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**William Melvin White v. State of Florida**

**SC05-1613**

PLEASE RISE.

>> GOOD MORNING.,,

>> LADIES AND GENTLEMEN, THE  
FLORIDA SUPREME COURT.

>> NEXT CASE ON OUR CALENDAR  
THIS MORNING AND FINAL CASE IS  
LIGHT VERSUS STATE OF FLORIDA.  
MR. CANNON?

>>

>> CHIEF JUSTICE, ASSOCIATE  
JUSTICES, MY NAME IS PETER  
CANNON, ON BEHALF OF WILLIAM  
WHITE.

MAY IT PLEASE THE COURT, IN THE  
SHORT AMOUNT OF TIME THAT I HAVE  
RESERVED FOR ARGUMENT, I WOULD  
LIKE TO FOCUS THE COURT'S  
ATTENTION TO TWO ARGUMENTS,  
ARGUMENT ONE, RESPONDED ON PAGE  
13 OF THE BRIEF WHICH ADDRESSES  
THE NEWLY DISCOVERED EVIDENCE  
CLAIM IN ARGUMENT SIX, FOUND ON  
PAGE 49 OF THE BRIEF WHICH  
ADDRESSES THE GIGLIO ISSUE.  
WITH REGARDS TO ARGUMENT, THE  
FIRST ARGUMENT, ARGUMENT ONE,  
THE POST CONVICTION COURT, THE  
COURT BELOW COMMITTED ERROR WHEN  
IT SUMMARILY DENIED MR. WHITE'S  
CLAIM INVOLVING THE NEWLY  
DISCOVERED EVIDENCE REGARDING  
FRANK MESARA'S STATEMENT AND  
THIS IS A STATEMENT THAT AGAIN,  
SHOWS THAT RICHARD DEMARINO, WHO  
WAS INVOLVED WITH THIS CRIME,  
CONFESSED TO THE MURDER OF  
GRACEIE MAY CRAWFORD.  
WHEN I SAY HE CONFESSED TO THE  
MURDER, IT CHANGES FROM HIS  
ORIGINAL TESTIMONY.

>> ONE ISSUE YOU HAVE HERE IS  
SEPARATING OUT THESE CLAIMS.  
RELATING TO THE MOST RECENT  
PENALTY PHASE AND THEN CLAIMS

RELATING TO THE GUILT PHASE.  
SO THIS IS ONE OF THE CLAIMS  
RELATING TO THE GUILT PHASE.  
IS THAT CORRECT?

>> CORRECT, YOUR HONOR.

>> HOW DO YOU OVERCOME THE  
PROCEDURAL HURDLE, THAT THE  
STATE SUGGESTS REALLY SHOULD BE  
IMPOSED WITH REFERENCE TO ANY  
GUILT PHASE ISSUES THAT YOU  
RAISE IN POST CONVICTION NOW?

>> YEAH.

>> WHEN WAS THE ORIGINAL  
CONVICTION AND WHEN DID THAT  
BECOME FINAL?

>> ORIGINAL CONVICTION WAS IN  
1978.

>> WAS THAT CONVICTION EVER SET  
ASIDE?

>> THE CONVICTION, NO.  
THE SENTENCE WAS.

>> OK.

BUT THE CONVICTION WAS NEVER SET  
ASIDE, IS THAT CORRECT?

>> CORRECT.

>> ALL RIGHT.

SO WE'RE GOING ALL THE WAY BACK  
TO THE 1970'S?

>> YES, YOUR HONOR.

>> SO WITH REFERENCE TO GUILT  
PHASE ISSUES, HOW DO YOU  
OVERCOME THE PROCEDURAL BAR THAT  
THE STATE SUGGESTS SHOULD BE  
IMPOSED?

>> WELL, YOUR HONOR, I WILL  
AGAIN, BY STATING THAT THIS  
CASE, AS I'VE OUTLINED IN THE  
BRIEF IS VERY SIMILAR  
PROCEDURALLY TO MR. HITCHCOCK'S  
CASE.

>> WELL, WAIT A MINUTE, IT'S  
NOT, BECAUSE HITCHCOCK, WE HAVE  
NOT EVER DEALT WITH A POST  
CONVICTION MOTION ON GUILT.  
WHEN WE LAST HAD IT HERE, AND WE  
SENT IT BACK FOR A DETERMINATION  
ON POST CONVICTION, AS TO GUILT.  
HERE, IN OUR 1999 DECISION, WE  
SPECIFICALLY SAY, WE AFFIRM THE  
TRIAL COURT'S DENYING RELIEF AS  
TO APPELLANT'S GUILT PHASE  
ISSUE.

THAT'S AS TO THE POST CONVICTION  
GUILT PHASE ISSUE, SO WE DEALT

WITH IT IN OUR 1999 DECISION,  
UNLIKE WHAT WE DID IN HITCHCOCK.  
>> WELL, YOUR HONOR, WHEN I SAY  
IT'S SIMILAR TO HITCHCOCK,  
PROCEDURALLY, WHAT I'M REFERRING  
TO IS TO THE OLD VERSION OF THE  
RULE, WHICH HAS NOW BEEN  
MODIFIED, PRIOR TO 1984.

THERE WAS NO ABSOLUTE BAR ON  
FILING A SECOND POST CONVICTION  
MOTION.

THE SUCCESS OF MOTION BAR THAT  
WE HAVE TODAY IS DIFFERENT THAN  
WHAT WAS BACK IN 1984.

AND --

>> THAT WASN'T THE PREVAILING  
LAW THOUGH IN 1999 OR WHATEVER  
IT WAS THAT THAT DECISION WAS  
RENDERED BY THIS COURT.

>> THE -- WHEN THIS --

>> ANY ASSERTIONS THAT YOU HAVE  
SORT OF AN OPEN-ENDED SITUATION,  
CLEARLY DIDN'T EXIST IN 1999  
WHEN WE DID TREAT SOME GUILT  
PHASE POST CONVICTION ISSUES, AN  
REJECTED THEM.

SO IF YOU'RE GOING TO LOOK FOR A  
MARKER, LET'S JUST WORK OUR WAY  
BACK TO THAT, IN TERMS OF --  
EVEN IF YOU JUST -- IF YOU USE  
THE 1999 DATE FOR A MARKER?  
WHY AREN'T YOU UNDER A  
REQUIREMENT THAT IF YOU ARE  
GOING TO ASSERT GUILT PHASE  
ISSUES, NOW IN THE SUCCESSIVE  
CLAIM, BECAUSE CLEARLY THERE WAS  
A CLAIM THERE, THAT THIS COURT  
DEALT WITH, WHY YOU DON'T CARRY  
A BURDEN TO DEMONSTRATE WHY  
THOSE ISSUES WEREN'T RAISED  
BEFORE.

