ANY WAY. SHE ONLY DID THAT LATER IN NOVEMBER OF THAT YEAR. SO THOSE WOULD BE THE ASPECTS THAT SHE WAS IMPEACHED UPON.

JUSTICE: WAS IT BROUGHT OUT THAT THE STATE HAD PURCHASED A HOTEL ROOM FOR HER?

RIGHT. IT WAS BROUGHT OUT THAT THE REASON THEY PUT HER UP IN THE HOTEL ROOM TO PROTECT HER FROM MR. GUZMAN SUO SEDELY BUT THEY DENIED THAT THAT WAS ANY SORT OF A DEAL. THEY HELPED HER WITH HER PENDING CHARGE BUT SHE WAS CROSS-EXAMINED IN THOSE AREAS BUT WHEN YOU TAKE INTO CONSIDERATION THAT SHE IS A PROSTITUTE AND SHE IS A CRACK COCAINE ADDICT THAT FEEDS INTO HER MOTIVATION TO MAKE UP A STORY ABOUT MR. GUZMAN CONFESSING TO HER IN ORDER TO GET THE MONEY SO I DON'T THINK FAR FROM SAYING THAT THAT IMPEACHMENT SOMEHOW CURSES THE FACT THAT THIS \$500 WASN'T REVEALED IS NOT CORRECT BECAUSE YOU HAVE TO PUT THAT IN THE OVERALL CONTEXT OF WHO WE ARE DEALING WITH. THIS IS A CRACK COCAINE ADDICT PROSTITUTE THAT IS GIVEN M

ONEY WHO IS DESPERATE FOR MONEY AND HAS A DAILY CRACK COCAINE HABIT SO THOSE THINGS JUST FEED INTO THE IMPERIALMENT VALUE OF THIS \$500 PAYMENT. >> JUSTICE: WHEN DID THEY GET THE \$500?

I BELIEVE IT WAS PAID IN JANUARY.

JUSTICE: OF WHAT YEAR?

I THINK IT IS JANUARY OF 1993, BUT I COULDN'T SWEAR TO IT. I KNOW IT WOULD HAVE BEEN NOVEMBER WHEN SHE GAVE THE STATEMENT AND THEN SHE WAS PAID IN JANUARY.

JUSTICE: THEN WHEN DID SHE TESTIFY?

SHE TESTIFIED THE FOLLOWING YEAR WHEN THE CASE CAME TO TRIAL.

CHIEF JUSTICE: SO HER FIRST STATEMENT TO THE POLICE BEFORE SHE WAS PAID MONEY WAS IMPLICATED OR SPECIFICALLY WAS THAT COLVIN HAD BEEN MURDERED BY GUZMAN, CORRECT?

THE FIRST STATEMENTS HE MADE TO THE POLICE SHE DENIED GUZMAN IN ANY WAY. THEY TALKED TO BOTH MR. GUZMAN --.

CHIEF JUSTICE: DID THE JURY, NOT THE JURY I GUESS THE JUDGE, DID THE JUDGE KNOW SHE DIDN'T INITIALLY IMPLICATE MR. GUZMAN? >> THE JUDGE KNEW THAT, YES.

CHIEF JUSTICE: THE JUDGE KNEW SHE HAD MADE INCONSISTENT STATEMENTS?

CORRECT.

CHIEF JUSTICE: ALSO, WHAT ABOUT THE FACT THAT I DIDN'T, YOU MAY HAVE MENTIONED IT AND I DIDN'T HEAR IT, THAT SHE HAD A DEAL TO TESTIFY IN EXCHANGE FOR SOME BENEFIT IN HER OWN CASE?

RIGHT. SHE PRESENTED HERSELF AND SAID I WANT A DEAL BUT THE STATE DENIED EVER GIVING HER A DEAL. THE DETECTIVE SAID WE DIDN'T GIVE HER A DEAL. WE DID SET HER UP IN A HOTEL TO PROTECT HER FROM MR. GUZMAN BUT SHE WANTED A DEAL. THAT CAME OUT BEFORE THE COURT THAT SHE WANTED A DEAL BUT DID NOT RECEIVE ONE.

CHIEF JUSTICE: THAT'S A LOT OF IMPEACHMENT?

AS FAR AS THE IMPEACHMENT VALUE, THE FACT THAT SHE IS A COCAINE ADDICT AND A PROSTITUTE AND THEN SHE IS PAID AND AFTER SHE FORGETS THE FIRST STATEMENT THAT DOESN'T IMPLICATE MR. GUZMAN AND THEN THE REWARD MONEY IS OFFERED AND THEN SHE GETS THE REWARD MONEY AFTER SHE CHANGES HER TESTIMONY ALL TIES IN BUT YOU ALSO HAVE TO CONSIDER THE FALSITY OF HER STATEMENT. I MEAN, SHE TESTIFIED FALSELY. SHE LIED TO THE COURT. THE LEAD DETECTIVE LIED TO THE COURT. SO HOW DOES THAT LYING IMPACT THE FAIRNESS OF THE PROCEDURES?

JUSTICE: DID YOU JUST SAY SHE WAS ACTUALLY GIVEN THE MONEY BEFORE SHE MADE -- AS I UNDERSTOOD IT, SHE HAD MADE ANOTHER STATEMENT THAT, IN FACT, IMPLICATED MR. GUZMAN AND THIS WAS BEFORE ANY MONEY EXCHANGED HANDS.

RIGHT. WELL, THERE IS A DIFFERENCE BETWEEN THE MONEY EXCHANGED AND WHEN THE REWARD OFFER WAS MADE.

JUSTICE: THE STATE MADE A GENERAL REWARD OFFER TO THE PUBLIC?

RIGHT. IN THE NEWSPAPER. AND THAT OCCURRED IN AUGUST. SHE HAD ALREADY GIVEN A STATEMENT TO THE POLICE THAT SHE DIDN'T IMPLICATE MR. GUZMAN, AND THEN AFTER THE REWARD MONEY IS OFFERED, ALL WE COULD GET OUT OF THE DETECTIVE WAS THERE WAS MORE DISCUSSION BETWEEN THE DETECTIVE AND MR. CROVIN ABOUT THE REWARD. SHE GIVES THE STATEMENT TO THE DETECTIVE IMPLICATING MR. GUZMAN, AND THEN SHE IS PAID IN JANUARY OF THE FOLLOWING YEAR IN THE JAIL.

CHIEF JUSTICE: NOW WE HAVE, SO WE HAVE TALKED ABOUT IMPEACHMENT. NOW, ALTHOUGH IT IS NOT A SUFFICIENCY OF EVIDENCE OR THAT THERE IS OVERWHELMING EVIDENCE BUT GIVEN THE LIGHT MOST FAVORABLE TO THE STATE, WHAT OTHER EVIDENCE THERE WAS CONNECTING GUZMAN TO THE CRIME AND SPECIFICALLY HIM HAVING THE DIAMOND RING OR OTHER PARTS OF COLVIN'S PROPERTY?

