

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 SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA, AND
THIS HONORABLE COURT.
LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> WELCOME TO THE FLORIDA
SUPREME COURT.
OUR FIRST CASE OF THE TODAY IS
CONAHAN VERSUS STATE OF
FLORIDA.
YOU MAY PROCEED.
>> GOOD MORNING, CHIEF JUSTICE
POLSTON, AND MEMBERS OF THE
COURT.
I'M WILLIAM HENNIS OF THE
CAPITAL COLLATERAL LAW --
>> YOU MIGHT WANT TO --
>> IN FORT LAUDERDALE.
I'M HERE ON BEHALF OF THE
APPELLANT IN THIS CASE, DANIEL
OWEN CONAHAN, JR.
THERE ARE A NUMBER OF ISSUES
THAT WE BRIEFED IN THE CASE BUT
I THINK TO BEGIN WITH, I'LL
SAY A FEW WORDS ABOUT THE
MATERIALITY OF
MRS. MONTGOMERY'S TESTIMONY IN
RELATION TO THE CLAIMS IN THE
CASE.
THE QUESTION I THINK IN PART
IS WHETHER OR NOT THE TRIAL
STRATEGY OF MR. SULLIVAN AND
MR. AHLBRAND, TRIAL COUNSEL IN
THE CASE, WAS PREJUDICED BY THE
TESTIMONY, THE SURPRISE
TESTIMONY OF MRS. MONTGOMERY AT
THE GUILT PHASE IN THE CASE.
>> ARE YOU, MRS. MONTGOMERY, AS
I UNDERSTAND YOUR ALLEGATION,
IS THAT SHE HAS NEVER AT ANY
POINT PRIOR TO TRIAL SAID THAT
HER SON HAD A FRIEND OR MET
SOMEONE BY THE NAME OF DANIEL,
IS THAT, ESSENTIALLY WHAT
YOU'RE SAYING?
>> THAT'S CERTAINLY A PART OF
WHAT SHE TESTIFIED TO AT TRIAL
THAT SHE HAD NEVER BEFORE BEEN
RECORDED AS SAYING TO ANYONE,

JUSTICE QUINCE.
>> SHE TESTIFIED TO THAT?
I THOUGHT SHE TESTIFIED THAT
SHE THOUGHT THAT SHE HAD
MENTIONED A SON.
WASN'T THAT HER TESTIMONY?
>> I THOUGHT THE QUESTION WAS
WHETHER OR NOT SHE HAD ACTUALLY
SAID THAT, BUT, SHE --
>> THAT'S STILL IN DISPUTE I
THINK.
>> SHE DID IN HER TESTIMONY AT
TRIAL SAY THAT, SEVERAL THINGS.
SHE SAID SHE BELIEVED THAT SHE
HAD IN HER POLICE TAPED
INTERVIEW GIVEN THAT
INFORMATION AND THAT IT WAS IN
AREAS THAT WERE NOTED AS
UNINTELLIGIBLE IN THE
TRANSCRIPT PROVIDED TO THE
DEFENSE --
>> OR MIGHT HAVE BEEN IN THIS
AREA?
>> I'M SORRY.
>> SHE DIDN'T SAY IT WAS IN
THAT AREA, DID SHE?
SHE SAID IT MIGHT HAVE BEEN IN
THOSE AREAS THAT WERE
INAUDIBLE?
>> I THINK SHE SPECIFICALLY
POINTED TO SEVERAL POINTS IN
THE TRANSCRIPT AND SHE BELIEVED
THAT'S WHERE WE SHE SAID SOME
OF THE MATERIAL SHE INDICATED
DURING HER TRIAL TESTIMONY THAT
HAD NEVER BEEN SPOKEN TO
BEFORE.
AND THAT INCLUDED HER WARNING
TO HER SON THAT HE WAS GOING TO
BE KILLED BY THIS PERSON WHO HE
TOLD HER HAD OFFERED HIM THE
OPPORTUNITY FOR TAKING NUDE
PICTURES.
SHE ALSO IN HER TESTIMONY
ESSENTIALLY SAID THAT THIS
PERSON WAS A MADMAN, A CRAZY
PERSON, WHO WOULD KILL HER SON.
THAT IT WAS A NEW FRIEND THAT
HE HAD MADE.
THAT'S WHAT HE TOLD HER.
THAT HIS NAME WAS CARNAHAN OR
CONAHAN.
BEYOND THAT HE WAS A NURSE.
HE WORKED AT THE SAME HOSPITAL
THAT HIS MOM HAD WORKED AT
BEFORE.
THAT HE WAS A NAVY VETERAN AND

HE WAS AN OLDER PERSON.
THAT IS ALL INFORMATION FOR THE
FIRST TIME, AS FAR AS THE
DEFENSE WAS CONCERNED, CAME OUT
DURING HER TRIAL TESTIMONY
FIRST ON CROSS-EXAMINATION BY
MR. AHLBRAND AND REDIRECT BY
MR. LEE.

>> WASN'T THERE EXPERT
TESTIMONY THAT REVIEWED THE
INAUDIBLE PORTIONS OF THE TAPE
THAT CONCLUDED CONAHAN'S NAME
WAS NOT MENTIONED IN THE
INAUDIBLE PARTS?

>> JUSTICE LABARGA, THAT IS
EXACTLY RIGHT.

THE EXPERT AT THE EVIDENTIARY
HEARING DID DETAILED ANALYSIS.
HE SAID INAUDIBLE PORTIONS OF
THE TAPE WERE ONLY AUDIBLE FOR
A SYLLABLE OR TWO.

WHEN HE WENT BACK TO THE TAPE
HE FOUND A FEW WORDS THAT HE
COULD FIND.

NO, WAS ONE OF THE THINGS THAT
HE FOUND, IN ANSWER TO THE
QUESTIONS AS TO WHETHER OR NOT
HE HAD ANY OTHER FRIENDS OR WAS
INVOLVED IN ANY KIND OF
RELATIONSHIPS WITH MALES, OTHER
THAN THE PEOPLE THAT SHE HAD
ALREADY MENTIONED IN HER POLICE
STATEMENT.

SHE GAVE AT LEAST FOUR
DIFFERENT MALE NAMES INCLUDING
AND A FEMALE NAME, EVEN A
COUNSELOR WHO HAD WORKED WITH
HER SON YEARS BEFORE AT A CAMP.
BUT THERE WAS NO CONAHAN, THERE
WAS NO DAN IN THE STATEMENT.

>> WHEN THE MOTHER MENTIONED
THE CONAHAN NAME THERE WAS NO
OBJECTION ON THE PART OF
DEFENSE COUNSEL, WAS THERE?

>> WELL, SINCE HE WAS ACTUALLY
DOING CROSS-EXAMINATION I DON'T
GUESS HE OBJECTED TO HIS OWN
QUESTION. I --

>> I THINK HE SAID HE DID NOT
SAY ANYTHING BECAUSE HE
COULDN'T FIGURE OUT AT THE
MOMENT HOW TO UN-RING THAT BELL?

>> THAT'S EXACTLY WHAT HE DID
TESTIFY TO AT THE EVIDENTIARY
HEARING, THAT'S RIGHT.

>> SO THAT IS WHAT I WOULD LIKE
TO FOLLOW UP ON THAT.

YOU SAID THAT THE STATE DIDN'T BRING THAT OUT IN THE DIRECT EXAMINATION THIS VERY HARMFUL TESTIMONY THAT YOU'RE REFERRING; IS THAT CORRECT?

>> THAT'S RIGHT.

>> SO IT CAME OUT IN A SERIES OF QUESTIONS THAT THE DEFENSE LAWYER ASKED, NOT KNOWING WHAT WAS GOING TO BE ELICITED?

>> SURE.

ESSENTIALLY THE QUESTION WAS, YOUR SON NEVER MENTIONED ANYBODY NAMED DANIEL OR DAN CONAHAN, DID HE?

>> HE FELT FAIRLY SECURE SINCE HE HAD THE TAPE AND THE PRIOR, THAT -- HAD HE TAKEN HER DEPOSITION?

>> THEY FELT SECURE ENOUGH THEY HAD NOT BOTHERED TO DEPOSE HER WHICH OF COURSE IS ONE OF THE ISSUES IN THE CASE AS WELL BECAUSE THERE'S REFERENCE BY MR. LEE IN HIS TESTIMONY AT THE EVIDENTIARY HEARING TO A DEPOSITION IN WHICH HE WAS INDICATING THAT HE RECALLED HAVING TALKED TO MRS. MONTGOMERY PRIOR TO THE DEPOSITION.

OF COURSE THERE IS NO DEPOSITION IN THE RECORD. THERE'S NO NOTICE OF DEPOSITION.

THE ONLY THING THAT WE HAVE INFERRED AT THIS POINT IS PERHAPS THE STATE DEPOSED HER PRIOR TO THE GRAND JURY TESTIMONY AND HAS NEVER PROVIDED THAT IN DISCOVERY.

>> DID YOU RAISE, NOT YOU, BUT WAS IT RAISED ON DIRECT APPEAL THAT ONCE THAT HAPPENED THAT THE TRIAL JUDGE SHOULD HAVE SUA SPONTE ON HIS OWN CONDUCTED A RICHARDSON HEARING?

SOMETIMES WE SEE THAT WHEN SOMETHING HAS COME OUT THAT NO ONE ANTICIPATED, THAT WAS, DID THE DEFENSE COUNSEL ALERT THE JUDGE AT A CERTAIN POINT THAT THIS WAS SURPRISE TESTIMONY?