>> AGAIN, YOUR HONOR, I WOULD GO  
BACK AND ALSO BECAUSE OF THE --  
OPERATING UNDER THE OLD RULE,  
THE ORIGINAL RULE, THE  
PROCEDURAL HISTORY OF THIS CASE,  
AGAIN, IS SOMEWHAT DRAWN OUT.  
IT TOOK A SUBSTANTIAL AMOUNT OF  
TIME FOR THAT ORIGINAL POST  
CONVICTION MOTION TO BE FINALLY  
HEARD, AND THEN RULED UPON BY  
THIS COURT.

IN ADDITION, BACK UNDER THE OLD  
RIEWM, WE COULD HAVE -- RULE, WE

COULD HAVE A HABEAS POSITION PROCEEDING, AND THAT'S WHAT HAPPENED, WE HAD A HABEAS PROCEEDING WITH REGARDS TO A HITCHCOCK CLAIM, AND THEN AT THE SAME TIME THE EVIDENTIARY HEARING ON SIMILAR ISSUES, ON THE MITIGATION, WAS HELD UNTIL THE RESOLUTION OF THE HABEAS.

>> BUT THE STATEMENT, YOU'RE COMPLAINING ABOUT -- YOU'RE CLAIMING THIS IS YOUR FRANK STATEMENT, IS THIS THE ONE WE'RE TALKING ABOUT?

>> YES, YOUR HONOR.

>> WHEN DID YOU KNOW ABOUT THE STATEMENT?

WHEN WAS THIS STATEMENT MADE?

>> WHEN DID MY OFFICE --

>> WELL, WHEN DID THE ATTORNEY FOR MR. WHITE KNOW ABOUT THIS STATEMENT?

THE STATEMENTS FROM MY UNDERSTANDING, FIRST APPEARED DURING MR. WHITE'S LAST RECENT TENSE.

>> AND THAT WAS WHAT YEAR?

>> IT WOULD HAVE BEEN AROUND THE YEAR, LET'S SEE, AROUND 2000. AROUND THAT TIME.

>> SO WHEN WAS IT RAISED IN THIS SUBSEQUENT -- I MEAN, THAT'S WHAT PART OF THIS IS.

WHEN WAS IT RAISED NOW?

>> IN THIS HEARING HERE.

>> RIGHT.

>> THIS WOULD HAVE BEEN, AGAIN, BECAUSE OF THE PROCEDURE -- THE WAY THE CASE WOULD HAVE BEEN PROCEEDING, THIS WOULD HAVE BEEN THE FIRST OPPORTUNITY TO PRESENT SUCH GUILT PHASE EVIDENCE TO THE COURT.

>> I THOUGHT YOU WERE BRINGING THIS HAS A NEWLY DISCOVERED EVIDENCE CLAIM?

>> CORRECT.

>> WELL, THEN, I MEAN, ANY TIME A NEWLY DISCOVERED EVIDENCE CLAIM, DON'T YOU HAVE AN OBLIGATION TO FILE THAT -- [INAUDIBLE]

IN THE TRIAL COURT?

>> WELL, YOUR HONOR, THE

RE-SENTENCING ATTORNEY WAS  
PROCEEDING ON JUST THE  
SENTENCING.

THE PENALTY PHASE.

THIS WAS A GUILT PHASE ISSUE,  
AND IT'S MY UNDERSTANDING THAT  
ISSUES LIKE THIS WERE ADDRESSED  
TO THE COURT.

>> YOU HAVE SOMETHING YOU CLAIM  
IS GOING TO LEAD TO THE  
PROBABILITY OF AN ACQUITTAL.  
DO YOU THINK WE HAVE SOME RULE  
THAT SAYS THAT THOSE -- THAT  
TYPE OF THING AS OPPOSED TO AN  
INEFFECTIVE POST CONVICTION HAS  
TO WAIT TILL SOMETIME 10 YEARS  
IN THE FUTURE, IF YOUR CLIENT  
WOULD ACTUALLY BE INNOCENT OR  
COULD GET A LIFE SENTENCE?  
I FIND THAT TO BE REALLY KIND OF  
DISINGENUOUS AS FAR AS POLICY  
THAT WOULD SAY THAT IF THERE IS  
NEWLY DISCOVERED EVIDENCE, AN WE  
SOMETIMES SEE THINGS FILED IN --  
AT THE END OF THE TRIAL.  
THERE'S A MOTION FOR NEWLY -- IF  
THERE'S NEWLY DISCOVERED  
EVIDENCE.

THEY DON'T HAVE TO WAIT FOR A  
MEGS FOR NEWLY DISCOVERED  
EVIDENCE.

IT'S TIED INTO WHEN YOU LEARN  
ABOUT IT.

DO WE AGREE OR DISAGREE WITH  
THIS?

>> I UNDERSTAND, YOUR HONOR, BUT  
THE LOWER COURT IN DEALING WITH  
THESE ISSUES, I BELIEVE THIS  
ISSUE WAS ADDRESSED ALSO, SAID  
YOU'RE GETTING INTO RESIDUAL  
DOUBT.

WE'RE JUST HERE ON RECENT  
TENSING.

I'M NOT GOING TO ADDRESS THAT.  
THEN WE HAVE TO ADDRESS IT IN --

>> YOU'RE DEALING WITH MR. MOW  
RASE' STATEMENT?

>> CORRECT.

>> AND THE TRIAL JUDGE ACTUALLY  
HERE FOUND THAT YOU HAD FAILED  
TO DEMONSTRATION WHY THIS HAD  
NOT BEEN DISCOVERED WITHIN ONE  
YEAR OF WHEN YOU FILED YOUR  
MOTION.

AND THAT'S OUR CASE LAW.  
OUR CASE LAW IN MILLS EXPRESSLY  
STATES THAT ON NEWLY DISCOVERED  
EVIDENCE, THE MOTION HAS TO BE  
FILED WITHIN ONE YEAR.

THE TRIAL COURT SPECIFICALLY  
FOUND YOU DID NOT DO THAT.  
I MEAN, THAT'S -- THAT'S WHAT  
THE TRIAL COURT'S FINDING WAS.  
THE TRIAL COURT DIDN'T DEAL WITH  
IT, THE TRIAL COURT DEALT WITH  
IT.

>> THAT'S WHAT I'M HAVING  
TROUBLE.