RIGHT. I WILL DISPUTE I DON'T THINK WE SHOULD LOOK AT IT IN THE LIGHT MOST FAVORABLE TO THE STATE.

CHIEF JUSTICE: WELL, WHAT OTHER EVIDENCE DID THE JUDGE HEAR?

THE JUDGE RELIED ON THE FACT THAT THE MEDICAL EXAMINER HAS SAID THAT THE KNIFE, THE SAMURAI SWORD OR MR. GUZMAN'S SURVIVAL KNIFE COULD HAVE BEEN THE MURDER WEAPON BUT IF YOU READ THE MEDICAL EXAMINER'S TESTIMONY ALL HE SAYS IS ANY KNIFE THREE-INCHES OR LONGER COULD HAVE BEEN THE MURDER WEAPON IN THIS CASE. SO THERE IS NO SPECIFICITY WHATSOEVER TO ANY PARTICULAR MURDER WEAPON IN THIS CASE AND MR. GUZMAN, CONTRARY TO WHAT THE COURT SAID, WASN'T CAUGHT WITH THIS SURVIVAL KNIFE OUT SOMEWHERE. HE VOLUNTARILY TURNED IT INTO THE POLICE SO THERE IS NO SIGNIFICANT LINK I DON'T BELIEVE THE RECORD WOULD SHOW BETWEEN THE SAMURAI SWORD AND THE MEDICAL EXAMINER'S TESTIMONY. THE OTHER ASPECT OF IT, WHICH WAS CITED BY THE LOWER COURT, IS THE SNITCH, MR. ROGERS TESTIFIED THAT MR. GUZMAN HAD CONFESSED TO HIM WHILE THEY WERE IN THE JAIL TO GET HER. HOWEVER, THE SNITCH HAD FILED AN AFFIDAVIT BEFORE THE TRIAL BEFORE HE TESTIFIED THAT GUZMAN HAD NEVER CONFESSED TO HIM SO I HARDLY SEE THAT IS EXTENSIVE CORROBORATION. -- CORROBORATION. THERE IS UNDISPUTED TESTIMONY THAT MR. GUZMAN SOLD MR. COLVIN'S RING FOR CRACK COCAINE. MR. GUZMAN'S VERSION OF THAT IS THAT CHRIS WALLACE HAD GIVEN HIM THE RING IN THE AFTERNOON AND ACCORDING TO MARTHA CROVIN LATER ON SAID THAT GUZMAN HAD CONFESSED TO HER ABOUT KILLING MR. COLVIN SO THE CRIMINALITY OR A SPECIFIC OF THE RING IS ONLY LINKED THROUGH THE TESTIMONY OF THE LYING WITNESS, MARTHA CROVIN.

JUSTICE: WAS THERE FINGERPRINT EVIDENCE IN THIS CASE?

THERE IS FINGERPRINT ON THE TELEPHONE AND MR. COLVIN'S HOTEL ROOM. MR. GUZMAN'S FINGERPRINTS ARE ON THE PHONE BUT IT IS UNDISPUTED HE HAD HELPED MR. COLVIN MOVE THE DAY BEFORE AND HAD CALLED MARTHA CROVIN FROM THAT PHONE SO IT DOES NOT IMPLICATE MR. GUZMAN IN ANY WAY BECAUSE THAT IS UNDISPUTED. MISS CROVIN AND MR. GUZMAN CONFIRMED THAT HE HAD HELPED MR. COLVIN MOVE AND THAT HIS FINGERPRINTS OUGHT TO BE ON THE PHONE AND NOT BLOODY FINGERPRINTS. THERE IS NOTHING TO LINK IT TO THE TIME OF THE HOMICIDE. IT HAD LATER REINFORCED THE DAY BEFORE BY THE FACT HE HELPED THE PERSON MOVE.

JUSTICE: WAS THERE ANY EVIDENCE IN THE HOTEL ROOM THAT HE TRIED TO CLEAN UP THE SCENE? SHE TESTIFIED HE CAME IN WITH A GARBAGE BAG OF WHITE RAGS. WAS THERE EVIDENCE FROM THE SCENE THAT, A GAIN --

THE STATE'S THEORY WAS THE SAMURAI SWORD WAS USED, SO WHOEVER USED IT MAY

HAVE CLEANED IT OFF. I MEAN - - .

JUSTICE: BUT WAS THERE EVIDENCE THERE WERE NO FINGERPRINTS ON IT AT ALL? ANY EVIDENCE THAT THE ROOM HAD BEEN CLEANED?

YOU KNOW, I DON'T RECALL ANY SPECIFIC EVIDENCE ABOUT THE ROOM HAVING BEEN CLEANED, ANYBODY THAT TESTIFIED. THERE MIGHT HAVE BEEN BUT GETTING BACK TO THE BAG OF CLOTHES, MR. CRONIN HAD SAID THAT MR. GUZMAN IN HER IMPRESSION PUT THEM IN THE DUMPSTER AND THE SNIITCH HAD SAID GUZMAN TOLD HIM HE PUT THEM IN THE DUMPSTER BUT IT WAS SEARCHED BY THE POLICE AND THE TRASH DEPARTMENT HADN'T COME TO PICK IT UP OVER THE WEEKEND AND THERE WAS NOTHING LIKE THAT FOUND IN THE DUMPSTER SO THAT PART OF IT IS INCONSISTENT. THERE ARE ALSO MANY OTHER PEOPLE WHO WERE IMPLICATED AS BEING INVOLVED IN THIS. OR COULD HAVE BEEN IMPLICATED BEING INVOLVED IN THIS. KURTIS WALLACE WAS SEEN BY ANTONIO LEE GOING INTO MR. COLVIN'S HOTEL ROOM AND KURTIS WALLACE TOLD THE POLICE WHEN HE WAS INTERVIEWED BY DETECTIVE SYLVESTER THAT IF THERE WAS A RING STOLEN IN KNOX WHO DID IT. THAT WAS THE BEFORE THE ISSUE OF THE RING HAD COME OUT. THERE WAS ANOTHER WITNESS WHO WAS SEEN OR ANOTHER PERSON WHO WAS SEEN INSIDE MR. COLVIN'S HOTEL ROOM IN A KNIFE FIGHT WITH HIM, AND THE MR. COLVIN HAD TAKEN HIS SAMURAI SWORD OFF TO DEFEND HIMSELF AND THE MANAGER OF THE HOTEL ROOM HAD BROKEN THIS UP. >> JUSTICE: ALL OF THAT TESTIMONY WAS BEFORE THE TRIAL JUDGE?

ALL OF THAT TESTIMONY WAS BEFORE THE TRIAL JUDGE, THAT'S TRUE. SO I DON'T THINK THERE IS ANY EXTENSIVE CORROBORATION AS IS REQUIRED IN THESE CASES TO ESTABLISH THE STATUTE'S BURDEN BEYOND A REASONABLE DOUBT THAT THIS COULD NOT HAVE AFFECTED THE FAIRNESS OF MR. GUZMAN'S TRIAL. AND IF THERE ARE NO FURTHER QUESTIONS, I WILL SIT DOWN. THANK YOU.