>> I CAN'T RECALL IF THAT WAS SPECIFICALLY DONE ON THE RECORD.

WHAT I DO RECALL IS THAT

THE TRIAL JUDGE IN THE CASE AT THE TIME THIS HAPPENED HAD ONLY BEEN ON THE CASE FOR A WEEK OR TWO BEFORE THE CASE WENT TO TRIAL BECAUSE --

>> THAT'S, I MEAN --

>> THE REASON I TRIED TO ANSWER YOUR QUESTION.

THE PREVIOUS JUDGE HAD ACTUALLY EXPLICITLY ENTERED AN ORDER SAYING THAT, ACTUALLY THAT'S NOT TRUE.

THE NEW JUDGE EXPLICITLY ENTERED AN ORDER SAYING IF THERE WERE ANY DISCOVERY ISSUES, IF THERE WERE PROBLEMS ABOUT DISCOVERY, THAT HE WOULD UPON REQUEST GRANT A RICHARDSON HEARING BECAUSE HE HAD ONLY BEEN ON THE CASE FOR A FEW WEEKS AND HE DIDN'T REALLY KNOW ANYTHING ABOUT THE CASE. SO THAT WAS IN PLACE PRETRIAL.

>> SO THE DEFENSE LAWYER ASKED FOR A RICHARDSON HEARING?

>> NO, HE DID NOT.

>> IS THAT ONE OF YOUR CLAIMS OF --

>> YES, IT IS ONE OF OUR CLAIMS.

THAT IS A RELATED CLAIM.

>> SO IF THE, LET'S TAKE IT TO THE PREJUDICE POINT.

IF HE HAD ASKED FOR IT, CERTAINLY SINCE IT WASN'T IN THE PRIOR STATEMENT THE JUDGE WOULD HAVE GRANTED A RICHARDSON HEARING.

AT THAT POINT, AS YOU SAY THE BELL HAD ALREADY BEEN RUNG, WOULD THERE HAVE, WOULD YOUR ARGUMENT BE THERE WAS REALLY NOTHING TO DO OTHER THAN TO GRANT A MISTRIAL?

>> THAT'S CERTAINLY ONE RESPONSE.

OF COURSE YOU'VE GOT TO REMEMBER THAT THIS WAS A BENCH TRIAL AS WELL.

SO YOU DIDN'T REALLY HAVE A JURY PRESENT.

>> THAT IS IMPORTANT, ISN'T IT, AS FAR AS OUR EVALUATION OF PREJUDICE?

>> SURE. ABSOLUTELY.

THIS IS A SITUATION WHICH THERE IS A LOT OF DISCRETION THAT'S

IMPLIED UPON THE PART OF A JUDGE AT A BENCH TRIAL IN THE GUILT PHASE IF IT HAD BEEN IN THE PENALTY PHASE BUT IT WASN'T.

>> DID THE JUDGE KNOW BEFORE DECIDING WHETHER TO FIND THIS DEFENDANT GUILTY THAT THE TESTIMONY THAT MRS. MONTGOMERY OFFERED, THAT THE FIRST TIME ANYBODY HEARD IT IN ANY KIND OF, THIS DEVASTATING WAS AT THE TRIAL?

WAS THE JUDGE AWARE OF THAT?

>> YES, I THINK SO BECAUSE WHEN MR. AHLBRAND DID WAS ATTEMPT TO IMPEACH THE WITNESS WITH HER PRIOR POLICE STATEMENT, SPECIFICALLY BY POINTING TO THE FACT THAT SHE HADN'T MADE ANY STATEMENTS I OUTLINED BEFORE IN HER PRIOR STATEMENT.

THAT IS WHAT SHE POINTED TO THE UNINTELLIGIBLE PORTION.

>> SINCE WE HAVE A TRIAL JUDGE RATHER THAN A JURY, WHAT ELSE WOULD, IF THE, WHAT ELSE COULD A DEFENSE LAWYER HAVE DONE TO SHOW THIS WAS PRETTY INCREDIBLE BECAUSE THIS WAS THE FIRST TIME SHE CAME UP WITH THIS?

YOU'RE SAYING IT IS DEVASTATING BUT I FORGOT THIS WAS A NONJURY TRIAL.

>> RIGHT.

>> WHERE WE HAVE A JUDGE WHO HAS THE SOPHISTICATION TO REALIZE IT IS THE FIRST TIME IT IS BEING OFFERED?

I'M TRYING TO SEE WHAT SHOULD THE JUDGE OR DEFENSE LAWYER SHOULD HAVE DONE AND WHAT SHOULD THE JUDGE SHOULD HAVE DONE?

>> AS SOON AS THIS FIRST ANSWER CAME OUT OF HER MOUTH IN ADDITION TO REQUESTING THE RICHARDSON HEARING, HE WOULD HAVE ASKED FOR A RECESS AND OPPORTUNITY TO DEPOSE THE WITNESS BASED ON THE FACT THAT THE PRIOR STATEMENTS THAT HE HAD BEEN PROVIDED WITH THE STATE DIDN'T INCLUDE ANY OF THIS INFORMATION.

>> I ASSUME YOU DID THAT. DID YOU OFFER HER AT THE

EVIDENTIARY HEARING?

>> TO, NO, WE DID NOT OFFER HER AT EVIDENTIARY HEARING, YOUR HONOR.

>> HOW DO WE KNOW EVEN IF HE HAD DONE THAT THE DEFENSE LAWYER, WOULD HAVE MADE ANY DIFFERENCE?

IT'S YOUR BURDEN, I KNOW YOU'RE AWARE OF THAT, TO ESTABLISH DEFICIENCY AND PREJUDICE.

IF WE DON'T THEY WHAT THE EFFECT WOULD HAVE BEEN OF THEN DEPOSING HER AND, AS AND IT IS CLEAR IT IS NOT IN THE INAUDIBLE PORTION, ISN'T SHE SUFFICIENTLY IMPEACHED BY WHAT WAS IN FACT DONE AT THE ORIGINAL TRIAL?

>> I THINK NOT.

THE REASON GOES BACK TO THE FACT THAT THIS WAS A BENCH TRIAL.

I THINK ONCE THE CAT WAS OUT OF THE BAG IN FRONT OF THE JUDGE, THE REALITY IS THAT THERE'S NOT REALLY VERY MUCH THAT COULD HAVE BEEN DONE BEYOND A MISTRIAL IN THAT SITUATION.

>> YOU JUST CONTRADICTED YOURSELF.

YOU JUST SAID THAT IT WAS, YOU WOULD HAVE ASKED FOR A, IF IT WERE YOU, YOU WOULD HAVE ASKED FOR A RECESS SO YOU COULD DEPOSE BUT IF NOW YOU'RE SAYING THEY SHOULD HAVE MOVED FOR A MISTRIAL BUT I DIDN'T --

>> THAT WAS IN RESPONSE TO YOUR EARLIER QUESTION.

I'M TRYING, I'M TRYING TO --

>> YOU WOULD HAVE ALSO HAD TO ASK FOR A NEW JUDGE, WOULDN'T YOU?

I MEAN, THIS WOULD HAVE REQUIRED NOT ONLY, NOT ONLY REQUESTING A NEW TRIAL BUT YOU WOULD HAVE HAD TO ASK FOR A NEW JUDGE IF YOU'RE SAYING THE JUDGE, BY HEARING THAT, NOW COULDN'T PUT THAT ASIDE?

>> WELL I THINK WE'VE ALSO ARGUED IN OUR BRIEFING THAT THE JUDGE RELIED ON A NUMBER OF, NUMBER OF THINGS THAT WERE IMPROPER, THAT WERE NOT COMPETENT SUBSTANTIAL EVIDENCE

AND THAT'S TIED IN WITH THE
PROSECUTORIAL MISCONDUCT CLAIM
WHICH ALSO INCLUDES THIS
INFORMATION.

>> THERE IS QUESTION OF HOW DID
THE PROSECUTOR ACTUALLY USE
THIS INFORMATION?

DID THE PROSECUTOR DURING
CLOSING ARGUMENT ACTUALLY ARGUE
THAT, YOU HAVE HEARD THAT WE
KNOW HE MET THIS MAN PRIOR TO
THIS MURDER.

YOU'VE HEARD THAT FROM HIS
MOTHER.

THAT KIND OF INFORMATION?

>> ABSOLUTELY.

HE ARGUED IN CLOSING.

HE ARGUED IN THE MOTION FOR A
NEW TRIAL AT LEAST TWICE.

HE CONNECTED HER TESTIMONY
WITH THE WILLIAMS RULE
TESTIMONY AND THE TESTIMONY BY
HOW LINNDY AND A NUMBER OF
OTHER THINGS OUTLINED IN THE
BRIEFING WE ARGUE ALLOWED THE
JUDGE MAKING THE FINDING
ALLOWING THE WILLIAMS RULE
EVIDENCE IN.

THAT THIS TESTIMONY WAS
ACTUALLY THE LYNCHPIN THAT
CONNECTED EVERYTHING ELSE.

FOR EXAMPLE --

>> LET ME ASK YOU THIS THOUGH
BEFORE YOU GET TO THE WILLIAMS
RULE.

>> SURE.

>> WAS THERE ANY OTHER WITNESS,
ANY OTHER KIND OF EVIDENCE THAT
WAS PRESENTED THAT TIED THE
DEFENDANT TO THE VICTIM OTHER
THAN THE MOTHER'S TESTIMONY
THAT HE HAD MET HIM?