YOU'RE TALKING ABOUT THE  
SITUATION, THE RAUL, 3.851,  
NEWLY DISCOVERED EVIDENCE, IS  
GOVERNED BY WHEN THEY DISCOVERED  
THAT EVIDENCE, SO I HAVE ANOTHER  
I GUESS ASSUMING THERE'S SOME  
WAY TO GET THROUGH A PROCEDURAL  
BAR, WHICH I DON'T THINK THERE  
IS, HOW DO YOU -- THE TESTIMONY  
THAT THIS MORASSA, THAT DEMARINO  
SAID HE HAD TO GET RID OF A GIRL  
LAST NIGHT, HOW IS THAT  
INCONSISTENT WITH HIS TRIAL  
TESTIMONY?

IN OTHER WORDS, JUST ON THE FACE  
OF IT, HOW WOULD THAT EVEN HAVE  
A THRESHOLD BASIS FOR AN  
EVIDENTIARY HEARING ON THE  
SECOND PRONG OF --

[INAUDIBLE]

PROBABLY LEADING TO AN  
ACQUITTAL.

>> IF I COULD ADDRESS, I'M GOING  
TO TRY, BOTH QUESTIONS AT ONCE,  
AN THEREIN LIES THE PROBLEM.  
WE NEVER HAD AN EVIDENTIARY  
HEARING ON THIS ISSUE.  
WE PRESENTED THE FACT THERE WERE  
NOT SHOWN BY THE STATE OR ANY!!!!!!!  
REBUTTED CONCLUSIVELY.  
WE WERE JUST ASKING FOR A  
HEARING.

>> I'M ASKING YOU, ASSUMING YOU  
GET THROUGH A PROCEDURAL BAR,  
THE STATEMENT IS THAT HE HAD TO  
GET RID OF A GIRL LAST NIGHT.  
THAT'S WHAT YOU'RE SAYING IS THE  
NEWLY DISCOVERED EVIDENCE.

>> CORRECT.

>> AS FAR AS ALL THE EVIDENCE IN

THIS CASE, HOW DOES THAT -- NOT UNDERMINE, HOW WOULD THAT LEAD TO THE PROBABILITY OF AN ACQUIT!!!!!!!!!!!! ACQUITTAL FOR MR. WHITE OF FIRST DEGREE MURDER WHEN THAT'S NOT -- I MEAN, DEMARINO NEVER STATED THAT HE WASN'T INVOLVED IN THIS KILLING.

>> RIGHT.

AND I AGREE WITH THAT.

HE -- WHEN HE DID TESTIFY, YOUR HONOR, HE MINIMIZED HIS ROLE, WHICH IS DIFFERENT FROM WHAT HE TOLD OTHER PEOPLE AND ONE OF THE REASONS WHY WE HAVE THE JONES HEARING AND THAT'S ONE OF THE REASONS WHY WE HAVE EVIDENTIARY HEARINGS AND THAT'S THE REASON FOR THE POLICY OF THIS COURT, SO WE DON'T SPECULATE IN INSTANCES LIKE THIS, IS TO ASCERTAIN NOT ONLY THE TRUSTWORTHINESS OF THE STATEMENTS, BUT ALSO THE CORROBORATION.

>> ONE OF THE REASONS THAT WE REQUIRE PLEADINGS IS SO THAT YOU SET OUT, OK, HERE'S THE NEW EVIDENCE THAT WE'VE DISCOVERED AND HERE'S WHY IT WOULD AFFECT A DETERMINATION OF THE GUILT OF MY CLIENT.

NOW YOU'VE LEFT OUT THAT WHOLE SECOND PART IN YOUR PLEADING HERE.

YOU HAVEN'T SET THAT OUT.

HERE'S WHAT THIS NEWLY DISCOVERED EVIDENCE IS, BUT HERE'S HOW IT WOULD ESTABLISH EITHER THE INNOCENCE OF MY CLIENT OR WHATEVER.

THERE'S NOTHING IN THE MOTION ABOUT THAT, IS THERE?

>> WELL, YOUR HONOR, WE DO HAVE SEPARATED OUT THE CLAIMS.

>> BUT IS THERE ANYTHING IN THE PETITION THAT SAYS THAT, THAT IS, HERE'S WHAT THE NEWLY DISCOVERED EVIDENCE IS, AND HERE'S HOW IT WOULD HELP MY CLIENT.

>> I BELIEVE IN THE PETITION, IT STATES THAT IT'S CORROBORATING THESE OTHER TWO STATEMENTS THAT WE HAVE FROM JOSEPH WATTS, WHO

DID TESTIFY ONLY AT THE SPENCER HEARING.

>> WELL, LET ME -- YOU KNOW, YOU'RE DOWN TO LESS THAN SEVEN MINUTES NOW, AN ARE YOU GOING TO ADDRESS ANY PENALTY PHASE ISSUES THAT WERE RAISED?

>> WELL, YOUR HONOR, IF I COULD CONTINUE WITH THIS ISSUE, I DID HAVE ANOTHER ISSUE, WHICH IS RELATED, BUT AGAIN, THIS IS THE -- THIS IS THE THIRD PERSON THAT HAS COME FORWARD AND TESTIFIED NOW OR IS WILLING TO TESTIFY STATING THAT, MR. DEMARINO, RICHARD DEMARINO CONFESSED TO ME, NOW HIS BROTHER, JOHN DI MARINO AND MR. WATTS, BOTH TESTIFIED, ONE AT THE SPENDS HEARING AND THEN AT THE --

>> WHAT HAPPENED TO DEMARINO?

>> WHICH ONE, THE -- RICHARD? HE WAS CONVICTED AND RECEIVED 15 YEARS.

BUT --

>> THERE'S NEVER BEEN A POINT IN WHICH ANYBODY HAS DENIED THAT HE WASN'T INVOLVED IN THIS, HAS THERE IS THIS.

>> NO, BUT THE ISSUE, YOUR HONOR, IS THE FACT THAT EVIDENCE HAS COME TO LIGHT THAT HE LIED. HE WAS THE ONE THAT KILLED THIS PERSON, BECAUSE HE DOES ADMIT TO TWO OTHER PEOPLE, MR. WATTS AND ALSO TO HIS BROTHER, THAT HE WAS THE ONE THAT BOTH STABBED HER AND SLIT HER THROAT.

NOW HIS ORIGINAL TESTIMONY WAS, IT WAS MR. WHITE THAT DID THE STABBING, AND HE MADE ME SLIT HER THROAT, SO I WOULD BE, YOU KNOW, INCULPATED IN THE CRIME.