CHIEF JUSTICE: MR. NUNNELLEY?

MAY IT PLEASE THE COURT, KEN NUNNELLEY, I REPRESENT THE STATE OF FLORIDA. LET ME SET THE CHRONOLOGY OF THE EVENTS THAT TOOK PLACE IN THIS CASE. THEY ARE A LITTLE BIT COMPLICATED AND SINCE WE'VE HAD A COUPLE OF TRIALS WE ARE ALWAYS OUT FROM THE ACTUAL OFFENSE.

JUSTICE: WHILE YOU ARE DOING THE CHRONOLOGY WOULD YOU GIVE US THE DETAILS OF THE PAYMENT OF THIS \$ 500? IN OTHER WORDS, WHAT THE CIRCUMSTANCES WERE INVOLVED WITH THAT AS AN EVENT UNUSUALLY CAME OUT IN THE POST-CONVICTION HEARING? IN OTHER WORDS, WOULD YOU BRING THAT IN AND GIVE US, YOU KNOW, THE ACTUAL DETAILS AS FAR AS HOW THE FINDING THAT THAT ACTUALLY DID OCCUR AND UNDER WHAT CIRCUMSTANCES?

JUSTICE, WITH THE CAVEAT THAT'S GOING TO COME AT THE TAIL END OF THE CHRONOLOGY, OKAY? DAVID COLVIN WAS MURDERED SOMETIME ON AUGUST 10TH OF 1991. THE BODY WAS FOUND ON AUGUST 12TH BY ONE OF THE CLEANING PERSONS OR MAINTENANCE MAN AT THE IMPERIAL MOTOR LODGE ON SOUTH RIDGE WOOD AVENUE.

CHIEF JUSTICE: I GUESS THEY DIDN'T CLEAN THE ROOM EVERY DAY, HUH?

NO, THE Y DIDN'T CLEAN THE ROOM EVERY DAY. ON AUGUST 12TH LAW ENFORCEMENT WAS CALLED TO THE SCENE. MARTHA CRONIN, WHO ALSO RESIDED AT THE IMPERIAL MOTOR LODGE ALONG WITH MR. GUZMAN WAS INTERVIEWED AS WELL AS A NUMBER OF THE OTHER RESIDENTS OF THIS MOTEL. AT THAT POINT IN TIME, MISS CRONIN GAVE A STATEMENT THAT SHE DIDN'T KNOW ANYTHING ABOUT IT. SUBSEQUENTLY --.

CHIEF JUSTICE: JUST AGAIN SETTING THE SCENE, THE MOTEL BUT YOU TALK ABOUT RESIDENTS

OF THE MOTEL . WAS THIS A WEEK TO WEEK PLACE ? I MEAN IT SOUNDS LIKE IT MUST HAVE BEEN A PRETTY SHADY KIND OF PLACE?

THAT'S A PRETTY GOOD DESCRIPTION OF IT , JUSTICE PARIENTE. >> CHIEF JUSTICE: ARE THERE A LOT OF PEOPLE IN AND OUT OF THIS OR IS IT A HOUR TO HOUR HOTEL , MOTEL ?

JUSTICE PARIENTE , I CAN HONESTLY SAY I HAVE NEVER SET FOOT IN THE PLACE AND HAVE NO INTENTIONS OF DOING SO.

CHIEF JUSTICE: I'M JUST GOING FROM THE RECORD, MR. NUNNELLEY.

MY UNDERSTANDING OF THIS HOTEL IN THIS AREA OF DAYTONA BEACH WHERE IT SETS.

CHIEF JUSTICE: NOT YOUR UNDERSTANDING, WHAT THE RECORD SHOWS.

THE RECORD SHOWS IT IS A HOTEL WHERE FOLKS LIVE KIND OF LIKE LOW INCOME HOUSING , IF YOU WILL. I'M NOT SURE THE RECORD USES THAT TERM. THAT IS MY UNDERSTANDING AND I BELIEVE THE RECORD WOULD BEAR OUT THAT THAT IS WHAT , IN FACT , THIS HOTEL IS . I'M NOT SURE IT IS STILL THERE. MAYBE IT IS NOT, BUT I DON'T KNOW IF IT IS STILL THERE OR NOT. ON AUGUST 16TH OF 1991 , THE REWARD ANNOUNCEMENT RUNS IN THE DAYTONA BEACH NEWS JOURNAL WHICH IS THE MAJOR NEWSPAPER IN DAYTONA BEACH , AND IT ALSO RAN IN ANOTHER NEWSPAPER THAT I DO NOT REMEMBER THE NAME OF , AND DON'T THINK I HAVE EVER SEEN. IT IS A WEEKLY NEWSPAPER , I BELIEVE.

CHIEF JUSTICE: WELL, YOU ARE GIVING US -- I MEAN A GAIN THAT'S ALL IN THE DIRECT -- OR THE OPINION IN THE REMAND. AUGUST 16TH , AND THEN THE FAIL TO LEAD TO ARREST UNTIL NOVEMBER 23. ARE YOU GOING TO FILE SOMETHING ELSE IN THAT'S NOT IN OUR OPINION?

NO, MA'AM. NOVEMBER 23RD IS THE CRUCIAL DATE WHEN MARTHA CRONIN IS PICKED UP ON A VIOLATION OF PROBATION AND THAT'S WHEN SHE STARTS TALKING ABOUT KNOWING SOMETHING ABOUT THIS CASE. ON DECEMBER 10TH , LAW ENFORCEMENT CONTACTS MR. GUZMAN, PRESUMABLY BASED UPON INFORMATION ABOUT HIS WHEREABOUTS PROVIDED BY MARTHA CRONIN. AT THAT TIME HE HANDS OVER THE INFAMOUS SURVIVAL KNIFE . ON NOVEMBER 13TH , MR. GUZMAN , I'M SORRY, DECEMBER 13TH MR. GUZMAN IS TAKEN INTO CUSTODY. ON JANUARY 3RD OF 1992 , MARTHA CRONIN RECEIVES A MONTHLY ORDER IN THE AMOUNT OF \$ 500 THAT IS IN PAYMENT OF THE ANNOUNCED REWARD IN THIS CASE. AT THAT POINT IN TIME MISS CRONIN WAS IN CUSTODY AT THE VOLUSIA COUNTY JAIL.

SHE RECEIVED THAT FROM WHOM?

DETECTIVE SYLVESTER OR FORMER DETECTIVE SYLVESTER.

CHIEF JUSTICE: AND THE DETECTIVE WHO ARRANGED THE PAYMENT CANNOT RECALL WHEN SHE FIRST DISCUSSED THE REWARD MONEY WITH CRONIN ? CORRECT?