>> THE STATE'S BRIEF CLAIMS
THAT THE TESTIMONY OF
MR. WHITTAKER, WHO, OWNED THE
TRAILER IN WHICH MONTGOMERY WAS
LIVING, AROUND THE TIME OF THE
MURDER, AND A SNITCH WITNESS
WHO TALKED TO MR. CONAHAN IN
THE COUNTY JAIL AFTER HE WAS
ARRESTED, MR. NEWMAN, ALSO
PROVIDED SUPPORT FOR THAT.
AS WE SAID IN OUR BRIEFS I
THINK IN SOME DETAIL,
MR. WHITTAKER WAS, GAVE THREE
OR FOUR PRETRIAL STATEMENTS ALL
OF WHICH WERE IMPEACHED.

BY THE TIME OF HIS TRIAL
TESTIMONY ALL HE WAS WILLING TO
TESTIFY TO AT THAT POINT WAS
THAT DANIEL CONAHAN AT SOME
POINT CAME AROUND LOOKING FOR
MR. MONTGOMERY.

HE BACKED OFF HIS PRIOR
TESTIMONY THAT MR. MONTGOMERY
AND MR. CONAHAN HAD GONE ON
BEER RUNS TOGETHER.

THEY SPENT 45 MINUTES AT HIS
TRAIL TRAILER.

THAT HE HAD COME BY NUMEROUS
TIMES.

WE BELIEVE THE REASON FOR THAT
IS IN FACT CONAHAN HAD
A PRIOR RELATIONSHIP THE
STATE HAD TO

DEAL WITH, THAT WOULD EXPLAIN
MOST OF THE EVIDENCE THE STATE
USED.

FIBER EVIDENCE IN THE CAPRI.
FIBER EVIDENCE TRANSFERRED TO
THE HOME.

THERE WAS PREEEXISTING
RELATIONSHIP SO BY THE TIME OF
WHILE WHITTAKER SAYING CONAHAN
CAME BY AND LOOKED FOR HIM ONLY
ONE TIME.

AS FOR MR. NEWMAN THE OTHER
WITNESS, MR. NEWMAN WAS A
CONVICTED MURDERER.

WAS CHARGED WITH FIRST-DEGREE
MURDER AT THE TIME OF THE TRIAL
AND TESTIFIED THAT CONAHAN TOLD
HIM THAT MONTGOMERY WAS A
MISTAKE.

THAT WAS THE TIE.

>> LET ME ASK YOU THIS.

I CAN UNDERSTAND THAT THESE TWO
WITNESSES WERE IMPEACHED BUT MY
REAL QUESTION IS, IF THE JURY
BRIEFED THEIR TESTIMONY WE
WOULD HAVE EVIDENCE, OTHER
EVIDENCE, THAT CONNECTS THE
DEFENDANT TO THE VICTIM,
WOULDN'T WE?

>> WELL IF WE HAD HAD A JURY
BUT WE DIDN'T.

>> I MEAN, BUT WE HAVE A JUDGE
WHO IS LISTENING TO THIS
TESTIMONY TOO.

THE JUDGE IS IN THE PLACE OF
THE JURY.

HE IS GOING TO MAKE THE
CREDIBILITY DETERMINATIONS,
CORRECT?

>> IN FACT, ONE OF OUR IAC CLAIMS IS RELATED TO FACT THERE WAS A JAILHOUSE WITNESS THAT HAD BEEN PREPARED BY THE INVESTIGATOR FOR THE DEFENSE THAT WAS SPECIFICALLY PREPARED TO TESTIFY RELATING TO THE CREDIBILITY OF NEWMAN, AGAIN TO IMPEACH HIS TESTIMONY. AND YET FOR UNKNOWN REASONS TO MR. CONAHAN AND US HE WAS NEVER PRESENTED.

IF I COULD JUST SAY ONE MOMENT, I KNOW I'M INTO MY REBUTTAL TIME I BELIEVE, 4:48, IS THAT RIGHT?

>> YES, SIR.

>> SO I COULD MENTION, I WANTED TO SAY SOMETHING BRIEFLY ABOUT THE PENALTY PHASE CLAIM WHICH WE REALLY DIDN'T RESPOND TO AFTER OUR INITIAL BRIEF.

ALL I REALLY WANTED TO SAY I THINK THAT THE FAILURE BY THE DEFENSE TEAM TO INTERVIEW HOW LINDY AT ALL IS A STRIKING OMISSION ON THEIR PART AND CALLS INTO QUESTION MR. SULLIVAN'S TESTIMONY ABOUT THE PENALTY PHASE.

MR. LINDY --

>> PRIOR BOYFRIEND?

>> HE WAS PRIOR BOYFRIEND WHO THE STATE PUT ON FOR THE PROPOSITION THAT MR. CONAHAN HAD A DEEP, DARK, HOMOSEXUAL FANTASY THAT ENDED IN MURDER AND RAPE.

AND OF COURSE THAT IS NOT WHAT MR. LINDY TESTIFIED TO. BUT AGAIN HIS TESTIMONY WAS CRUCIAL IN GETTING THE JUDGE TO BRING IN ALL THE WILLIAMS RULE EVIDENCE.

SO I THINK FOR PENALTY PHASE PURPOSES YOU DEFINITELY SHOULD LOOK AT THAT IN COMBINATION WITH TESTIMONY FROM THE MITIGATION SPECIALISTS AND THE ATTORNEYS THEMSELVES AND THE DOCUMENTATION BECAUSE I TRULY THINK THIS IS A CASE WITH WHERE THE DEFICIENT PERFORMANCE WAS SO EXTREME AT THE PENALTY PHASE THAT IT EQUALS PREJUDICE. IT IS ONE OF THOSE RARE CASES IN WHICH THAT'S THE CASE.

SO I WILL SIT DOWN NOW AND USE
THE REST OF MY TIME FOR
REBUTTAL IF THAT'S OKAY.

>> MAY IT PLEASE THE COURT.
ASSISTANT ATTORNEY GENERAL
CHARMAINE MILLSAPS REPRESENTING
THE STATE.

I WOULD LIKE TO TALK ABOUT SOME
OF THE SAME ISSUES BUT I WOULD
LIKE TO GO TO PREJUDICE ON NOT
HOLDING A RICHARDSON HEARING.

ROBERT WHITTAKER --
>> BEFORE YOU DO THAT, I'M VERY
CONCERNED ABOUT WHAT THE STATE
KNEW BEFORE THEY PUT THE MOTHER
ON.

IS THIS A SITUATION WHERE THEY
GAVE THE DEFENDANT THE
RECORDED STATEMENT BUT THEY
KNEW ABOUT OTHER STATEMENTS AND
THEY KNEW ABOUT THIS TESTIMONY
AND DIDN'T PRODUCE IT FOR THE,
FOR THE DEFENDANT?

>> NO.
>> THAT IS NOT WHAT HAPPENED?
>> THE STATE HAD A TAPE
RECORDING OF THE MOTHER TALKING
TO TWO DAYS AFTER THE CRIME
OCCURRED AND WE HAD A
TRANSCRIPT.

AND WE GAVE THAT TRANSCRIPT TO
DEFENSE COUNSEL, AND, THE
DEFENSE COUNSEL, WE KNOW HE HAD
IT BECAUSE HE IMPEACHED THE
MOTHER WITH IT.

UNDERSTAND, THERE IS NO
DISCOVERY VIOLATION HERE.
WHAT THE STATE HAD THE STATE
GAVE TO HIM.

WHEN A WITNESS SAYS SOMETHING
COMPLETELY DIFFERENT, IT WAS AS
MUCH, YOU KNOW, AS FAR AS THE
PROSECUTOR GOES, WHAT WE HAD WE
GAVE TO HIM.

WHAT THE MOTHER STARTED
TESTIFYING TO WAS THIS, YOU
KNOW, ABOUT I WAS CRYING.
IT WAS TWO DAYS AFTER HER SON,
WAS MURDERED.

AND SHE SAID SHE WAS CRYING AND
SHE POINTED TO WHERE SHE
THOUGHT, WHICH DEFENSE COUNSEL
HAD IN HIS HAND.

UNDERSTAND RICHARDSON IS
DISCOVERY.
WE HAD A TRANSCRIPT.
WE GAVE THAT TRANSCRIPT TO

DEFENSE COUNSEL.

>> WHAT I'M LOOKING AT, WHAT I WANT TO KNOW IS HOW DID THE STATE ON REDIRECT KNOW ABOUT ALL THESE OTHER DETAILS ABOUT THIS, THE DEFENDANT?

THAT HE HAD BEEN IN THE NAVY. HE WAS A NURSE AND THIS. WAS THAT KNOWN TO BOTH SIDES BEFORE, BEFORE THE TRIAL?

>> THAT THE DEFENDANT HAD BEEN IN THE NAVY WAS INDEPENDENTLY KNOWN, YES. AND THEY TRIED, THEY WERE, THERE WAS AN ASSAULT IN THE NAVY.

>> NO, I'M ASKING YOU, DID THEY KNOW, DID MRS. MONTGOMERY, DID THEY KNOW MRS. MONTGOMERY WAS TOLD BY HER SON, THE VICTIM, THAT THE PERSON HE HAD MET, THAT NOW SHE'S REVEALING IS CONAHAN, WAS A NURSE IN THE NAVY?

SO HOW, IF THEY DIDN'T KNOW THAT --

>> WE GOT THE DEFENDANT'S RECORDS, NAVY RECORDS, INDEPENDENT SOURCED. WE DIDN'T KNOW THAT FROM THE MOTHER.