>> GO BACK TO THIS.

WHAT DI MARINO TELLS MARISSA, VERSUS WHAT MARISSA SAYS DI MARINO TELLS THEM IS!!!!!! IS HOW TO GET RID OF A GIRL.

THAT HAS NOTHING TO DO WITH WHO WAS THE ACTUAL PERPETRATOR OF THIS CRIME, CORRECT?

THAT'S THE SUM OF WHAT YOU ALLEGE THAT MARISSA WOULD

TESTIFY TO, CORRECT?

>> WELL, THERE'S A LITTLE MORE.  
HE HASTY!!!!!!!!!!!!!! HAS THE VAN AND HE'S HOLDING  
MS. CRAWFORD'S WIGAND HE'S  
SAYING HE HAD TO GET RID OF A  
GIRL LAST NIGHT.  
NO WAY DOES HE IMPLICATE, LIKE  
HE DOES IN HIS TESTIMONY,  
MR. WHITE.

>> BUT NOW YOU SAY WATTS  
CORROBORATES IT, WHEREAS NOW  
THERE WAS AN EVIDENTIARY HEARING  
ABOUT WATTS, AND SPENCE'S  
COUNSEL SAYS IN THE PENALTY  
PHASE HE DIDN'T CALL WATTS  
BECAUSE HE FOUND HIM TOTALLY  
UNPREDICTABLE AND  
UNCONTROLLEDBLE.  
IS THAT NOT CORRECT?

>> WE DID HAVE A -- ONE-HALF OF  
A CLAIM ON THE -- MR. MARKHAM  
ISSUE.

>> BUT HE EXPLAINED WHY HE  
DIDN'T CALL WATTS.

>> WELL, HE DID -- MR. WATTS DID  
TESTIFY AT THE SPENCER HEARING.

>> WHY HE DIDN'T CALL HIM AT THE  
PENALTY PHASE, RE-SENTENCING.

>> AT THE PENALTY PHASE --

>> WHY THE DEFENSE LAWYER DIDN'T  
CALL HIM FOR THE JURY TO HEAR  
THIS, WHAT YOU'RE SAYING IS  
WOULD HAVE BEEN JUST AN  
ACQUITTAL OR SOMETHING ON  
RETRIAL, IS THAT SPENCER'S  
COUNSEL SAID HE DIDN'T FIND HIM  
TO BE A PREDICTABLE OR  
CONTROLLABLE WITNESS.

>> WELL, YOUR HONOR, IT'S MY  
UNDERSTANDING WITH REGARD TO THE  
RE-SENTENCING, THE REASON WHY HE  
DIDN'T WANT TO CALL THESE  
WITNESSES, MR. MARKHAM AND  
MR. WATTS, WAS BECAUSE OF THE  
FACT THAT THEY WERE OUT -- YOU  
KNOW, MEMBERS OF A GANG AND HE  
DIDN'T WANT MR. WHITE TO BE  
IMPLICATED BY ASSOCIATION.  
THAT WAS HIS MAIN REASON FOR NOT  
CALLING THESE INDIVIDUALS.  
BUT HE DID -- YOU KNOW, THIS  
PERSON WHO IS UNCONTROLLEDBLE OR  
A BAD WITNESS, HE DID CALL AT  
THE SPENCER HEARING, SO I FIND

THAT SOMEWHAT EXPERIENCE, THAT ARGUMENT, BECAUSE IF HE WAS UNCONTROLLED BLE, THEN HE WOULD BE JUST AS UNCONTROLLABLE IN FRONT OF A JUDGE DURING THE SPENCER HEARING, THAN HE WOULD BE IN FRONT OF A JURY.

I KNOW THERE IS SOME LIMITATIONS WITH REGARDS TO A JURY, BUT THE FACT THAT HE'S UNCONTROLLED BLE. NOW, WHEN WE'RE --

>> YOU AGREE MR. MULL CERTIFICATE A QUITE EXPERIENCED -- MULLER, IS A QUITE EXPERIENCED CRIMINAL DEFENSE LAWYERS WITH SUBSTANTIAL CREDENTIALS, BOARD CERTIFIED, HANDLED ALMOST 15 -- I THINK IT WAS 14 OR 15 CAPITAL CASES, CORRECT?

>> OH, SURE.

HE'S EXPERIENCED, BUT, YOU KNOW, CY YOUNG WINNERS CAN HAVE A BAD DAY PITCHING AND LAWYERS CAN HAVE A BAD DAY DOING TRIALS.

HIS EXPERIENCE DOES COUNT.

I'M SORRY.

>> IF YOU'RE NOT FINISHED, GO AHEAD AND FINISH THAT, THEN I HAVE A QUESTION FOR.

>>

>> I WAS JUST GOING TO SAY, YES, HIS EXPERIENCE DOES COUNT. BUT IT DOESN'T AB!!!!!! AP!!!!!! ABSOLVE HIM FROM ANYTHING AND ACTUALLY SHOULD BE LOOKED AT THE FACT THAT HE'S DONE THESE TRIALS AND WELL, WHY DIDN'T YOU DO IT IN THIS CASE.

>> IF YOU WOULD, YOU KNOW, YOU TALKED ABOUT THESE PEOPLE, WHAT -- AND WHAT THEY SAID.

IF YOU COULD CONCISELY TELL US WHY, EVEN IN COMBINATION, WHAT YOU CONSIDER TO BE NEWLY DISCOULD HAVE HAD EVIDENCE, WOULD PUT THIS CASE IN SUCH A DIFFERENT LIGHT, THAT MR. WHITE WOULD BE ENTITLED TO IN THE TRIAL?

>> WELL, WE DO HAVE MR. MORASSA, AGAIN, CLAIM ONE, WHO SIGNIFICANT!!!!!!!!!!!!!!!!!!!!!! IS -- ISSAYING THAT HE SEES ZS MR. DI MARINO DRIVE UP IN THE VAN THAT HE BORROWED WITH A WIG SAYING HE

HAD TO GET RID OF A GIRL LAST NIGHT.

>> IS THAT CONSISTENT WITH WHAT WENT ON TRIAL?

WASN'T HE THE ONE WHO ACTUALLY ASKED MR. WHITE TO EVEN GET INVOLVED IN THIS AND COME HELP HIM.

>> I'M SORRY, I DIDN'T UNDERSTAND.

>> WASN'T IT THIS MR. DI MARINO WHO STARTED THE WHOLE THING AND GOT MR. WHITE INVOLVED IN IT? THE TRIAL TESTIMONY TOO.