THAT IS CORRECT . SOMEWHERE AFTER NOVEMBER 23RD , AND BEFORE MISS CRONIN WAS ACTUALLY PUT INTO THE VOLUSIA COUNTY JAIL AND I DON'T REMEMBER EXACTLY WHEN THAT WAS AND IT IS NOT OF GREAT RELEVANCE HERE, SHE WAS , IN FACT, PUT IN A HOTEL OVER ON THE BEACH SIDE IN DAYTONA BEACH, WHICH IS ACROSS THE RIVER FROM WHERE SHE WAS LIVING ON RIDGEWOOD AVENUE. THAT WAS DONE FOR HER PROTECTION ACCORDING TO LAW ENFORCEMENT. MISS CRONIN TOOK ADVANTAGE OF THE SITUATION AND CONTINUED TO WORK AS A PROSTITUTE OUT OF THE HOTEL ROOM ON THE BEACH SIDE. THAT'S ALL IN THE OPINION. WE KNOW ALL OF THIS.

CHIEF JUSTICE: AND OTHER THAN THIS PART WHERE THEY BOTH DENIED THE DETECTIVE AND

CRONIN THAT THERE HAD BEEN ANY MONEY PAID, AND WE'VE ALREADY DETERMINED AND IT WAS ALREADY A FINDING THAT THAT WAS FALSE TESTIMONY?

THAT'S TRUE.

CHIEF JUSTICE: WHERE ARE WE GOING ON THIS THEN?

WHERE WE ARE GOING ON THIS IS THE DEFENDANT'S POSITION IS THAT THIS IS ENTIRELY REVIEWED DE NOVO BY THIS COURT. I DO NOT DISPUTE THE NOTION THAT THE GIGLIO CLAIM IS SUBJECT TO DE NOVO REVIEW. HOWEVER, I DO NOT CONCEDE OR DO I AGREE THAT THE FACTUAL FINDINGS BY THE CIRCUIT COURT ARE SUBJECT TO DE NOVO REVIEW BY THIS COURT. THIS COURT HAS SAID OVER AND OVER AGAIN THAT IT WILL NOT SUBSTITUTE ITS JUDGMENT FOR THAT OF THE FACTFINDER. IN THIS PARTICULAR CASE, WE HAVE AN UNUSUAL CASE IN THE CONTEXT OF A GIGLIO CLAIM, BUT THESE ARE THE ONES THAT THIS IS THE FACTS THAT WE HAVE. THIS IS THE CASE WE HAVE. WE HAVE A BENCH TRIAL. THIS COURT SENT THIS CASE BACK TO THE TRIAL JUDGE TO ANSWER A VERY, VERY SPECIFIC QUESTION, WHICH WAS WHETHER THERE IS ANY REASONABLE LIKELIHOOD THAT THE FALSE TESTIMONY WOULD HAVE AFFECTED HIS JUDGMENT, HIS VERDICT AS THE FACTFINDER IN THIS CASE.

JUSTICE: WELL, WHAT IS THE TEST THERE? IS IT A SUBJECTIVE TEST THAT IS FOR THE JUDGE TO SAY I'M THE ONE THAT TRIED IT, AND, THEREFORE, WHAT I AM GOING TO DO IS SAY TO MYSELF, WELL, WOULD IT HAVE AFFECTED ME, OR DOES THE JUDGE HAVE TO APPLY AN OBJECTIVE TEST OF SAYING, WELL, LET'S SUOSE THAT IT WASN'T ME, THAT IT WAS A JURY THAT WAS CONSIDERING THIS, AND WHAT WOULD HAVE BEEN THE IMPACT ON A JURY FACTFINDER? SO I'M ASKING YOU NOW WHAT WAS -- WHAT WOULD BE THE APPROPRIATE TEST FOR THE JUDGE? HOW WOULD YOU ARTICULATE IT, SUBJECTIVE, I.E. I TRIED IT, I CAN TELL YOU IT WOULD N'T HAVE MADE ANY DIFFERENCE TO ME. I STILL WOULD HAVE FOUND HIM GUILTY, OR OBJECTIVE, GEE, NOW I'VE GOT TO CONSIDER OBJECTIVELY WHAT THIS IMPACT MAY HAVE HAD ON A FACTFINDER, YOU KNOW, INCLUDING A JURY. WHAT TEST SHOULD THE JUDGE HAVE A LIED?

I'M NOT CERTAIN, JUSTICE ANSTEAD, WHETHER WE CAN CALL THIS AN OBJECTIVE VERSUS SUBJECTIVE SITUATION OR NOT. I THINK ON THE ONE HAND WE CAN, AND I THINK THAT UNDER THOSE CIRCUMSTANCES WHAT THE TRIAL JUDGE HAS DONE IS TAKEN THE LAW AS ANNOUNCED BY THIS COURT AND THE U.S. SUPREME COURT IN GIGLIO ITSELF AND OBJECTIVELY ALIED THAT TO HIS DETERMINATIONS AND FOUND THAT IT WOULD MAKE NO DIFFERENCE TO HIM.

JUSTICE: BUT WOULD YOU AGREE IT WOULD BE A MISTAKE IF HE DID IT SUBJECTIVELY? IF HE JUST SAID I WAS THE TRIER OF FACT, AND IT WOULD N'T MAKE ANY DIFFERENCE TO ME? BECAUSE IN MOST INSTANCES WE CAN'T BRING A JURY BACK. TO TRY THE CASE AND SAY, HEY, FOLKS, YOU KNOW, WOULD THIS HAVE MADE ANY DIFFERENCE TO YOU? YOU'VE GOT TO ALYSORT OF AN OBJECTIVE TEST OF WOULD THIS HAVE MADE A DIFFERENCE TO A REASONABLE FACTFINDER?

AND I THINK THAT'S WHAT HE HAS DONE. I THINK IT IS A KIN TORUL IN G ON A MOTION FOR JUDGMENT OF ACQUITTAL AT THE CLOSE OF THE STATE'S CASE.

CHIEF JUSTICE: I GUESS THE PROBLEM I HAVE THEN IS WHY DID WE, IF IT IS A QUESTION OF LAW, IN OTHER WORDS YOU LOOK AT THIS WHOLE RECORD, WHY DIDN'T WE JUST DECIDE IT OURSELVES? IN OTHER WORDS, WHAT ADDITIONALLY DID THE JUDGE DO WHEN IT WAS SENT BACK THAT WE COULDN'T DO ON THE SAME RECORD? WERE THERE FACTUAL FINDINGS THAT HE MADE?

THE JUDGE WENT -- AS FAR AS THE FACTUAL FINDINGS ARE CONCERNED, WE HAVE TWO THINGS GOING ON HERE AND I'M NOT DEFLECTING YOUR QUESTION, JUSTICE PARIENTE, BUT YOU HAVE INITIALLY WHEN THIS CASE CAME THROUGH THIS COURT, WE HAD A BRADY CLAIM THAT WAS BASED UPON THE SAME FACTS. BUT BRADY AND GIGLIO ARE DIFFERENT STANDARDS AS FAR AS WHETHER OR NOT THERE IS REVERSEABLE ERROR. THE MATERIALITY STANDARDS ARE DIFFERENT. THIS COURT DECIDED A BRADY CLAIM AND I WOULD SUGGEST IN SO DOING ESSENTIALLY SET THE FACTS OR LOCKED THE FACTS, IF YOU WILL, WITH RESPECT TO THIS ISSUE. AND THIS COURT'S OPINION ON REMANDING THE CASE FOR RECONSIDERATION OF THE GIGLIO ISSUE, CLEARLY DIRECTED THE TRIAL COURT TO ANSWER IS THERE ANY REASONABLE LIKELIHOOD OF IT WOULD HAVE AFFECTED MY JUDGMENT AS THE FACT FINDED IN QUESTION. I DON'T --.