UNDERSTAND --

>> WHY DID YOU CROSS-EXAMINE -- WHY DID THEY KNOW ENOUGH TO CROSS-EXAMINE HER ABOUT IT? HOW WOULD THEY KNOW SHE KNEW ABOUT IT UNLESS THEY KNEW THAT SHE KNEW ABOUT IT?

AM I MISSING SOMETHING?

>> THE QUESTION IS REALLY, IF THE PROSECUTOR ASKED THE MOTHER ABOUT HIM BEING IN THE NAVY, HOW DID THEY KNOW SHE KNEW THAT?

>> OKAY.

BUT THE PROSECUTOR DIDN'T ASK. UNDERSTAND THIS ALL HAPPENED ON CROSS.

DEFENSE COUNSEL ASKED THIS. AND THEN HE SAYS STATEMENTS LIKE IN FOR A PENNY, IN FOR A POUND, OKAY?

UNDERSTAND WHAT WE PUT THE MOTHER ON AND WHAT HAPPENED ON DIRECT.

>> LET ME SURE I HAVE THE PART I'M CONCERNED ABOUT.

ON REDIRECT THE STATE PROCEEDED
TO ELICIT ADDITIONAL
INFORMATION, ADDITIONAL
INFORMATION, THAT HER SON HAD
TOLD HER THE MAN WAS OLDER,
LIVED IN PUNTA GORDA ISLES,
WAS A NURSE AND HAD BEEN IN THE
NAVY.

WAS THAT --

>> THAT IS NOT REDIRECT, YOUR
HONOR. THAT'S CROSS.
DEFENSE COUNSEL IS BRINGING
THAT OUT ABOUT THE NAVY AND THE
LIVING IN PUNTA GORDA, OKAY?
HERE IS REDIRECT.

I REMEMBER TELLING HIM, OH,
YOU'RE RIGHT, YOUR HONOR, IT IS
REDIRECT EXAM.

I REMEMBER TELLING HIM HIS NEW
FRIEND LIVING IN PUNTA GORDA.
HIM TELLING ME

THAT HE HAD BEEN IN THE NAVY
AND HE WAS A NURSE THAT WORKED
IN THE MEDICAL CENTER.

>> WHAT I'M ASKING YOU, I THINK
IT IS A VERY SIMPLE QUESTION.
HOW, IF THIS WAS ALL A SURPRISE
TO THE STATE, DID THE STATE
KNOW THAT THIS, THAT THE, THAT
HER SON HAD TOLD HER ALL THIS
ADDITIONAL INFORMATION THAT WAS
NOT IN HER RECORDED STATEMENT?

>> THE PROSECUTOR ASKED AND
THAT'S WHAT THE MOTHER SAID.
NOW WE KNEW FROM AN INDEPENDENT
SOURCE --

>> WHAT WAS THE QUESTION THAT
THE PROSECUTOR ASKED?

>> MRS. WEST.

THIS CONVERSATION THAT YOU HAD
WITH YOUR SON, THAT YOU WERE
JUST ASKED ABOUT, MEANING BY
DEFENSE COUNSEL.

>> THAT IS THE CONVERSATION SHE
HAD TALKED ABOUT IN THE DIRECT?

>> THE CROSS.

>> I'M SORRY, IN THE CROSS.

>> UNDERSTAND WHAT WE DID IN
THE DIRECT.

WE, THE STATE, PUT THE MOTHER
ON FOR ONE REASON AND ONE
REASON ONLY AND NEVER GOT NEAR
ANY OF WHAT WE'RE TALKING
ABOUT.

WE WANTED TO PROVE HE WAS
SLIGHT AND FAIR-HAIRED BECAUSE
THAT DESCRIPTION, HIS PHYSICAL

DESCRIPTION MATCHED THE MOTHER,
MATCH THE WILLIAMS RULE VICTIM.
>> WHAT WAS THE QUESTION?
>> AFTER, THEN ON CROSS,
EVERYTHING WE'RE TALKING ABOUT
HAPPENED, AND THEN ON REDIRECT,
PROSECUTOR, IN THE FIRST
QUESTION OUT OF HIS MOUTH
ASKED, MRS. WEST, THIS
CONVERSATION THAT YOU HAD WITH
YOUR SON THAT YOU WERE JUST
TALKING ABOUT AT TRIAL
TESTIMONY, WHERE HE MENTIONED
THE NAME CONAHAN AND YOU
THOUGHT AT FIRST HE SAID
CARNAHAN, DID HE GIVE YOU ANY
INFORMATION ABOUT THIS
INDIVIDUAL, CARNAHAN, AS TO
WHERE HE WORKED OR HIS
BACKGROUND OR ANYTHING LIKE
THAT?
OKAY?
PROSECUTOR, I DON'T THINK YOU
COULD SAY HE KNEW ALL --
>> DID HE TESTIFY AT THE
POST-CONVICTION HEARING?
>> THE PROSECUTOR?
PROSECUTOR LEE TESTIFIED, YES.
>> DID HE SAY HE, DID HE
TESTIFY UNDER OATH THAT HE DID
NOT KNOW THIS?
IT WAS JUST ONE OF THOSE THINGS
EVERY TRIAL LAWYER KNOWS NOT TO
ASK, YOU DON'T ASK A QUESTION
YOU DON'T KNOW THE ANSWER TO?
HE JUST SAID HE DECIDED TO ASK
THESE QUESTIONS BECAUSE NOW HE
WAS GETTING INTO AN AREA THAT
HE HAD NO IDEA ABOUT?
>> OKAY. BUT WHICH ONE
ARE YOU TALKING ABOUT?
THAT DESCRIBES MORE DEFENSE
COUNSEL THAN THE PROSECUTOR.
>> DEFENSE COUNSEL THAT IS
PRETTY BIG --
>> WE CALLED THE PROSECUTOR, WE
CALLED THE PROSECUTOR AT
EVIDENTIARY HEARING.
THE PROSECUTOR TRIED TO EXPLAIN
THIS ALL IN DETAIL.
AND THEY KEPT CUTTING HIM OFF.
PROSECUTOR WAS CALLED AS AT THE
VERY END.
WE DID NOT, THEY DID NOT ASK
THE PROSECUTOR, WHAT DID YOU
KNOW WHEN ABOUT THE MOTHER?
AND WHEN THE PROSECUTOR TRIED

TO EXPLAIN ALL OF THIS, THEY GOT, HE GOT, YOU KNOW, WE'RE NOT ASKING YOU ABOUT THAT.

>> THIS IS A VERY, FROM MY POINT OF VIEW THIS IS VERY SERIOUS.

I WANT TO KNOW DID THE PROSECUTOR, ALSO THE STATE'S OBLIGATION, TO SEEK JUSTICE, DID THE PROSECUTOR TESTIFY UNDER OATH THAT HE DID NOT KNOW ABOUT THESE STATEMENTS THESE ADDITIONAL STATEMENTS UNTIL MRS. MONTGOMERY GOT ON THE STAND AND TESTIFIED TO THAT ON RE --, ON CROSS-EXAMINATION?

>> AS I UNDERSTAND, YOUR HONOR, IT WAS NOT FULLY EXPLORED SO I'M NOT GOING TO BE ABLE TO FULLY ANSWER YOUR QUESTION. IT WAS AN OBLIGATION THAT THEY HAD IF THEY'RE SAYING RICHARDSON. THE PROSECUTOR --

>> I'M ASKING ABOUT BRADY, I'M TALKING ABOUT BRADY AND GIGLIO. I'M NOT TALKING ABOUT RICHARDSON.

THERE IS A BRADY CLAIM HERE.

>> THERE IS GIGLIO CLAIM.

>> YOU'RE SAYING AS A OFFICER OF THIS COURT HERE, THAT THE STATE DID NOT KNOW UNTIL, UNTIL THE CROSS-EXAMINATION THAT MRS. MONTGOMERY HAD THIS ADDITIONAL, SOMEWHAT DEVASTATING INFORMATION ABOUT, ABOUT THE RELATIONSHIP BETWEEN THE DEFENDANT AND HER SON?

>> AND I'M TELLING YOU IT WASN'T FULLY EXPLORED. WHAT THE PROSECUTOR DID SAY IS THIS AT THE EVIDENTIARY HEARING.

AT A DEPO, NOT THE MOTHER'S NECESSARILY BUT AT A DEPO WHERE HE WAS TALKING TO THE MOTHER, SHE HAD TOLD HEM SOME OF THIS AT A DEPO.

>> I THOUGHT THERE WAS NO DEPOSITION OF THE MOTHER?

>> THERE WAS NO DEPOSITION OF THE MOTHER BUT THE PROSECUTOR, THEY DIDN'T FULLY EXPLORE THIS I'M NOT GOING TO BE, THEY HAVE THE BURDEN ON GIGLIO.

THEY NEVER ASKED HIM, DID YOU KNOW THIS?