>> WELL PLRKS DI MARINO IS OUR ONLY WITNESS TO BASICALLY ALL OF THESE FACTS, THAT THIS COURT HAS FOUND IMPORTANT IN CONCLUDING THE HACC AGGRAVATOR AND WHO ACTUALLY DID THE STABBING, AND THE MURDER.

SO MR. DI MARINO, WE PUT A LOT OF FAITH IN HIS TESTIMONY, BUT HE'S ALSO TOLD, MOVING ON TO MR. WATTS, HE TOLD MR. WATTS, WHICH IS QUITE DIFFERENT FROM HIS TESTIMONY, THAT HE STABBED HER AND SLICED HER NECK.

AND THE MEDICAL EXAMINER SAID THAT IT WAS THE STABBING THAT CAUSED THE DEATH, AND THEN

MR. DI PA REASON!!!!!!!!!!!!!!!!!!!!!! MARINO, SO TO ANSWER YOUR QUESTION, JUSTICE QUINCE, THOSE THREE STATEMENTS THERE, ARE VERY IMPORTANT, AND THEN I GUESS I CAN SORT OF DOVETAIL THEM TO CLAIM SIX, WITH REGARDS TO THE GIGLIO ISSUE.

I KNOW THIS WAS AGAIN RAISED PREVIOUSLY BEFORE THIS COURT AND AS I OUTLINED IN THE BRIEF, THIS COURT FOUND THAT THE.

FIRST TWO PRONGS OF GIGLIO DID EXIST.

>> IT LEADS TO IT CONCISE -- PLEASE CONCLUDE CONCISELY BECAUSE YOU'VE EXHAUSTED YOUR TIME.

>> THE MATERIALITY THAT THIS COURT RELIED UPON WAS WRONG FOR NEARLY 10 YEARS, AND IN MR. WHITE'S CASE, NOT ONLY DID IT CON FLAT BRADY AND GIGLIO, IT SHIFTED THE BURDEN TO HIM.

AND IT WAS AN IMPROPER STANDARD.  
SO I'M ARGUING IN CLAIM SIX, WE  
HAVE TO LOOK AT ALL THE ISSUES,  
WE DIDN'T GET AN EVIDENTIARY  
HEARING, MR. WATTS TESTIMONY,  
AND MR. DIMARINO'S TESTIMONY,  
PUT THAT INTO THE MATERIALITY  
EQUATION THAT WAS DONE  
INCORRECTLY, ORIGINALLY WHEN  
THIS CASE -- NOT ORIGINALLY,  
BACK IN 1999, AND THEN WE HAVE  
TO LOOK AT IT AGAIN, BECAUSE WE  
CAN'T -- IT'S LIKE A PUZZLE, WE  
CAN'T LOOK AT THE INDIVIDUAL  
PIECES, BUT WE HAVE TO LOOK AT  
THE WHOLE THING.  
I'LL RESERVE THE REST OF MY  
TIME.

>> THANK YOU.

>> IF IT PLEASE THE COURT, THE  
STATE WOULD SUBMIT THAT THE  
TRIAL COURT PROPERLY DENIED THE  
NEWLY DISCOVERED EVIDENCE CLAIM  
FOR A NUMBER OF REASONS.

ONE OF WHICH WAS THAT IT WAS  
PROCEDURALLY BARRED.

I THINK JUSTICE QUINCE ASKED  
COUNSEL, WHEN WAS THIS  
DISCOVERED?

I STILL HAVEN'T REALLY HEARD AN  
ANSWER AS TO THAT.

IT'S NEVER BEEN PLEAD WHEN THIS  
QUOTE UNQUOTE, NEWLY DISCOVERED  
EVIDENCE WAS IN FACT DISCOVERED.

WE DO KNOW FROM THE RECORD THAT  
CHAIN MULLER IN 1999, KNEW OF  
MR. MORASSA AND IT WAS PUT ON  
THE RECORD AT THAT TIME AT THE  
TIME OF RE-SEND!!!!!!!!!! SENTENCING HE DID  
NOT CALL THIS WITNESS --

>> I'M TRYING TO UNDERSTAND, IS  
MR. CANNON CORRECT THAT THE  
CASE, THE STATE'S CASE AGAINST  
MR. WHITE GOES!!!!!!!!!!!!!! FALLS ON WHAT DIMARINO  
HAD TO SAY?

>> I DO BELIEVE THAT OBVIOUSLY  
MR. DIMARINO'S TESTIMONY WAS KEY  
AS TO THE FACTS UNDERLYING IT,  
BUT WE ALSO HAVE THE SEA WORLD  
EMPLOYEES, WHERE THEY, AFTER THE  
MURDER, THEY RAN OUT OF GAS, AND  
WERE OBSERVED BY NUMEROUS SEA  
WORLD SECURITY PERSONNEL, AND  
MR. WHITE WAS NOT WEARING A

SHIRT AND HAD BLOODSTAINS ON HIS ARM, WHEREAS MR. DIMARINO WAS FULLY CLOTHED WITH TO BLOODSTAINS AND THE MEDICAL EXAMINER'S TESTIMONY WAS, WHOEVER WAS RESPONSIBLE FOR THIS STABBING, WOULD HAVE BEEN VERY MUCH HAD BROUGHT ON HIS PERSON, WE NEVER DID FIND MR. WHITE'S SHIRT, OR WHERE THAT WAS LOCATED99!!!!!!!!!!!!!! LOCATED, I WOULD SUBMIT THAT THAT IN CONJUNCTION WITH DIMARINO'S TESTIMONY SUPPORTED HIS VERSION OF EVENTS. WE KNOW THAT DIMARINO AND WHITE WERE THE TWO INDIVIDUALS THAT TOOK THIS VICTIM OUT TO THIS DESERTED AREA AND THEY WERE THE ONLY TWO THERE. DIMARINO HAS NEVER REALLY DENIED HIS INVOLVEMENT IN THIS CASE. PART OF THE PROBLEM WITH COUNSEL'S CLAIM ABOUT DIMARINO TELLING PEOPLE, QUOTE UNQUOTE, WE GOT RID OF A GIRL LAST NIGHT, THAT'S EXACTLY WHAT HE TESTIFIED TO. THE JURY HEARD ALL THIS. DIMARINO NEVER SAID, I WASN'T THERE AND I WASN'T DOING IT. HE JUST SAID, YOU KNOW, WE DID THIS TOGETHER, UP UNTIL THE POINT WHERE MR. WHITE STRADDLED THE VICTIM AND STABBED HER. HE, DIMARINO ADMITTED TO SLASHING HER THROAT. THE JURY HEARD ALL THAT. SO EVEN IF YOU GET OVER THE PROCEDURAL BAR ON THIS -- >> DID THE STATE WORK OUT A DEAL THEN WITH DIMARINO. >> NO, HE WAS CHARGED WITH FIRST DEGREE MURDER AND CONVICTED OF A LESSER 3rd DEGREE BY THE JURY, AND THEN HE TESTIFIED IN THIS CASE, BACK IN 1978, 1979, WHEN THIS ORIGINAL TRIAL TOOK PLACE. BUT EVEN ASSUMING YOU CAN JUMP OVER THAT PROCEDURAL BAR, COUNSEL DOESN'T MEET THE STANDARD IN JONES FOR, YOU KNOW, GETTING RELIEF ON A NEWLY DISCOVERED EVIDENCE CLAIM. AS I WAS STATING, THE FACT THAT