CHIEF JUSTICE: AND IN THAT WE SAY IN OUR OPINION WE SAY THAT THE CROVIN AND THE LEAD DETECTIVE TESTIFIED AT TRIAL THAT CROVIN RECEIVED NO BENEFIT FOR HER TESTIMONY AGAINST GUZMAN OTHER THAN BEING TAKEN TO A HOTEL RATHER THAN JAIL WHEN SHE WAS ARRESTED. IN FACT, THE STATE PAID CROVIN \$500, A SIGNIFICANT SUM TO AN ADMITTED CRACK COCAINE ADDICT AND PROSTITUTE. SO THAT'S ALREADY DETERMINED.

YES, MA'AM. WE ALL SAID THAT. I'M NOT ARGUING WITH THAT. I DON'T DISPUTE THAT. I CAN'T. AS FAR AS THE ULTIMATE QUESTION AS TO -- THAT YOU TILL I -- ACTUALLY ASKED ME AS TO WHY THE COURT REMANDED RATHER THAN DECIDING THE CASE ITSELF, I DON'T MEANT TO PRESUME TO TELL THIS COURT WHAT ITS THOUGHT PROCESSES WERE IN REACHING THAT DECISION.

CHIEF JUSTICE: I'M ASKING YOU IF IT IS DE NOVO, IF WE WERE TO DEFER TO THE JUDGE, WHAT FACTUAL FINDINGS DID THE JUDGE MAKE UPON REMAND THAT WE NEED TO REFER TO?

HE WENT BACK AND MADE ADDITIONAL -- AND MADE FACT FINDINGS AS TO WHAT THE STATE OF THE EVIDENCE PRESENTED AT TRIAL WAS. HE WENT BACK AND REVIEWED THE TESTIMONY OF CROVIN, SYLVESTER, A COUPLE OF OTHER PEOPLE WHOSE NAMES ARE ESCAPING ME AT THE MOMENT. AND MADE AND ENTERED A VERY EXPLICIT AND DETAILED ORDER AS TO WHAT HIS FACT FINDINGS WERE BASED UPON HIS REVIEW, IF YOU WILL, OF THE EVIDENCE AND THEN REACHED THE CONCLUSION THAT IN ANSWER TO THIS COURT'S QUESTION THE ANSWER WAS NO. AND I WOULD SUGGEST THAT THOSE FACT FINDINGS, OR THOSE FINDINGS BY THE CIRCUIT COURT ARE ENTITLED TO DEFERANCE ARE ANY OTHER ACTUAL DETERMINATIONS MADE BY THE TRIAL COURTS.

JUSTICE: WELL, WHAT THIS BASICALLY BOILS DOWN TO, ISN'T IT, IS THAT WHAT THE TRIAL COURT IS ASKED TO DO, WAS ASKED TO DO BY THIS COURT WAS TO TAKE AND MAKE A HINDSIGHT VIEW OF ACCEPTING THAT THIS EVIDENCE WAS FALSE? LOOKING AT THE TOTALITY OF THE EVIDENCE IN THE RECORD, WAS THERE A REASONABLE LIKELIHOOD THAT THE RESULT WOULD HAVE BEEN DIFFERENT? >> YES, SIR. THAT'S ABSOLUTELY CORRECT.

JUSTICE: AND SO, IN FACT, THAT IS WHAT DETERMINED IN EVERY GIGLIO CLAIM, REGARDLESS OF WHETHER IT IS A JURY OR NONJURY?

THAT'S TRUE.

JUSTICE: AND SOMEBODY, AND WE HAVE RECOGNIZED THAT THE FIRST CALL OF THAT IS TO BE AT THE TRIAL LEVEL.

YES, SIR.

CHIEF JUSTICE: I THOUGHT THAT THE, AND IT WAS THE STANDARD AND MAYBE IT IS THE SAME, THE REASONABLE LIKELIHOOD OF A DIFFERENT RESULT WE'VE GOT TO BE VERY CAREFUL WHAT

THE JUDGE FOUND IS THE STATEMENT, ITS BURDEN OF DEMONSTRATING THAT THE FALSE EVIDENCE WAS HARMLESS BEYOND A REASONABLE DOUBT. DO YOU THINK THOSE ARE THE SAME THING? IS THAT THE SAME THING?

DO I THINK THEY ARE THE SAME THING?

CHIEF JUSTICE: THE STATE MEETING ITS BURDEN OF DEMONSTRATING THE FALSE EVIDENCE WAS HARMLESS BEYOND A REASONABLE DOUBT. THAT'S WHAT THE TRIAL COURT FOUND.

THAT WAS HIS SECOND FINDING. THAT WAS THE SECOND QUESTION THIS COURT ASKED OR THE LEAST IT CAME SECOND IN THE ULTIMATE PARAGRAPH IN THIS COURT'S DECISION. THE FIRST WAS THE REASONABLE LIKELIHOOD OF A DIFFERENT, OF REASONABLE LIKELIHOOD IT WOULD HAVE AFFECTED MY JUDGMENT AS THE FACT FINDER WAS THE FIRST QUESTION. THE SECOND QUESTION THAT ON -- WELL, THE SECOND SENTENCE BY THE COURT WAS THE STATE BEARS THE BURDEN OF PROVING THAT THE ERROR WAS HARMLESS BEYOND A REASONABLE DOUBT. JUDGE JOHNSON TREATED THAT AS A SECOND QUESTION BY THIS COURT AND ANSWERED IT IN THE AFFIRMATIVE THAT THE STATE HAD, IN FACT, PROVEN IT, CARRIED THE BURDEN OF PROVING HARMLESSNESS BEYOND A REASONABLE DOUBT.

ISN'T THAT THE DIFFICULTY THAT WE HAVE HERE, THAT IS THAT THE, QUOTE, IF THE YARE FROM OUR PBI IF THE RE IS ANY REASONABLE LIKELIHOOD THAT THE FALSE TESTIMONY COULD HAVE AFFECTED THE JUDGMENT OF THE JURY, THAT'S A VERY DIFFERENT QUESTION THAN WHETHER OR NOT THERE WOULD HAVE BEEN A DIFFERENT OUTCOME WITH THIS EVIDENCE. HOW IS IT THAT COMING OUT WOULD NOT HAVE AFFECTED THE JUDGMENT OF THE JURY? NORMAL HARMLESS ERROR YOU SAY, WELL, IS THIS SOMETHING THAT THE JURY WOULD HAVE SERIOUSLY CONSIDERED IN THE IR DELIBERATIONS? GIVEN OUR CHARACTERIZATION OF THIS WITNESS THAT JUSTICE PARIENTE READ TO YOU BEFORE, AND THEN THE FACT THAT SHE IN ADDITION TO THE OTHER PROBLEMS THAT SHE WAS PAID, WOULDN'T THAT HAVE SUBSTANTIALLY UNDERMINED THE CREDIBILITY OF HER EVIDENCE?

