Peter Ventura v. State of Florida

GOOD MORNING, LADIES AND GENTLEMEN. WELCOME TO THE FLORIDA SUPREME COURT. FIRST CASE ON THE COURT'S CALENDAR IS PETER VENTURA VERSUS THE STATE OF FLORIDA, AND PETER VENTURA VERSUS MICHAEL MOORE. THE CASES HAVE BEEN CONSOLIDATED FOR ARGUMENT. FROM GRUBER. -- MR. GRUBER.

THANK YOU. GOOD MORNING AND MAY IT PLEASE THE COURT.

YES.

MY NAME IS MARK GRUBER. I REPRESENT PETER VENTURA. I AM STAFF COUNSEL WITH CCRC, AND THIS IS AN APPEAL FROM A DENIAL OF A POSTCONVICTION RELIEF. THIS IS A CLASSIC GIGLIO CASE, AND THAT IS THE ISSUE I AM MAINLY ARGUING. I AM ARGUING SUCH OTHER ISSUES AS MAY BE ATTACHED TO IT AS WE GO ALONG HERE. THE SHORT, SHORT THUMBNAIL SKETCH VERSION OF WHAT HAPPENED HERE IS THAT THERE WERE CODEFENDANTS, PETER VENTURA AND JACK McDONALD. ACCORDING TO THE CASE AGENT, DEINGT I HAVE HUDSON, THEY WERE ARRESTED WITHIN 30 -- DETECTIVE HUDSON, THEY WERE ARRESTED WITHIN 30 MINUTES OF EACH OTHER IN CHICAGO AND FLORIDA, BECAUSE ACCORDING TO HIM AT TRIAL, THE AUTHORITIES COULDN'T MAKE A CASE AGAINST ONE WITHOUT THE OTHER. A SERIES OF EVENTS OCCURRED. MR. VENTURA WENT TO TRIAL, AND JACK McDONALD AT THAT POINT WAS THE KEY OR STAR STATE'S WITNESS. DURING THE COURSE OF THE TRIAL, ON QUESTIONING FROM THE STATE, MR. McDONALD SAID THAT HE HAD MADE OR ENTERED NO DEALS WHATSOEVER, AND HIS WORDS WERE NONE WHATSOEVER, TO GET HIM TO TESTIFY INVENT YOU ARE A'S TRIAL AND THEN, AT THE CONCLUSION OF HIS REDIRECT TESTIMONY AND SORT OF A GRAND FINALE, AS IT WERE, HE SAID THAT HE WAS TESTIFYING ONLY BECAUSE HE WAS DYING OF CANCER AND THIS IS ONE OF THE MOST TERRIBLE THINGS THAT HE HAD EVER DONE, AND HE WANTED TO GIVE SOME PEACE OF MIND TO MR. AND MRS. CLEMENTE, THE VICTIM AND HIS WIDOW.

WAS HE QUESTIONED AT ALL ABOUT HIS CONVICTIONS OR HIS ARRESTS? WHAT WAS THE ACTUAL QUESTIONING ON THAT ISSUE AT TRIAL?

IF I UNDERSTAND YOUR QUESTION AND PLEASE CORRECT ME IF I AM WRONG, YOU ARE TALKING ABOUT OTHER IMPEACHMENT THAT OCCURRED DURING THE COURSE OF THE TRIAL?

SPECIFICALLY TO DO WITH THE FEDERAL CHARGES. WHAT WAS THE STATUS OF THEM AT THE TIME, AND WAS THERE ANY QUESTIONING ABOUT NOT WHETHER HE WAS IMPEACHED ON OTHER BASIS, BUT THE ACTUAL CHARGES THAT YOU ARE SAYING A DEAL WAS MADE ON. IS THERE ANY QUESTIONING ABOUT THAT AT THE TIME OF TRIAL?

DARN IT. I AM NOT ENSURE I RECALL. AS -- I AM NOT EVEN SURE I RECALL. AS BESSIE RECALL, THE --

WERE THE ESCAPE CHARGES PUT ON HOLD OR DROPPED OR WHATEVER?

YES. THE ACTUAL FEDERAL CHARGE PENDING AGAINST HIM AT THAT TIME WAS FAILURE TO REPORT FOR A SENTENCE THAT HAD PLR BEEN IMPOSED.

-- THAT HAD ALREADY BEEN IMPOSED.

WAS HE QUESTIONED ABOUT THOSE CHARGES AT ALL THAT YOU KNOW OF?

I DON'T REMEMBER HIM BEING QUESTIONED ABOUT THOSE AT ALL. AS I SAID, HE HAD BEEN OFFERED NO DEALS WHATSOEVER, AND WHAT I HAVE ALREADY SAID IN THE BRIEFING THAT WE HAVE IN THE LETTERS VERY CLEARLY IS THAT HE WAS OFFERED A STRAIGHT QUID PRO QUO DEAL FOR TESTIMONY, IN WHICH THE -- WHAT ARE CALLED BOND JUMPING CHARGES WOULD BE DROPPED BY THE FEDERAL GOVERNMENT, IN EXCHANGE FOR HIS TESTIMONY.