DIMARINO SAID, WE HAD TO GET RID OF A GIRL LAST NIGHT, SIMPLY IS NOT GOING TO CAST DOUBT ON MR. WHITE'S GUILT IN THIS CASE. THE JURY, AS I SAID, HEARD TESTIMONY FROM RICHARD DIMARINO ADMITTING HIS INVOLVEMENT IN THE CASE.

>> HOW ABOUT THE ADDITIONAL STATEMENT THAT THEY'RE ALLEGING, THAT IS THAT HE ALSO SAID THAT HE WAS THE ONE THAT ACTUALLY KILLED HER?

>> THAT'S INCORRECT, YOUR HONOR. THE PLEADING SAYS MR. MORASSA'S STATEMENT IS HE HAD TO GET RID OF A GIRL.

THAT'S ALL THERE AS TO MR. MORASSA.

NOW COUNSEL HAS SAID THAT MR. DIMARINO HAS ADMITTED TO OTHERS TO KILLING AND STABBING THE VICTIM.

THAT IS ALSO KIND OF INCORRECT IN THE SENSE THAT YES OR NO DIMARINO, RICHARD'S BROTHER IS THE ONLY PERSON THAT HAS EVER SAID THAT RICHARD SAID THAT HE STABBED HER AND SLIT HER THROAT. HE'S THE ONLY ONE, BOTH WATTS AND MORASSA JUST SAID, DIMARINO ADMITTED TO GETTING RID OF A GIRL.

BUT THE JURY HEARD FROM JOHN DIMARINO, THE BROTHER, THE JURY HEARD THAT RICHARD WAS GOING AROUND BASICALLY BRAGGING THAT THEY GOT RID OF THIS GIRL.

SO IT'S NOTHING NEW THAT WOULD CHANGE ANY OUTCOME IN THIS CASE, IT'S SIMPLY CUMULATIVE AS TO WHAT THE JURY HEARD, AT BOTH THE 1978 TRIAL AND THE RESENTENCING IN 1999, SO I DON'T SEE -- I THINK THE TRIAL COURT WAS CORRECT IN BOTH THE PROCEDURAL BAR AND GOING AHEAD AND ADDRESSING IT ON THE MERITS AND STILL DENYING RELIEF BASED ON THAT.

>> ON THE PROCEDURAL BAR, IS ONE OF THE ELEMENTS THAT THEY -- MY UNDERSTANDING OF THE DISCUSSION, THEY DID NOT FILE THIS TIMELY?

>> NO.  
NO, YOUR HONOR.  
THEY DIDN'T.  
>> DO YOU NOT NEED TO KNOW WHEN  
THEY KNEW OR SHOULD HAVE KNOWN?  
>> IT WAS NEVER EVEN IN THE  
ALLEGATION AS TO WHEN THEY  
DISCOVERED IT, AND CLEARLY --  
>> IT'S SOMETHING THAT'S  
NECESSARY FOR THE PLEADING IS  
WHAT YOU'RE SAYING?  
>> YES.  
AND CLEARLY THEY WERE ON NOTICE  
OF IT FROM 1999, AT LEAST  
MR. MORASSA, THEY WERE ON NOTICE  
OF IT OR DEFENSE COUNSEL WAS.  
>> THE WITNESS CAN CHANGE  
TESTIMONY.  
>> SURE.  
>> THAT DOESN'T ANSWER.  
>> WE DON'T KNOW EXACT MY WHAT  
THEY WERE AWARE OF IN 1999, IT  
NEVER CAME OUT, BUT ESTIMATE,  
COUNSEL HAS AN OBLIGATION TO  
PLEAD IN HIS MOTION.  
>> EXACTLY.  
>> I BELIEVE THE ONLY VAGUE  
ALLEGATION IN THE MOTION WAS  
THAT THIS COURT IS AWARE THAT  
THE OUTLAWS HAVE A CODE OF  
SILENCE, THAT'S ALL THERE WAS  
REGARDING THAT.  
SO THERE WASN'T ANYTHING ELSE IN  
ADDITION TO THAT.  
MOVING ON TO CLAIM SIX, WHICH  
WAS THE --  
>> GO BACK TO THIS ISSUE ON THE  
MOTION IN THE TRIAL COURT, THE  
NEWLY DISCOVERED EVIDENCE.  
YOU AGREE THAT WE DON'T HAVE  
SOME RULE THAT SAYS, NEWLY  
DISCOVERED EVIDENCE, THAT YOU  
WAIT UNTIL ALL OF THE  
PROCEEDINGS ARE FINISHED, SO WE  
MAKE SURE ALL COUNSEL KNOW THIS,  
THAT WHEN SOMETHING COMES TO  
LIGHT, SOMEONE SAYS IS FOOL  
DISCOVERED --  
>> THEY HAVE AN OBLIGATION TO  
FILE A MOTION, CORRECT.  
AND COUNSEL WAITED UNTIL THIS  
POST CONVICTION MOTION AND FILED  
IT AND THEN NEVER SAID WHEN IT  
WAS EVEN DISCOVERED.

>> WELL, HOW DO YOU FILE IT EXACTLY IF THERE ARE CURRENTLY OTHER PROCEEDINGS GOING ON, SAY RESENTENCING --

>> WELL, IN THIS CASE, THERE WEREN'T ANY OTHER PROCEEDINGS GOING ON.

THIS WAS THE INITIAL POST CONVICTION MOTION, BUT ARE YOU TALKING ABOUT, LIKE, SAY IN 1999, WHEN TRIAL -- RESENTENCING COUNSEL SAYS MAY, I KNOW FRANK MORASSA?

>> YES.