NO, IT WOULD NOT, AND HERE'S WHY: THIS CRIMINAL WAS HEAVILY IMPERMEABLE. WE TALKED ABOUT THAT DURING MY OPPONENT'S INITIAL ARGUMENT ABOUT ALL OF THE IMPEACHMENT THAT WAS BROUGHT OUT AGAINST HER. THE TRIAL COURT IN A LYING THE STANDARD THAT HE WAS SUED TO ALY BECAUSE THIS COURT'S DIRECTIVE FOUND THAT IF YOU ADD IN \$500 AS A REWARD ON TOP OF WHAT WAS ALREADY OUT THERE ABOUT HER, THAT THERE IS NO REASONABLE LIKELIHOOD THAT IT WOULD HAVE AFFECTED HIS JUDGMENT AS THE FACT FINDER IN THIS CASE, AND I DON'T THINK WE CAN GO DOWN THE ROAD OF SUGGESTING THAT LET ME BACK UP. I DIDN'T SAY THAT VERY WELL. THIS IS NOT A JURY CASE. WE CANNOT LOOK AT IT AS A JURY CASE, AND WE CAN'T GO DOWN THE ROAD I WOULD SUGGEST OF IGNORING THE FACT OR OVERLOOKING THE FACT THAT THIS WAS A BENCH TRIAL. IT WOULD BE, I SUBMIT, IN !!! INAPPROPRIATE TO SAY, WELL, OKAY, THIS WAS A BENCH TRIAL BUT IF IT HAD BEEN A JURY TRIAL WOULD IT HAVE AFFECTED THE JURY? I DON'T THINK WE CAN DO THAT.

JUSTICE: I'M TRYING TO FOLLOW UP ON WHAT YOU ARE SAYING. ISN'T THE ANALYSIS THE SAME, WHETHER IT WAS A BENCH OR A JURY TRIAL? THE QUESTION IS WHETHER IT WOULD HAVE AFFECTED THE FACT FINDER'S JUDGMENT. >> THE ULTIMATE QUESTION IS THE SAME. THE FACTS OF THIS CASE, BEING A BENCH TRIAL, MEAN THAT WE DO NOT HAVE THE POSITIVE OCCURRENCE, IF YOU WILL, TO DIVINE WHAT A JURY MIGHT HAVE DONE. WE KNOW WHAT THE FACT FINDER WOULD HAVE DONE.

JUSTICE: ISN'T THAT AN IMPROPER SUBJECTIVE TEST BECAUSE WHAT YOU ARE SAYING IS THAT IF YOU HAD HAD A JURY TRIAL THAT MAYBE THE OUTCOME WOULD HAVE BEEN DIFFERENT BECAUSE THEN YOU WOULD HAVE HAD TO APPLY AN OBJECTIVE TEST, BUT BECAUSE IT WAS A

BEN CH TRIAL BY THIS PARTICULAR JUDGE, WE KNOW WHAT THIS JUDGE WOULD HAVE DONE BECAUSE HE TOLD US IN THE ORDER?

AND IN REACHING THAT STATEMENT, THAT CONCLUSION BY THIS CIRCUIT JUDGE HE ALIENED AN OBJECTIVE TEST IN DETERMINING THAT IT WOULD NOT AFFECT HIS JUDGMENT AS THE FACT FINDER.

CHIEF JUSTICE: JUSTICE CANTERO HAS FURTHER QUESTIONS. >> I HAVE A SIMILAR QUESTION AS JUSTICE ANSTEAD. WE CAN'T SAY, JUDGE, YOU TELL US IF IT WOULD HAVE AFFECTED YOUR DETERMINATION. WHAT WE HAVE TO SAY IS, JUDGE, YOU TELL US IF THIS WOULD HAVE AFFECTED A FACTFINDER'S DETERMINATION IF A FACTFINDER, WHETHER IT IS A JUDGE OR A JURY, BUT A FACTFINDER NOT THIS FACTFINDER WHO HADENED TO HEAR THE PREVIOUS CASE?

WELL, AND NOT TOO RTO ARGUE WITH YOU, JUSTICE CANTERO.

FEEL FREE. >> THE QUESTION THAT JUDGE JOHNSON ASKS WE'RE DIS THE QUESTION THIS COURT PUT TO HIM. AND I WOULD SUBMIT THAT THERE IS A VERY STRONG UNDERCURRENT IN THE DEFENSE BRIEF THAT SEEKS TO PUT THE TRIAL JUDGE IN ERROR FOR DOING EXACTLY WHAT THIS COURT TOLD HIM TO GO DO. THE OBJECTIVE, SUBJECTIVE DICHOTOMY, JUSTICE ANSTEAD, IS SOMETHING I HAVE WRESTLED WITH. IT DOESN'T ANALYTICALLY TO ME SQUARELY FIT THE SEFACTS BECAUSE THIS IS A BENCH TRIAL AND I'M NOT WILLING TO SUGGEST THE COURT SHOULD ENGAGE IN ANY KIND OF MENTAL GYMNASICS TO FLIP THE STANDARD AROUND OR CHANGE IT ABOUT.

CHIEF JUSTICE: IT IS, AS I SEE THE WAY WE PHRASED THIS AND IT IS INTERESTING, BECAUSE IT LOOKS LIKE THERE ARE TWO DIFFERENT THEMES AND WHAT I WAS THINKING ABOUT IS LET'S SAY IT IS A BENCH TRIAL AND THERE WAS ERROR IN SOMETHING THAT THE TRIAL COURT ALLOWED IN OR DIDN'T ALLOW IN. WHEN WE WOULD LOOK AT THIS ON APEAL FOR A HARMLESS ERROR. SAY HE HAD LEFT SOMETHING IN AND IT SHOULD NOT HAVE BEEN IN AND IT WAS OBJECTED TO. WE WOULD SAY, WAS IT HARMLESS ERROR BEYOND A REASONABLE DOUBT? WE WOULDN'T SEND IT BACK TO THE TRIAL JUDGE TO SAY, WELL, IF YOU HADN'T LET IT IN, OR HAD LET IT IN, WHAT WOULD, YOU KNOW, HOW WOULD YOU HAVE RULED DIFFERENTLY? WE MAKE THAT DETERMINATION OF HARMLESS ERROR UNDER GIGLIO, REALLY AS A MATTER OF LAW BASED ON AN OBJECTIVE REVIEW OF THE RECORD. CORRECT?

I BELIEVE SO, JUSTICE PARIENTE.

CHIEF JUSTICE: WELL, YOU KNOW SO BECAUSE YOU HAVE BEEN AN AEL LATE ADVOCATE THAT, YOU KNOW, THAT'S AN AEL LA TE STANDARD FOR REVIEW. NOW, MAYBE THIS GIGLIO ISSUE DOESN'T QUITE FIT, YOU KNOW, WITH THE GIGLIO ISSUE. WHERE THE JUDGE IS THE FACT FINDER. I'M NOT SURE ABOUT THAT.