THEY NEVER PROVED IT WAS --
>> AS YOU ARE HERE TODAY
WHETHER THE STATE KNEW THIS
BEFORE OR NOT?
AND THEN THEREFORE IT'S A
FAILURE NOW OF THE, OF
MR. HENNIS FOR NOT EXPLORING IT
AS OPPOSED TO STATE BEING
FORTHRIGHT WHETHER YOU KNEW IT
OR DIDN'T KNOW IT?
>> YES.
AND THE PROSECUTOR TRIED TO BE
FORTHRIGHT AND THEY CUT HIM
OFF AT THE EVIDENTIARY HEARING.
SO THIS --
>> LET ME ASK YOU THIS.
THE PROSECUTOR DID NOT SAY,
DURING THE COURSE OF THE
EVIDENTIARY HEARING THAT THERE
WERE OTHER TIMES THAT THEY
TALKED WITH, WAIT A MINUTE,
WITH MRS. MONTGOMERY AND THAT
SOME OF THIS INFORMATION CAME
OUT DURING THESE OTHER ORAL
DISCUSSIONS WITH HER AND THAT
THEY WERE NOT ASKED ABOUT ORAL
DISCUSSIONS?
THAT DIDN'T COME OUT AS
EVIDENCE AT HEARING?
>> THE PROSECUTOR AT THE END, HE
TALKED ABOUT AT A DEPO, NOT
NECESSARILY THE MOTHER'S DEPO,
AT A DEPO, PROBABLY SOMEBODY
ELSE'S DEPO WAS THE
IMPLICATION, HE IS TALKING TO
THE MOTHER. OKAY?
AND THE MOTHER SAYS, SOME OF
THIS --
>> HE IS TALKING TO THE MOTHER
AT SOMEONE ELSE'S DEPO?
SHE IS PRESENT AT THE DEPO?
>> I THINK IT'S THE DAUGHTER'S
DEPO, YOUR HONOR.
>> IT MAKES MORE SENSE --
>> NONE OF THIS IS ON THE
RECORD, YOUR HONOR.
I THINK IT WAS MORE LIKELY
CARLA'S DEPO, THE SISTER, HER
DAUGHTER.
THIS IS THE MOTHER OF THE
VICTIM AND BUT THAT'S NOT ON
THE RECORD.
I DON'T KNOW WHOSE DEPO IT IS.
WHAT THE PROSECUTOR SAID, AND
HE IS TRYING TO EXPLAIN ALL
THIS AND THEY WON'T LET HIM.
>> WHAT DID HE SAY SHE TOLD HIM

AT THAT DEPO?
WHAT WAS THE CONTENT, THE
SUBSTANCE OF IT?
>> WE DIDN'T, WE DIDN'T EVEN
GET THAT FAR.
HE JUST SAID SHE TOLD ME, SHE
TALKED TO ME AT THE DEPO AND,
THEY NEVER EXPLORED THIS.
I'M SORRY I CAN NOT ANSWER.
>> THAT WAS IT?
HE SAID THEY TALKED ABOUT?
>> TALKED TO HER, YOU KNOW,
ABOUT HER STATEMENT AND THAT
WAS IT.
AND WHEN THE PROSECUTOR KEPT
TRYING TO GO, THE PROSECUTOR
WAS OPENLY TRYING TO EXPLORE
THIS AND THEY KEPT CUTTING HIM
OFF.
THEY CUT HILL OFF TWICE, YOUR
HONOR.
SO I'M NOT GOING TO BE ABLE TO
ANSWER YOUR QUESTION ABOUT
EXACTLY WHAT THE PROSECUTOR
KNEW EXACTLY WHEN.
BUT - CUT HIM OFF.
SEEMS IF YOU READ IT WAS A
SURPRISE TO BOTH OF THEM.
HE JUST SAYS ON, AT THAT
REDIRECT, THE PROSECUTOR JUST
SAYS, OKAY, YOU WERE JUST
TALKING ABOUT CARNAHAN.
WHAT ELSE DO YOU KNOW ABOUT
THIS CARNAHAN NOW?
WHAT ELSE DID YOUR SON TELL
YOU? THAT'S ALL HE SAID.
NOW WE KNEW ABOUT THE NAVY
INDEPENDENTLY BECAUSE THEY WERE
PURPOSELY TRYING TO KEEP THE
NAVY OUT OF THERE BECAUSE THERE
WAS AN ASSAULT DURING THE NAVY.
BUT WE KNEW ABOUT THAT INDEPENDENTLY.
THAT THE DEFENDANT HAD BEEN IN
THE NAVY AND THAT THEY HAD BEEN
AN ASSAULT WHILE SERVING IN THE
NAVY. WE KNEW ABOUT THAT
INDEPENDENTLY.
THAT'S NOT FROM THE MOTHER.
THAT WE KNEW ABOUT THE NAVY
PROVES ABSOLUTELY NOTHING
NOTHING ABOUT WHAT WE KNEW
ABOUT THE MOTHER.
>> THE REAL DEVASTATING PORTION
IS THE FACT SHE SAID HER
HUSBAND TOLD HER THIS WAS THE
DEFENDANT'S NAME AND SO, SO
WHEN DO WE HAVE ANY IDEA FROM

THE EVIDENTIARY HEARING WHEN
THE PROSECUTOR KNEW THAT THE
MOTHER KNEW THE NAME OF THE MAN
HE HAD MET RECENTLY?

>> FROM THE EVIDENTIARY
HEARING? NO.

LET ME BACK UP.

REMEMBER GIGLIO HAS TWO-PRONGS.
THEY HAVE TO CALL THE MOTHER OR
SOMEHOW PROVE SHE WAS LYING AND
THEY DID NOT CALL THE MOTHER.
WE HAVEN'T EVEN PROVED THIS
TESTIMONY WAS FALSE.

THE MOTHER SAID, THE MOTHER
SAID, I TALKED TO THEM BEFORE
THE RECORDING, OKAY?

SHE IS TALKING TO THEM BEFORE
THEY PUSHED THE BUTTON.

WE DON'T KNOW THAT THE MOTHER
NEVER SAID THIS.

WE DON'T KNOW WHEN THIS
HAPPENED, OKAY?

BUT SECONDLY I WOULD LIKE TO
TALK ABOUT THE PREJUDICE HERE.

WHAT THIS REALLY, ALL THIS
REALLY PROVES, THIS IS NOT
DEVASTATING AT ALL.

ALL THIS MOTHER'S TESTIMONY
PROVES IS THAT THE DEFENDANT
YOU KNEW THE VICTIM.

ROBERT WHITAKER IS TOTALLY
UNIMPEACHED ON STATEMENT I'M
RELYING ON.

2 1/2 MONTHS BEFORE THIS
MURDER, THE DEFENDANT,
CARNAHAN, COMES OVER TO THE
TRAILER ASKING FOR THE VICTIM,
STEVEN MONTGOMERY

WE HAVE INDEPENDENT PROOF,
UNIMPEACHED THAT THESE TWO KNEW
EACH OTHER.

THAT IS ALL THIS PROVES.

THIS IS NOT INDEPENDENTLY
DEVASTATING.

WE KNOW THIS FROM ANOTHER
UNIMPEACHABLE SOURCE.

>> YOU KNOW, JUST SEEMS TO ME
THIS WHOLE THING IS DEFYING
COMMON SENSE.

IF I'M A PROSECUTOR AHLBRAND
THAT I KNOW THE DEFENDANT CAN
CONNECT TO THE VICTIM AS
CLOSELY AS YOU CAN HERE, WHY
DON'T I USE THAT ON DIRECT
EXAMINATION TO WAIT FOR THE
DEFENDANT TO BRING SOMETHING
OUT ON CROSS?

DOESN'T MAKE ANY SENSE TO ME.
>> EXACTLY.
DOESN'T MAKE ANY SENSE WHAT HE
KNEW.
UNDERSTAND WHAT THE PROSECUTOR
DID AND ALL HE DID ON DIRECT.
>> BUT TO SUGGEST IT IS NOT
DEVASTATING --
>> DESCRIPTION OF HER SON.
>> EXCUSE ME.
TO SUGGEST IT IS NOT
DEVASTATING IS A LITTLE BEYOND
THE PALE WHEN YOU CONNECT IN A
CASE LIKE THIS, BRUTAL CASE
LIKE THIS AND YOU CONNECT THE
DEFENDANT TO THE VICTIM AND
SUGGEST THAT AND WITH ALL THIS
OTHER STUFF.
>> AND WE HAVE ANOTHER WITNESS
THAT DOES THAT.
HIS ROOMMATE, HIS ROOMMATE DOES
THAT TOO.
HIS ROOMMATE SAYS THE DEFENDANT
CAME OVER TWO 1/2 MONTHS BEFORE
THIS MURDER ASKING FOR THIS
VICTIM.
WE HAVE ANOTHER INDEPENDENT
SOURCE.
THE VICTIM'S OWN ROOMMATE.
UNIMPEACHED.
THE STUFF HE IS TALKING ABOUT
IMPEACHED, THAT PART IS
UNIMPEACHED.
WE HAVE ANOTHER WITNESS AND
THAT IS WHO WE RELIED ON TO
CONNECT THEM.
THAT IS HOW WE WERE RELYING ON
TO CONNECT THEM.
WE WEREN'T RELYING ON THE
MOTHER FOR THIS.
WE WANTED THE MOTHER TO DESCRIBE
HIM PHYSICALLY BECAUSE HE
PHYSICALLY MATCHED OUR VERY
IMPORTANT WILLIAMS RULE VICTIM.
IT'S THE WILLIAMS RULE THAT'S,
THAT'S DEVASTATING HERE.
IT'S STANLEY BURDEN WHO IS
DEVASTATING WHO DESCRIBES WHAT
THIS COURT ON THE DIRECT APPEAL
SAID WAS A UNIQUE CRIME.
WE HAD A TRUE SIGNATURE CRIME
AND WE HAD THE VICTIM OF THE
OTHER ATTACK, STANLEY BURDEN,
WHO LIVED.
THAT'S WHAT'S DEVASTATING HERE.
AND THIS MOM DOES ABSOLUTELY
NOTHING TO THAT.