>> OBVIOUSLY, IF HE HAD THAT INFORMATION AT THE TIME THAT MR. MORASSA WAS SAYING THAT, WHICH PRESUMABLY IS WHAT THE CASE IS, BUT WE DON'T KNOW THAT, BUT ONCE CURRENT COUNSEL FINDS OUT ABOUT IT, HE HAS A DUTY TO FILE IT AND HE DID FILE IT.

HE FILED IT IN HIS INITIAL POST CONVICTION MOTION, AND IT'S SIMPLY NOT ALLEGED SPECIFICALLY, WHAT HE NEEDS TO HAVE IN THERE, TO GET RELIEF.

>> IS IT PENDING ON APPEAL, FOR EXAMPLE --

>> RIGHT.

>> YOU CAN RELINQUISH JURISDICTION.

>> SOMETHING THAT BRINGS IT TO THE COURT'S ATTENTION.

>> CORRECT.

YOU HAVE TO DO SOMETHING TO BRING IT FORTH.

ON THE CLAIM SIX, THE LOWER COURT FOUND THAT PROCEDURALLY BARRED, THIS WAS A CLAIM LITIGATED BY THIS COURT BACK IN I BELIEVE IT WAS 1999 THAT THE OPINION CAME OUT.

THIS COURT ADDRESSED THE GIGLIO ISSUE AT THAT TIME.

>> DID WE MAKE A MISTAKE? BECAUSE I KNOW FOR A WHILE, WE WERE DEBATING THE TWO STANDARDS.

>> CORRECT.

>> IN SUBSEQUENT CASES, YES, YOUR HONOR, GUZMAN, YOU POINTED OUT THAT YOU'D BEEN USING OM IMPRECISE LANGUAGE AS IT RELATED TO THE MATERIALITY PRONG OF

GIGLIO.

THAT WAS THE CASE, BUT  
NONETHELESS, IT WAS STILL  
ANALYZED BY THIS COURT AT THAT  
TIME, AND FOUND NOT TO BE  
MATERIAL AND I WOULD SUBMIT EVEN  
IF THIS COURT WAS GRATUITOUS TO  
RELOOK AT THIS ISSUE AGAIN,  
UNDER THE REASONABLE LIKELIHOOD  
LANGUAGE, IT WOULD STILL BE THE  
SAME RESULT.

>> THEY'D HAVE TO -- DID WE  
FIND -- WHAT EVIDENCE ARE WE  
SPECIFICALLY TALKING ABOUT?

>> THE EVIDENCE IS TWOFOLD, IT'S  
ONE, THAT DIMARINO COULD HAVE  
BEEN CHARGED AS A HABITUAL  
OFFENDER AND WAS NOT.

THAT WAS PART OF HIS AGREEMENT  
WITH THE STATE, AND THAT THE  
STATE ALLEGEDLY PAID HIS SPOUSE  
\$1,000.

HE TESTIFIED ON  
CROSS-EXAMINATION AS TO THE  
STATE, QUOTE UNQUOTE, TAKING  
CARE OF HIS WIFE AND CHILD, IN  
THIS COURT, IN PART OF THEIR  
ANALYSIS, IN BOTH THE LOWER  
COURT AND THIS COURT, BACK IN  
THE ORIGINAL POST CONVICTION HAD  
ADDRESSED AND SAID, WELL, THE  
JURY DIDN'T KNOW THE SPECIFICS,  
BUT KNEW THE MAJOR COMPONENTS OF  
THE DEAL THAT DIMARINO LIED  
WHENEVER IT BENEFITED HIM AND  
THAT HE HAD GOTTEN A DEAL WITH  
THE STATE TO GET A LESSER CHARGE  
AND ALL THIS.

THEY JUST DIDN'T KNOW THOSE TWO  
SPECIFIC INCIDENCES, BUT THEY  
WERE AWARE OF NUMEROUS --

>> I THOUGHT THAT -- AGAIN, I  
HAVE TO GO BACK AND LOOK AT THE  
OPINION, BUT I THOUGHT THAT THE  
COURT DID FIND THAT THIS  
EVIDENCE WAS -- IN GIGLIO, THAT  
IT HAD TO BE FALSELY -- THE  
WITNESS TOOK THE STAND KNOWING  
THE TESTIMONY WAS FALSE.  
WE DIDN'T FIND IT TO BE IGLIO  
VIOLATION.

>> I BELIEVE THIS COURT QUOTED  
THE LOWER COURT THAT DID THE  
SAME THING AND BASICALLY THIS

COURT'S ANALYSIS IS PRETTY MUCH  
TAKEN VERBATIM, THE TRIAL  
COURT'S ORDER WHICH DIDN'T  
ADDRESS THE FIRST TWO PRONGS OF  
A GIGLIO CLAIM WHICH SAID THIS  
WASN'T MATERIAL AND THIS COURT  
RELIED ON THAT, AND IN SUMMARY  
FASHION, SAID WE AGREE WITH THE  
LOWER COURT'S ORDER.

>> THE STATE, IF IT'S GIGLIO,  
THEN THE STATE HAS TO ESTABLISH  
THAT IT WAS HARMLESS ERROR  
BEYOND A REASONABLE DOUBT.

>> RIGHT.

REASONABLE LIKELIHOOD.

>> AGAIN, WE GET CONFUSED ABOUT  
THESE.

I'M PRETTY SURE THAT'S WHAT  
HAPPENS IN GIGLIO, IT TIPS THE  
BURDEN BACK TO THE STATE.

>> RIGHT.

AND --

>> AND HERE WE ARE DEALING WITH  
BOTH A BRADY.

>> AND A GIGLIO.

>> -- CLAIM AND WE ESSENTIALLY  
SAID THAT THE ORDER OF THE TRIAL  
COURT FOCUSED ON MATERIALITY AND  
WE DEALT WITH KOWEL VERSUS  
WHITLEY AND WE CAME ALONG AND  
SUMMARILY SAID FOR THE SAME  
REASON WE DID NOT FIND ANY ERROR  
UNDER GIGLIO.

>> RIGHT AND I WOULD SUBMIT IF  
THIS COURT WERE TO REVIEW IT, IT  
WOULD BE PROCEDURALLY BARRED,  
BUT EVEN IF THE COURT WERE TO  
REVIEW IT, IT WOULD NOT ENTITLE  
MR. WHITE UNDER RELIEF UPPED  
THAT STANDARD.

>> I GUESS WHAT -- OF COURSE  
SERK SOMETHING!!!!!!!!!!!!!!!!!!!!!! SOMETHING ELSE COMES ALONG.