IT DOESN'T PIGEONHOLE VERY WELL. I WILL CERTAINLY CONCEDE THAT. NOW, I MEAN I KNOW I AM ONLY OUR-ALLS TIME NOW, BUT I KNOW THE HARMLESS ERROR DISCUSSION, HARMLESS ERROR HAS BEEN MENTIONED. THERE IS SOME ATLEAST DEBATABLE POSITION THAT IT MAY NOT EXACTLY BE HARMLESS ERROR AND HARMLESS ERROR MAY BE SOMETHING THAT'S KIND OF EASING ITS WAY OVER INTO THE GIGLIO CLAIM THAT MAY OR MAY NOT NECESSARILY BELONG THERE. THAT'S A MATTER FOR THIS COURT TO DECIDE AS A MATTER OF LAW.

CHIEF JUSTICE: WE CITE TO UNITED STATES VERSUS AGGER S WHICH IS OUT OF THE UNITED STATES SUPREME COURT IF THERE IS ANY REASON THAT THE FALSE TESTIMONY COULD HAVE, AND WE HIGHLIGHTED THAT, COULD HAVE WHICH GOES BACK TO BEING AN OBJECTIVE TEST AND YOU AGREE WITH THAT, THAT THAT'S THE UNITED STATES SUPREME COURT.

THAT IS THE LANGUAGE. I WOULD HOWEVER POINT THE COURT TO THE VENTURA DECISION OUT OF THE 11TH CIRCUIT AND I KNOW THAT IS A CIRCUIT COURT OPINION BUT THERE IS A DISCUSSION INVENT YOU'RE ABOUT - - IN VENTURA ABOUT THE HARMLESS ERROR ISSUE. I DON'T WANT TO GO DOWN THAT ROAD.

CHIEF JUSTICE: BECAUSE ALSO IT IS, IT WASN'T US THAT CAME UP WITH THIS IDEA THAT THE MATERIALITY STANDARD IS EQUIVALENT TO CHAPMAN. THAT COMES FROM BAGLEY OUT OF THE UNITED STATES SUPREME COURT.

THANK YOU, MA'AM. I WOULD ASK THAT THIS COURT AFFIRM THE LOWER COURT'S RULING.

AS TO THE ISSUE OF THE BENCH TRIAL AND THE POTENTIAL FOR ANY DEFERENCE TO THE COURT, I DID CITE IN MY BRIEF THE BAGLEY CASE WHICH, IN FACT, WAS A BENCH TRIAL AND THEN IT WAS APPEALED TO THE 9TH CIRCUIT AND THEN IT WENT ON UP TO THE U.S. SUPREME COURT.

JUSTICE: LET ME ASK YOU THIS ABOUT OUR PRIOR DETERMINATION, IN GUZMAN, WE SAID KIND OF TWO THINGS AND I WONDER IF THOSE ARE - - THE SAME TWO STANDARDS OR TWO SIDES OF THE SAME COIN. WE SAID THE PROPER QUESTION IS WHETHER THERE IS ANY REASONABLE LIKELIHOOD THAT THE FALSE TESTIMONY COULD HAVE AFFECTED THE COURT'S JUDGMENT AS A FACT FINDER. IF THERE IS ANY REASONABLE LIKELIHOOD THAT THE FALSE STATEMENT WOULD HAVE AFFECTED THE NEW TRIAL IS REQUIRED THEN IT SAYS THE STATE BEARS THE BURDEN OF PROVING THAT THE PRESENTATION OF THE FALSE TESTIMONY WAS HARMLESS BEYOND A REASONABLE DOUBT. SO ARE THESE LIKE TWO PRONGS OF A TEST OR ARE THEY SE, THE DIFFERENT SIDES OF THE SAME PRONG?

I THINK IT IS A DIFFERENT SIDE OF THE SAME PRONG BUT YOU HAVE TO BE CAREFUL WHEN YOU START TALKING ABOUT WHETHER IT WOULD HAVE CHANGED THE OUTCOME OR NOT BECAUSE THAT CLEARLY WOULD BE BRADY AND ONE THING THAT IS ABSOLUTELY SURR IS THAT GIGLIO IS A MORE DEFENSE FRIENDLY STANDARD AND EVEN IN BRADY YOU DON'T HAVE TO PROVE THAT THE OUTCOME WOULD HAVE BEEN DIFFERENT. IT WOULD HAVE BEEN SUFFICIENT.

JUSTICE: BUT IN THE STATE OF THIS CASE, I MEAN THE LAW IN THIS CASE IS THAT WHAT THIS COURT DID WAS THIS COURT SAID THAT THERE WERE TWO ELEMENTS OF GIGLIO THAT HAD BEEN MET, BUT THAT WE, AND THEN THE CONCLUDING STATEMENT HERE IS WE RAN - - REMANDED GUZMAN'S CLAIM TO THE POST-CONVICTION COURT FOR APPLICATION OF THE GIGLIO STANDARD TO THE FACTS. AND THE FACTS WERE, THE FACTS IN THE RECORD UP UNTIL THAT TIME AND SO WHAT THIS TRIAL JUDGE TRIED TO DO, THE WAY I READ IT, IS THE TRIAL JUDGE SAT DOWN AND TRIED TO DO THAT, AND ALIENATED THE MATTER TO THE FACTS OF THE JUST LIKE WE ORDERED THE TRIAL JUDGE TO DO.

RIGHT. I AGREE WITH THAT.

JUSTICE: SO WHAT YOU ARE SAYING IS THAT THOUGH WE TOLD THE TRIAL JUDGE TO MAKE THAT DECISION, THAT AND THE TRIAL JUDGE DID IT ON THE BASIS OF THE RECORD, THAT THEN WE ARE TO, SHOULD REVERSE, YOU KNOW?

I AM ASKING FOR A DENOVOREVIEW JUST AS IS DONE IN ALL OF THE OTHER GIGLIO CASES THAT COME BEFORE THIS COURT.

JUSTICE: THE PROBLEM IS IF IT WAS GOING TO BE - - IF WE WERE GOING TO DO THAT, WOULDN'T WE HAVE DONE THAT WHEN IT WAS HERE BEFORE?

I DON'T KNOW WHY YOU DIDN'T DO IT WHEN IT WAS HERE BEFORE. I THINK ON REHEARING I WOULD ASK THE COURT TO GO AHEAD AND DO IT.

JUSTICE: LET ME ASK YOU ABOUT MR. NUNNELLEY'S DISCUSSION OF THE SUBJECTIVE VERSUS OBJECTIVE STANDARD AND YOU ARE SAYING IT IS NOT REALLY THAT KIND OF DICHOTOMY BUT HE IS SAYING IN OUR PRIOR DECISION WE TOLD THE COURT SPECIFICALLY TO SAY WHETHER IT WOULD HAVE AFFECTED THE COURT'S JUDGMENT, AND AS I READ OUR DISCUSSION ON PAGES 507 AND 508 OF OUR PRIOR DECISION, WE SAY THAT THE PROPER QUESTION UNDER GIGLIO IS WHETHER THERE IS ANY REASONABLE LIKELIHOOD THAT THE FALSE TESTIMONY COULD HAVE AFFECTED AND THEN WE SAY THE COURT'S JUDGMENT AS THE FACT FINDER IN THIS CASE. SO WE SEEM TO HAVE BEEN TELLING THE COURT DID THIS AFFECT YOUR JUDGMENT AS THE FACT FINDER?