THEY'RE TRYING TO MAKE IT, YOU KNOW, SOMEHOW ATTACKS THE WILLIAMS RULE.

THAT IS NOT WHAT THE TRIAL COURT, THE TRIAL COURT FOUND THAT THE WILLIAMS RULE ATTACK, AND THIS COURT AGREED WITH THAT ON THE DIRECT APPEAL, WAS THAT AN ATTACK ON STANLEY BURDEN WAS NOT ONLY UNIQUE BEING TIED TO A TREE, TEEN TO A REMOTE AREA, PHOTOGRAPHS TAKEN OF HIM, THAT IS EXACTLY WHAT THE STATE'S THEORY HAPPENED TO THIS VICTIM. THE MOTHER HAD NOTHING TO DO WITH THAT.

THIS IS ALL ON CROSS AND ALL THE MOTHER DOES ON CROSS IS PROVE THAT THESE TWO KNEW EACH OTHER AND WE HAVE ANOTHER INDEPENDENT WITNESS THAT DOES THAT.

THE DEVASTATING EVIDENCE HEAR IS THE WILLIAMS RULE VICTIM.
>> WHAT DID THE JAIL, WAS THERE A JAILHOUSE SNITCH HERE?
>> YEAH. JAMES NEWMAN.
>> WHAT DID HE SAY ABOUT THE DEFENDANT'S KNOWLEDGE OF THE VICTIM?

>> THEY SHARED A CELLMATE FOR A FEW MONTHS AND NEWMAN SAID THAT AT FIRST CONAHAN SAID HE DIDN'T KNOW THE VICTIM. THEN HE ADMITTED THAT HE DID. AND THEN HE SAID MONTGOMERY WAS A MISTAKE.

>> AND WAS THAT PORTION IMPEACHED OR NOT USED OR WHAT?
>> NO. IT WAS USED. AND IT WAS PRESENTED AND IT WAS IMPEACHED IN THE SENSE HE WAS A CONVICTED FELON, NEWMAN WAS A CONVICTED FELON.

I'M NOT EVEN RELYING ON THAT. I'M RELYING ON A ROOMMATE WHO WAS NOT IMPEACHED REGARDING TWO MONTHS BEFORE THIS CRIME THAT THEY KNEW EACH OTHER. CONAHAN CAME OVER TO THE TRAILER THAT, EITHER AT THE TIME OR RIGHT AROUND THAT THEY SHARED AND ASKED FOR STEVEN MONTGOMERY THE VICTIM IN THIS CASE THE DEVASTATING EVIDENCE HERE IS NOT EVEN THAT THEY KNOW EACH OTHER.

>> I WAS UNDER THE IMPRESSION THAT THE MOTHER OF THE VICTIM DID MORE THAN JUST IDENTIFY A NAME.
AM I INCORRECT IN THAT?
>> OKAY.
NO, YOUR HONOR, I HAVE --
>> SHE TESTIFIED AS TO ALMOST THE MODUS OPERANDI THAT IS INVOLVED HERE, DIDN'T SHE?
I MEAN SHE TALKED ABOUT PHOTOS AND MONEY AND --
>> SHE DID TALK ABOUT PHOTOS AND MONEY.
>> SHE SORT OF PAINTED THE PICTURE OF THE CRIME.
>> SHE TOLD ME THAT SOMEONE OFFERED HIM \$200 TO POSE FOR NUDE PICTURES.
HE DIDN'T TELL ME WHO.
HE REFUSED TO TELL ME WHO.
I TOLD HIM TO STAY AWAY FROM THAT PERSON.
THAT HE WOULD SEXUALLY ABUSE HIM OR EVEN KILL HIM.
AT THAT POINT THE DEFENDANT SCREAMS, YOU'RE A LIAR.
BUT, YES, BUT SHE DID NOT SAY WHO IT WAS. AND --
>> THIS IS BEYOND ME.
THIS DEFIES COMMON SENSE SHE WOULD HAVE NOT TOLD LAW ENFORCEMENT HER SON HAS BEEN KILLED, THEY FIND HIS BODY AND THAT THIS IS NOT SOMETHING THAT WOULD HAVE BEEN DISCUSSED WITH LAW ENFORCEMENT.
I JUST, I MEAN, THIS WHOLE THING IS LIKE A FAIRYTALE.
>> OKAY, BUT YOUR HONOR, IF YOU'RE GOING, YOU NEED TO CALL THE MOTHER AT THE EVIDENTIARY HEARING.
YOU NEED TO LET THE PROSECUTOR EXPLAIN WHAT HE KNEW WHEN.
IF YOU'RE GOING TO PROVE A GIGLIO CLAIM, YOU NEED TO PROVE A GIGLIO CLAIM.
>> YOU MAY BE RIGHT.
THAT IS WHERE ALL THE HOLES IN THE CASE ARE.
>> YES.
>> FAILURE DURING POST-CONVICTION TO FULLY DEVELOP ALL WHAT HAPPENED BECAUSE JUST, I MEAN, I'M SORRY, YOU DON'T LOSE COMMON

SENSE ONCE YOU GO INTO A COURTROOM.

THIS WHOLE THING IS JUST, JUST NOT FITTING TOGETHER.

>> I AGREE WITH THAT, YOUR HONOR.

WHAT NEEDED TO HAPPEN WAS NOT ONLY DID THE MOTHER NEED TO BE CALLED BUT THE TWO AGENTS THAT SHE TALKED TO THIS TAPE AND FDLE AGENT AND A DEPUTY, DEPUTY SMITH.

THEY SHOULD HAVE BEEN CALLED ABOUT WHAT DID THE MOTHER TELL YOU WHEN, OKAY?

AND THEN, THE PROSECUTOR SHOULD HAVE BEEN ALLOWED TO EXPLAIN WHAT HE KNEW WHEN.

AND, THEY HAD THE BURDEN HERE. THEY HAVE NEITHER PROVEN THAT THE MOTHER'S TESTIMONY WAS FALSE.

NOR HAVE THEY PROVEN THAT THE PROSECUTOR KNEW, OKAY?

YOU HAVE TO DO BOTH.

AND THEN I DON'T THINK THERE IS ANY PREJUDICE ANYWAY BECAUSE WHAT THIS REALLY, THIS MOTHER'S TESTIMONY, ON CROSS, THE STATE DIDN'T EVEN ASK HER ANY OF THESE QUESTIONS THAT WE'RE NOW LITIGATING AND ARGUING ON APPEAL.

WE ASKED HER, WHAT DOES YOUR SON LOOK LIKE?

THE WHOLE POINT OF THAT WAS HE WAS SLIGHT AND FAIR HAired WHICH IS EXACTLY AND WHAT THE TRIAL COURT RELIED ON, WHICH IS EXACTLY THE PHYSICAL APPEARANCE OF OUR WILLIAMS RULE VICTIM, STANLEY BURDEN.

AND THAT WAS, THAT WAS, SO, WE DID WHAT WE WANTED TO WITH THE MOTHER AND THEN THIS ALL CAME OUT ON CROSS.

>> AND REDIRECT?

>> AND THEN REDIRECT.

AND THE PROSECUTOR STARTS OUT WITH, OKAY, YOU SAID HE KNEW CONAHAN.

I TAKE THAT TO BE, TELL US SOME MORE, YOU KNOW.

DID YOUR SOWN GIVE YOU ANYMORE INFORMATION ABOUT THIS INDIVIDUAL AS TO WHERE HE WORKED OR HIS BACKGROUND?

THAT'S WHAT THE PROSECUTOR
ASKED.
AND THEN THE MOTHER SAYS, HE
LIVED IN PUNTA GORDA.
HE HAD BEEN IN THE NAVY.
HE HAD BEEN A NURSE THAT WORKED
AT THE MEDICAL CENTER.
THE MOTHER SAYS THAT.
AND THEN SHE SAYS --
>> WHAT SHE TESTIFIED TO, WAS
THERE A CONNECTION BETWEEN THE
OFFER OF MONEY AND CONAHAN?
THOSE ARE TWO SEPARATE THINGS.
>> THEY ARE TWO SEPARATE
THINGS.
LET ME GIVE YOU THE EXACT LINE.
I'M DOING THAT.
THIS IS THE MOTHER.
HE DID NOT TELL ME WHO,
REFERENCING HER STATEMENT ABOUT
THE OFFER OF \$200.
HE REFUSED TO TELL ME WHO.
SO SHE DID NOT CONNECT THE
OFFER TO CONAHAN.
THAT IS A DISCLAIMER.
I DON'T KNOW WHO MADE THAT
OFFER TO MY SON. OKAY?
BUT WHAT I'M TELLING YOU IS
THAT THIS NEEDED TO BE EXPLORED
MORE FULLY.
IF THEY'RE GOING TO CLAIM THIS
IS A GIGLIO VIOLATION, MOM
SHOULD HAVE BEEN --
>> BUT THERE IS TWO.
GIGLIO AND BRADY.
AND SO YOU AGREE, YOU AGREE
THEY RAISED BOTH OF THOSE
CLAIMS?
>> WELL.
>> ONE HAS TO DO WITH
PRESENTING FALSE TESTIMONY.
ONE HAS TO DO WITH KNOWING
SOMETHING BEFORE AND NOT
REVEALING IT.
WHAT YOU'RE TELLING ME AS
OPPOSED TO THE PROSECUTOR
DIDN'T KNOW YOU'RE SAYING THAT
MR. CONAHAN HAS NOT ESTABLISHED
IT.
I ACCEPT THAT'S THE CASE.
IT IS JUST TROUBLING THAT WE'RE
HERE ON THE MOST
SERIOUS OF CASES, DEATH PENALTY
CASES AND WE DON'T KNOW WHAT
THE PROSECUTION KNEW WHEN AND
YOU CAN NOT SAY AS AN OFFICER
OF THE COURT THAT THE

PROSECUTOR DID NOT KNOW THAT WHICH IS WHY IT SEEMS, IF THERE WAS A RICHARDSON HEARING, IT WOULD HAVE BEEN DEVELOPED. WE WOULD HAVE KNOWN IT. THAT'S ONE THEIR CLAIMS OF INEFFECTIVE ASSISTANCE. THAT WE SHOULD HAVE HAD A RICHARDSON HEARING. IF THE DEFENSE LAWYER WAS SURPRISED, WHICH HE WAS, SHOULD HAVE ASKED FOR A RICHARDSON HEARING, WE WOULD HAVE KNOWN STRAIGHT FROM THE PROSECUTOR AT THE TIME WHAT WAS KNOWN AND NOT KNOWN, CORRECT? THAT'S WHAT RICHARDSON IS ABOUT?