I THINK THE ONLY CONTINUING I'M  
STILL NOT SURE ABOUT IN -- THING  
I'M STILL NOT SURE ABOUT IN THE  
LONG RUN IS SOMETHING THAT MAY  
COME UP AS A NEWLY DISCOVERED  
EVIDENCE CLAIM.

I THINK WHEN I ASKED YOU, IT WAS  
PRETTY WELL THE LINCHPIN PAY NOT  
BE, WHETHER IT'S THE LINCHPIN  
FOR THE -- ARE YOU OK?

>> OK.

SORRY, I LOST YOU THERE.

>> THAT FOR THE PENALTY PHASE, IT COULD MAKE A DIFFERENCE TO A JURY, IF EVEN THOUGH WHITE IS INVOLVED, IF DIMARINO IS REALLY THE PERSON, SO IF YOU START TO PUT TOGETHER -- FIRST OF ALL, IT'S NOT EXACTLY A HIGHLY CREDIBLE WITNESS TO BEGIN WITH, THEN THAT HE HAS DEALS WITH THE STATE AND THEN HE TELLS EVERYBODY THAT HE IS THE ONE THAT DID THE KILLING, AT SOME POINT --

>> WELL, THAT WAS ALL KNOWN TO THE JURY THOUGH.

ALL OF THAT WAS KNOWN, EXCEPT THE DETAILS OF THE GIGLIO CLAIM, BUT THE JURY HEARD ALL THESE OTHER STATEMENTS, EXCEPT FRANK MORASSA AND HIS STATEMENT WAS CUMULATIVE TO DIMARINO'S BROTHER.

>> BUT THEY DIDN'T HEAR WATTS?

>> YOU'RE RIGHT.

THE JUDGE DID AT THE SPENCER HEARING.

>> THIS IS THE ONE THAT WAS WATTS, THE DEFENSE LAWYER SAID WHY HE DIDN'T CALL WATTS.

>> RIGHT.

HE HAD A REASON FOR THAT AND PRESUMABLY THAT WOULD APPLY TO MR. MORASSA, WHO WAS ALSO A MEMBER TOO, THAT SAME LOGIC, HE WAS PURPOSELY, DEFENSE COUNSEL TESTIFIED, HE DIDN'T WANT TO PRESENT A WHOLE BUNCH OF OUTLAWS, DIDN'T WANT TO BRING THEM INTO THE RESENTENCING HEARING, HE HAD A REASON FOR THAT, TRIAL STRATEGY REASON FOR THAT.

AND IN SUMMARY, I WOULD ASK THIS COURT AFFIRM THE LOWER COURT'S DECISION.

>> ALL RIGHT.

THANK YOU VERY MUCH.

MR. CANNON, I'LL GIVE YOU TWO MINUTES.

I THINK YOU'RE WAY OVER YOUR TIME.

JUST A COUPLE MINUTES, CONCISE, LET'S GO.

>> YES YOUR HONOR.

LET ME START WITH, AGAIN, GOING  
BACK TO THE GIGLIO ISSUE.  
GUZMAN CITES THIS CASE AS BEING  
AN EXAMPLE OF INCORRECT  
RECITATION AND THE AGREEMENT WAS  
FOR LESS TIME.

HE GOT 15 YEARS, WHICH THIS  
COURT IN THE ORIGINAL OPINION,  
WAS KIND OF SHOCKED AT.  
BUT SAID, WELL, THAT'S IT.  
HE COULD HAVE GOTTEN MORE TIME,  
BUT THIS MEMORANDUM SHOWED THAT  
HE CUT A DEAL WITH THE STATE IN  
EXCHANGE FOR HIS TESTIMONY.  
WITH REGARDS TO MR. --

>> DID THIS OCCUR BEFORE OR --  
HE WAS ACTUALLY TRIED FOR FIRST  
DEGREE MURDER, CORRECT?

>> CORRECT.

>> AND SO HE ENDED UP WITH A  
JURY CONVICTION FOR THIRD DEGREE  
MURDER.

>> CORRECT.

>> AND SO DID THIS OCCUR, THE 15  
YEARS IS REALLY WHAT YOU WOULD  
NORMALLY GET FOR, IS THAT THE  
SENTENCE YOU WOULD GET FOR THIRD  
DEGREE OR 30 YEARS?

>> YOUR HONOR, IT'S MY  
UNDERSTANDING THAT HE COULD HAVE  
GOTTEN MORE, BECAUSE HE HAD  
OTHER CRIMES THAT THE STATE  
DROPPED, AND IN HIS TESTIMONY,  
HIS DEPOSITION, MR. DIMARINO,  
HIS LAWYER WENT TO THE STATE AND  
SAID, HEY, WE'VE GOT A DEAL FOR  
YOU, I'LL TESTIFY.

GETTING BACK TO MR. MORASSA'S  
STATEMENT, IT'S NOT WE HAD TO  
GET RID OF A GIRL LAST NIGHT.  
HE WAS VERY SPECIFIC.  
HE SAID HE DID.

I DID.

I HAD TO GET RID OF A GIRL LAST  
NIGHT.

AND YOUR HONOR, THE ONLY THING I  
COULD SAY WITH REGARDS TO THAT  
STATEMENT IS, THAT IS VERY  
IMPORTANT.

NOW I UNDERSTAND THAT, YOU KNOW,  
RESENTENCING COUNSEL HAD THAT  
INFORMATION, BUT HE TRIED TO  
BRING THAT UP TO THE COURT.  
AND YOU'RE CORRECT, WE DON'T

WANT THAT POLICY.  
WE DON'T WANT FOLKS WHO MAY BE  
INNOCENT HAVING TO WAIT TO GO  
THROUGH THIS POST CONVICTION  
PROCESS.  
WE DON'T.  
BUT HE DID.  
AND COUNSEL AGREED, THAT HE  
BROUGHT THAT UP TO THE POST  
CONVICTION COURT.  
I MEAN, TO THE RESENTENCING  
JUDGE.  
TRIED TO BRING THAT UP AND THE  
JUDGE SAID NO.  
SO HE'S STUCK.  
HE HAS TO -- THIS IS HIS ONLY  
OPPORTUNITY HE'S HAD TO PRESENT  
MR. MORASSA STATEMENT AND THAT  
WAS THE FIRST TIME THAT WAS  
HEARD.  
>> WITH THAT HUGH EXHAUSTED  
ADDITIONAL TIME.  
THANK YOU VERY MUCH.  
WE'LL TAKE THE CASE UNDER  
ADVISEMENT.  
THE COURT WILL STAND IN RECESS  
UNTIL 9:00 A.M. TOMORROW  
MORNING.