WELL, VERY TO TAKE A LOOK AT THAT IN THE CONTEXT OF THIS IS A GIGLIO CLAIM AND THAT IS A MORE DEFENSE FRIENDLY CLAIM SO WHETHER OR NOT IT AFFECTED THE TRIAL AS FACT FINDER YOU ARE TALKING ABOUT UNDER GIGLIO WHETHER THE FAIRNESS OF THE PROCEEDING IS IMPACTED, NOT WHETHER THE OUTCOME WOULD HAVE BEEN DIFFERENT BECAUSE THAT'S BRADY AND THIS IS CLEARLY MORE DEFENSE FRIENDLY STANDARD. YOU WOULD BE JUMPING OVER BRADY EVEN IN A LYING A HIGHER STANDARD IN A GIGLIO VIOLATION THAN YOU WOULD IN A BRADY VIOLATION IF THAT WAS THE WAY TO READ IT. THAT'S WHY YOU HAVE TO READ THE GIGLIO CASE IN CONTEXT WITH THE OTHER CASES FROM THE U.S. SUPREME COURT THAT TALK ABOUT THE IMPACT ON THE FAIRNESS OF THE PROCEEDING THAT THE FALSE TESTIMONY HAD. SO RIGHT ON POINT THE BAGLEY CASE IS DIRECTLY ON POINT. THAT WAS A BENCH TRIAL AND THAT COURT IN THAT CASE SAID I'M IN A SPECIAL UNIQUE POSITION TO REVIEW THE FACTS OF THIS CASE AND I FOUND THAT IT WOULDN'T HAVE HAD ANY EFFECT ON ME OR MY VERDICT, AND THEY SAID, AND THE BAGLEY SAID IT IS NOT A DETERMINATION ABOUT A SUBJECTIVE ANALYSIS BY THE TRIAL COURT AND ALSO IN THE VASQUEZ CASE IT IS NOT HOW THE TRIAL JUDGE WOULD SUBJECTIVELY EVALUATE THE UNDISCLOSED OR FALSE TESTIMONY BECAUSE IT CAN'T BE THAT WAY AND INVENTURALLY OUT HERE WHAT THE TRIAL COURT SAID ALL TOGETHER BECAUSE THEY ALIENED THE WRONG STANDARD AND TOTALLY AND INDEPENDENT DE NOVO REVIEW. THAT'S ALL I AM ASKING YOU TO DO IN GUZMAN'S CASE. TAKE A LOOK AT THE RECORD AND SEE IF THERE IS ANY CORROBORATION AND SEE THE IMPEACHMENT VALUE OF THE EVIDENCE WITH NO DEFERENCE TO THE TRIAL COURT.

CHIEF JUSTICE: TELL ME WHAT YOU SAID AGAIN ABOUT THE WITNESS THAT THE JUDGE RELIES ON FOR CORROBORATION, WHETHER HE CONFESSED TO SOMEONE ELSE.

THAT'S MR. PAUL ROGERS, HE IS A SNIATCH AND HE TESTIFIED THAT MR. GUZMAN HAD CONFESSED TO HIM WHILE THEY WERE BOTH IN THE COUNTY JAIL AWAITING TRIAL AND THE LOWER COURT SAID THAT WAS CORROBORATION OF THE GUILT OF MR. GUZMAN GOING THROUGH THE PROCESS.

CHIEF JUSTICE: ISN'T IT?

I DON'T THINK SO BECAUSE THE GUY HAD SAID BEFORE IN A SWORN AFFIDAVIT GUZMAN NEVER CONFESSED TO ME.

CHIEF JUSTICE: BUT THERE IS SOMETHING WHERE THAT JUDGE WAS EVALUATING THE CREDIBILITY OF THE CORROBORATING EVIDENCE? >> RIGHT.

CHIEF JUSTICE: IN OTHER WORDS, AS TO WHETHER THAT WITNESS WAS SUFFICIENTLY IMPEACHED OR NOT HE FOUND IT TO BE CORROBORATING OF MISCRIMINATIONS, DOES THAT FINDING, THAT IS THE HOW MUCH CREDIBILITY HE ASCRIBED TO THE JAIL SNIATCH, IS THAT SOMETHING THAT WE ACCEPT AS AN ACTUAL FINDING BECAUSE HE TOLD US THAT HE HAD

A C C E P T E D T H I S W I T N E S S A S B E I N G C R E D I B L E , D E S P I T E H I M B E I N G A J A I L H O U S E S N I T C H ?

I C A N O N L Y S A Y T H A T T H I S C O U R T I N E V E R Y G I G L I O C A S E T H A T I T H A S B E F O R E I T D O E S A D E N O V O R E V I E W A N D T H A T A N A L Y S I S I S D O N E . I N M O R D E N T I Y O U D I D A C O R R O B O R A T I O N A N A L Y S I S A N D I ' M A S K I N G F O R T H E S A M E A N A L Y S I S I N T H I S C A S E B Y T H E E N T I R E T Y O F T H E R E C O R D A N D Y O U W I L L F I N D W H E N Y O U D O T H A T T H E R E I S N O E X T E N S I V E C O R R O B O R A T I O N T H A T A L L O W S T H E S T A T E T O M E E T I T S B U R D E N T H A T T H I S C O U L D N O T H A V E A F F E C T E D T H E F A I R N E S S O F T H I S P R O C E E D I N G B E C A U S E T H E S E W I T N E S S E S L I E D A B O U T S I G N I F I C A N T M A T T E R S .

J U S T I C E : T H E R E W A S N ' T A T R I A L P R E S E N T E D T H A T M I S S C R O N I N H A D L I E D T O P O L I C E , S H E W A S I M P E A C H E D T H R O U G H A N O T H E R W I T N E S S , C A R M E L O G A R C I A , W H O S A I D T H A T S H E T O L D H I M S H E L I E D T O T H E P O L I C E A B O U T G U Z M A N M U R D E R I N G - - > > C O R R E C T , Y E S . T H E R E W A S A W I T N E S S W H O T E S T I F I E D T H A T C R O N I N H A D T O L D H I M T H A T S H E H A D L I E D T O T H E P O L I C E , C O R R E C T . T H A N K Y O U V E R Y M U C H .

C H I E F J U S T I C E : T H A N K Y O U V E R Y M U C H . T H A N K Y O U , M R . N U N N E L L E Y . T H E C O U R T W I L L B E I N R E C E S S U N T I L 8 : 3 0 T O M O R R O W M O R N I N G . > > T H E M A R S H A L : P L E A S E R I S E .