>> NO.

>> NO, IT'S NOT?

>> RICHARDSON WAS ABOUT DISCOVERY. YOU HAVE TO GIVE ME WHAT WE HAD. WHAT WE HAD WAS TRANSCRIPT. YOU WILL NOT GET VERY FAR WITH A RICHARDSON HEARING. THE JUDGE WILL SAY IT IS IN YOUR HAND. THE TRANSCRIPT IS IN YOUR HAND. YOU WERE TRULY GIVEN THAT. SO, BUT, YOUR HONOR, LET'S GO THROUGH IT AS BRADY.

>> YOU'RE, I THINK YOU'RE OUT OF TIME.

>> I WOULD LIKE TO HEAR HER COMMENTS ABOUT BRADY. GO AHEAD.

>> BRADY HAS THREE PRONGS. THIS IS, THIS IS NOT EXCULPATORY BECAUSE IT TIES THE DEFENDANT TO THE VICTIM. IF YOU'RE GOING TO DO IT, YOU'RE GOING TO IMPEACH THE MOTHER BUT YOU'RE NOT GOING TO IMPEACH HER FOR WHAT THE STATE WANTS. THE STATE WANTED HER TO PROVE THE PHYSICAL CHARACTERISTICS OF HER SON.

>> DID THE BRADY CLAIM IN THIS CASE HAVE TO DO WITH THE MOTHER'S TESTIMONY OR SOMETHING ENTIRELY DIFFERENT?

>> THEY RAISED THE MOTHER'S TESTIMONY AS A GIGLIO CLAIM. THE BRADY CLAIM HERE IS THE

UNDERCOVER RECORDING.
I TOOK THIS MOTHER'S TESTIMONY
TO BE A STRAIGHT GIGLIO CLAIM,
NOT A BRADY CLAIM.
IT'S THE UNDERCOVER COPS THAT
IS THE BRADY CLAIM.
SO I THINK THIS IS STRAIGHT
GIGLIO.
GIGLIO HAS TWO PARTS.
YOU PROVE THE MOTHER LIED AND
YOU PROVE THE PROSECUTOR KNEW
THAT LIE.
THEY DIDN'T EITHER OF THOSE
BECAUSE THEY DIDN'T CALL THE
MOTHER AND THEY WOULDN'T EVEN
LET THE PROSECUTOR TALK ABOUT
IN ANY DETAIL.
EVERY TIME HE TRIED THEY CUT
HIM OFF.
THEY HAVE NOT PROVED A GIGLIO
CLAIM.
YOUR HONOR, I THINK YOU THINK
I'M NOT, OF COURSE A GIGLIO
CLAIM WOULD BE HORRIBLE IF THEY
PROVED IT.
MY POINT IS THAT THEY DIDN'T
PROVE IT.
I'M NOT TRYING TO SAY GIGLIO
ISN'T A BAD THING FOR THE STATE
TO DO.
OF COURSE THE STATE SHOULDN'T
LIE BUT UNDERSTAND WE DIDN'T
PUT THIS MOTHER UP THERE FOR
ANY OF THIS.
NONE OF THIS WAS WHAT OUR
PURPOSE WAS FOR THE MOTHER.
>> OKAY.
>> WE DIDN'T ASK HER ANY OF
THIS ON DIRECT.
THIS WAS ALL CROSS.
THANK YOU VERY MUCH.
>> HAVE A LITTLE LEEWAY ON MY
TIME.
>> YOU HAVE 3 MINUTES, 22.
>> DURING THIS ENTIRE TRIAL
SOMEBODY TESTIFIED THEY OFFERED
MR. MONTGOMERY \$200 FOR NUDE
PICTURES WAS MRS. MONTGOMERY
AND IT WAS IN THE SAME ANSWER
TO THE STATE'S QUESTION ABOUT
MR. CONAHAN.
SO THERE IS INEXORABLE LINK.
>> BUT IS IT ACCURATE THAT SHE
SPECIFICALLY SAID HE WOULDN'T
TELL HER WHO IT WAS?
>> ABSOLUTELY SHE SAID THAT.
ABSOLUTELY.

I ALSO WANT TO POINT OUT AS TO THE QUESTION ABOUT THE OFFICER'S TESTIFYING. WE CALLED AGENT GACONI AT THE EVIDENTIARY HEARING, ONE. PEOPLE WHO INTERVIEWED MRS. MONTGOMERY ON APRIL 18th, 1996 WHICH INCIDENTALLY WAS LONG AFTER THE MURDER. THE CONVERSATION THAT SHE REFERRED TO TOOK PLACE ON MARCH 23rd, 1996, ACCORDING TO HER. AND THE EVENTUAL IDENTIFICATION OF MR. CONAHAN AS A SUSPECT WAS OVER A MONTH LATER AND IT WAS RELATED TO WHAT THEY CALLED IN THE CASE REPORT, THE BELLE GLADE INCIDENT WHICH HAS TO DO WITH A COMPLETELY DIFFICULT WITNESS. BUT AS TO MR. LEE'S TESTIMONY, THE RECORD WILL SPEAK FOR ITSELF. GO LOOK AT IT. MR. LEE SPECIFICALLY SAYS THAT HE KNEW THE INFORMATION THAT MRS. MONTGOMERY TESTIFIED ABOUT AT TRIAL PRIOR TO HER TESTIMONY.

>> WHO IS HE?
>> HE SAYS IT WAS AT THE DEPOSITION.
>> WHO IS MR. LEE?
>> MR. LEE IS THE ASSISTANT STATE ATTORNEY WHO WAS BOTH THE TRIAL STATE ATTORNEY AND WHO ALSO HAS BEEN ON THE CASE DURING THE ENTIRE COURSE OF POST-CONVICTION.
>> WELL, YOU DON'T RAISE, YOU DON'T RAISE A BRADY CLAIM. ASSUMING IT'S TRUE, THEN WOULDN'T THAT HAVE BEEN A BRADY CLAIM THAT YOU SHOULD HAVE RAISED?
>> PERHAPS SO, YOUR HONOR. PERHAPS SO.
>> IF SHE'S TRUTHFUL ABOUT IT, THEN THAT IS NOT GIGLIO.
>> IF SHE IS TRUTHFUL ABOUT IT?
>> IF WHAT SHE SAID IS IN FACT TRUE, GIGLIO PREVENTS THE STATE FROM PUTTING ON FALSE TESTIMONY.
BRADY I'M SURE YOU KNOW THIS, BETTER THAN I DO, REQUIRES THE STATE TO TURN OVER SOMETHING

THAT IS EXCULPATORY OR --
>> THE BASIS FOR OUR GIGLIO
CLAIM OF COURSE IS THE
TRANSCRIPT IN WHICH SHE SAYS
NONE OF WHAT SHE SAID LATER.
NOW AS FAR AS --
>> YOU JUST SAID SPECIFICALLY
THAT SHE TOLD THE POLICE.
SO THAT WOULD SEEM TO SHOW THAT
IT'S, IT WAS TRUTHFUL.
IT JUST WASN'T REVEALED TO THE
DEFENSE APPARENTLY?
>> MAYBE I SHOULD GET BACK, WE
CALLED AGENT GACONI IN,
AGENT GACONI WAS
PRESENT AT TAPING OF
CONVERSATION.
HE TESTIFIED TO ANYTHING SHE
SAID DURING THE INTERVIEW,
DURING PREINTERVIEW, ANYTIME HE
SPENT WITH HER HE WOULD HAVE
PUT IN HIS NOTES.
REVIEWED HIS NOTES.
HE HAD THEM AT THE EVIDENTIARY
HEARING.
HE SAID IF THERE HAD BEEN A
NAME, DAN CONAHAN, ANYBODY ELSE
OTHER THAN THE NAMES THAT WERE
IN THE TRANSCRIPT, THEY WOULD
HAVE BEEN IN HIS NOTES AND HE
WOULD HAVE DONE A REPORT ABOUT
IT.
SO WE DID EXACTLY THAT.
>> I'M GETTING A LITTLE
CONFUSED HERE BECAUSE YOU'RE
TALKING ABOUT TWO DIFFERENT
POLICE OFFICERS?
ONE WHO SAYS THAT HE WOULD HAVE
PUT ALL OF THIS IN HIS NOTES.
>> RIGHT.
>> AND IF SHE HAD TOLD HIM.
>> RIGHT.
>> YET YOU ARE NOW SAYING
ANOTHER POLICE OFFICER DOES IN
FACT SAY, THAT SHE SAID THAT?
>> WELL I'M SAYING THAT
MR. LEE, WHO WAS THE
PROSECUTOR, TESTIFIED AT THE
EVIDENTIARY HEARING THAT HE
KNEW THE INFORMATION THAT SHE
TESTIFIED TO AT TRIAL AND THE
REASON HE DIDN'T REVEAL THAT TO
THE DEFENSE WAS HE HAD NO
OBLIGATION TO BECAUSE IT WASN'T
WRITTEN DOWN.
THAT IS WHAT HE TESTIFIED TO.
IN FACT HE WAS ON THE CASE FROM

THE FIRST DAY WE FILED A STATE
POST-CONVICTION NOTION.

>> IS THAT BRADY CLAIM, IF THE
FACT THAT HE KNEW AND DIDN'T
TURN IT OVER TO THE DEFENSE
BECAUSE IT WASN'T IN ANY
WRITTEN FORM, IS THAT A BRADY
VIOLATION?

>> IF HE IS A STATE AGENT AS
THE PROS TORE THEN IT'S A BRADY
VIOLATION.

>> SO WHY WASN'T THAT RAISED AS
A BRADY VIOLATION AS OPPOSED
TO, SEEMS TO ME THE ONLY BRADY
VIOLATION THAT'S IN THIS CASE
HAS TO DO WITH A RECORDING BY
AN UNDERCOVER POLICE OFFICER ON
MAY 29th, IS THAT CORRECT?

>> THAT IS THE MISSING, THE
MISSING TAPE RECORDING, YES.

>> BUT THAT HAS NOTHING TO DO
WITH THIS ISSUE OF WHEN AND
WHERE MRS. MONTGOMERY TOLD THE
STATE ABOUT THE DEFENDANT,
CORRECT?

NO, THERE IS NO DIRECT
RELATIONSHIP REGARDING THE
WILLIAMS RULE EVIDENCE.

>> WHAT I'M ASKING YOU IS THERE
OR IS THERE NOT A BRADY
VIOLATION BASED ON THE FACT
THAT THE PROSECUTOR HAD
INFORMATION THAT WAS NOT TURNED
OVER TO THE DEFENSE --

>> WELL --

>> -- CONCERNING MRS. MONTGOMERY?

>> IT APPEARS BASED ON THE
STATE ATTORNEY'S TESTIMONY AT
THE EVIDENTIARY HEARING WHICH
WAS LESS THAN A YEAR AGO, THERE
MAY WELL BE A BRADY VIOLATION
BASED ON HIS TESTIMONY THEN.

>> BUT WE DON'T HAVE THAT
BEFORE US?

>> YOU APPARENTLY DON'T HAVE
THAT BEFORE YOU IF IT IS NOT IN
THE PLEADINGS.

>> LET'S GO TO RICHARDSON, WHAT
YOU WOULD SAY, WE'LL GO BACK TO
WHAT YOU ORIGINALLY SAID.

IF THIS WAS A SURPRISE, A
DEVASTATING SURPRISE FOR THE
DEFENSE LAWYER.

OBVIOUSLY FROM MY POINT OF VIEW
THE PROSECUTOR MUST HAVE KNOWN
ABOUT IT JUST SEEMS HE SAID HE
DID.

>> I THINK THE RECORD WILL --
>> SO WHY, SAY IT WAS DEFICIENT
CONDUCT AND THE JUDGE DIDN'T
KNOW IT WAS NEW BECAUSE NO ONE
TOLD HIM IT WAS NEW AND IT WAS
A NEW JUDGE.

SO WHY, LET'S ASSUME IT WAS
DEFICIENT CONDUCT, NOT TO HAVE
REQUESTED A RICHARDSON HEARING.
THEN YOU STILL HAVE TO PROVE
PREJUDICE FROM NOT HAVING
REQUESTED A RICHARDSON
HEARING.

AND WHAT WE'RE LOOKING AT THEN,
YOU SAID, WELL, MAYBE HE COULD
HAVE, COULD HAVE TAKEN A RECESS
AND QUESTIONED MRS. MONTGOMERY
MORE BUT REALLY, THERE DOESN'T
SEEM TO BE THEN, WHAT YOU HAVE
IS PROBABLY DEFICIENT CONDUCT
IN NOT BRINGING THIS TO THE
JUDGE'S ATTENTION, SO THAT,
THEY COULD HAVE FOUND OUT WHAT
WAS GOING ON.

BUT WHERE IS THE PREJUDICE THAT
IS UNDERMINING CONFIDENCE IF IN
FACT WHAT MRS. MONTGOMERY HAS TO
SAY IS TRUE?

WHICH APPARENTLY WHAT IT MUST
BE OR, WE CAN'T SAY IT'S FALSE
SO LET'S ASSUME THAT IT IS
TRUE?

>> I THINK THE PREJUDICE IS IN
THE JUDGE'S ULTIMATE RELIANCE
ON THAT TESTIMONY IN HIS
FINDINGS BOTH, THE ORAL
FINDINGS REGARDING THE WILLIAMS
RULE AND THE WRITTEN FINDINGS
THAT HE DID SUBSEQUENTLY
INVOLVING THE WILLIAMS RULE IN
WHICH HER TESTIMONY WAS THE
LYNCHPIN FOR THOSE FINDINGS.

>> THE FINDING WOULD ONLY BE
ABOUT HIM BEING FAIR-HAIRED AND
I THOUGHT THAT WAS BUT ANYWAY,
YOU'RE WAY BEYOND, I THINK,
THIS IS A --

>> I THINK ORDER ON WILLIAMS
RULE EVIDENCE WHICH IS, 16th OF
AUGUST, 1999, AND CONSIDER THAT
IN THE CONTEXT OF THE QUESTION
YOU JUST ASKED ME ABOUT
PREJUDICE AND THINK ABOUT THAT
IN THE CONTEXT OF
MR. CONAHAN BEING PORTRAYED AS
A SERIAL MURDERER WHEN HE
WASN'T EVEN CONVICTED OF SEXUAL

BATTERY IN THIS CASE BASED ON THE EVIDENCE WHERE THE MEDICAL EXAMINER, DR. AMANI, SAID THERE WASN'T ANY EVIDENCE OF SEXUAL BATTERY TO THE VICTIM AND YET THE STATE'S SAID THE OPPOSITE ALL THE WAY THROUGH THE CASE. AND TO GET BACK TO MR. LEE, THE PROSECUTOR, JUST REMEMBER, THAT THE STATE, IN ITS RESPONSES TO OUR POST-CONVICTION MOTIONS ALL THE WAY THROUGH THIS CASE HAD THE OPPORTUNITY TO PROVIDE IN RESPONSE TO OUR CLAIMS BRADY AND GIGLIO, REGARDING MRS. MONTGOMERY'S STATEMENTS, THE OPPORTUNITY TO COME FORWARD WITH WHAT MR. LEE, WHO WAS ALSO THE POST-CONVICTION PROSECUTOR KNEW.

IT'S ONLY WHEN WE CALL HIM AT THE EVIDENTIARY HEARING FOR PURPOSES OF CLARIFYING THIS THAT HE COMES UP WITH THIS TESTIMONY THAT, HE'S THE SOURCE, NOT AS THEY HAVE BEEN SAYING TO ALL THE PLEADINGS UNIDENTIFIED POLICE OFFICERS.

>> IF YOU COULD SUM UP.

>> TO SOME UP, I THINK THAT THE WILLIAMS RULE STUFF IN THIS CASE IS REALLY THE STORY OF THE CASE.

IT WAS REALLY A MINI-TRIAL. IT WAS REALLY A SITUATION LIKE DURASO, IN WHICH THE JUDGE NEVER FOUND CLEAR AND CONVINCING EVIDENCE OF THE WILLIAMS RULE.

LOOK AT HIS ORAL ORDER. LOOK AT HIS WRITTEN ORDER. THE WHOLE IDEA WAS THAT THE STATE PORTRAYED THEM AS A SERIAL KILLER.

THEY DIDN'T QUITE HAVE ENOUGH EVIDENCE FOR.

THEY DIDN'T HAVE ANY DNA EVIDENCE, EXCEPT DNA EVIDENCE THAT EXCULPATED MR. CONAHAN. SO THERE WAS NO DNA EVIDENCE PUT ON IN THIS CASE.

SO THE STATE RELIED ON THE WILLIAMS RULE.

THEY RELIED ON FALSE EVIDENCE. THEY RELIED ON WITNESSES THAT THAT RECANTED UP UNTIL THE TIME OF TRIAL SO THAT THEIR ONLY

DOING IDENTIFICATIONS LIKE
HUNDREDS OF PEOPLE IN THE
COUNTY AREA WHO KNEW
MR. CONAHAN COULD HAVE COME IN
TESTIFIED, OH, YEAH, I KNEW
HIM.
AND THEY'RE RELYING ON
WHITTAKER'S TESTIMONY
ESSENTIALLY TO SUPPORT THE
FACT THAT CONAHAN HAD SOME
CONTACT WITH MR. MONTGOMERY,
YET BACKING OFF WHAT THAT MIGHT
MEAN FOR THEIR FIBER EVIDENCE
AND THEIR PAINT CHIP EVIDENCE.
THAT'S WHY THEY PRESENTED THE
EVIDENCE THE WAY THEY DID.
THANK YOU FOR THAT ADDITIONAL
TIME.
I APPRECIATE IT, YOUR HONOR.
>> THANK YOU.
NEXT CASE WE'LL CALL IS FRANKS
VERSUS BOWERS.