DID YOU, IN THE TRIAL COURT, I NOTICED THAT THE TRIAL JUDGE DIDN'T EXPLICITLY TREAT THIS ISSUE IN HIS ORDER. WAS THERE A MOTION FOR REHEARING ASKING THE TRIAL JUDGE MORE SPECIFICALLY? IN OTHER WORDS SAYING THAT THE ISSUE WASN'T ADEQUATELY TREATED IN THE ORDER?

BY THE DEFENSE, NO.

THERE WAS NO MOTION FOR REHEARING.

NO. THE COURT DID DEAL WITH THE ISSUES IN THE LOWER COURT'S ORDER, IN DENYING THE EVIDENTIARY HEARING, THE MOTION FOR POSTCONVICTION RELIEF ON THE GROUNDS THAT THEY WERE PRESENTED AT THE EVIDENTIARY HEARING. THE COURT DID DEAL WITH THOSE.

YOU ARE TALKING ABOUT THE PARAGRAPH THAT GROUPS SEVERAL ISSUES TOGETHER AND THEN CITES STRICKLAND?

I THINK THE EXACT LANGUAGE WAS THERE ARE OTHER ISSUES HERE THAT ARE NOT WORTHY OF CONSIDERATION. SO THEY ARE ALL SORT OF LUMPED TOGETHER.

WHAT WAS THE LANGUAGE IN THE COURT ORDER THAT TREATED THIS ISSUE?

WELL --

WELL, YOU CAN LOOK AT THAT BEFORE YOU COME BACK UP FOR REBUTTAL.

OKAY. I WILL DO THAT.

IT WAS MY IMPRESSION THAT THE COURT DID NOT EXPLICITLY TREAT THE ISSUE.

YEAH.

WHEN I SAY EXPLICITLY, DEN ONLY NATURE THE NATURE OF THE ISSUE, AND WHAT THE ARGUMENTS WERE, BOTH WAYS, AND RESOLVE IT.

THIS IS MY UNDERSTANDING. THE LOWER COURT ORDER ADDRESSED INEFFECTIVENESS ISSUES, INEFFECTIVE ASSISTANCE OF COUNSELEST, WITH REGARD TO JURY SELECTION, WITH REGARD TO THE PENALTY PHASE, AND I BELIEVE THOSE WERE THE ONLY WHAT COULD BE CALLED SPECIFIC FINDINGS OF FACT MADE IN THE LOWER COURT'S ORDER.

DENIED THIS CLAIM ON A CONCLAOSORY ACTION. THAT IS WHY I AM ASKING. THERE WAS NO ATTEMPT TO GET IT TO REHEARING OR THE COURT DIDN'T MORE EXPLICITLY TREAT THAT.

NO, SIR, I DON'T BELIEVE THERE WAS.

CAN YOU SUSTAIN A BRADY BRADY/GIGLIO CLAIM, BY SIMPLY SAYING THAT I DON'T KNOW WHETHER I GOT THE BRADY MATERIAL OR NOT? THE STATE SAYS WE HAVE AN OPEN FILE POLICY, AND UNDER ORDINARY CIRCUMSTANCES, YOU WOULD HAVE GOTTEN IT. THE LAWYER'S

ASERTION IS I DON'T KNOW DEFINITIVELY I DON'T KNOW WHETHER I GOT IT OR NOT. CAN YOU SUSTAIN YOUR CLAIM, ON THAT TYPE OF ALLEGATION?

LET ME SAY TWO THINGS. ONE IS THAT I AM URGING THE GIGLIO ISSUE, AND WITH GIGLIO, I DON'T BELIEVE THERE IS A DUE DILIGENCE ARGUMENT, SO I AM NOT SURE THIS TYPE OF ISSUE WOULD COME UP UNDER GIGLIO. I AM THINKING, THE SECOND THING IS I AM THINKING OF THE FRED LEWIS WAY CASE, WHERE I BELIEVE THIS WAS A SIMILAR TYPE OF SITUATION, WHERE AT THE EVIDENTIARY HEARING YOU ESSENTIALLY HAVE A DEFENSE COUNSEL AND A PROSECUTOR POINTING FINGERS AT EACH OTHER AND ONE SAYING HE HAS IT AND THE OTHER ONE SAYING I COULDN'T FIND IT.

BUT DON'T YOU HAVE TO DEFINITIVELY ASSERT THAT IT WAS NOT SENT TO ME? I KNOW I DIDN'T GET IT. FALLING SHORT OF THAT, DO YOU -- YOU ARE UNABLE TO PREVAIL ON YOUR CLAIM, OR IS THERE SOME LAW THAT YOU FEEL THAT YOU CAN PREVAIL ON?

I DON'T THINK I REALLY UNDERSTAND THE QUESTION. I THINK THE BRADY CLAIM IS VERY CLEARLY ASSERTED.

WHAT WAS THE TESTIMONY OF THE LAWYER WHO REPRESENTED YOUR CLIENT AT TRIAL, AND IF THERE HAD BEEN AN OPEN FILE POLICY ON THE PART OF THE PROSECUTOR, PRESUMABLY WOULD HAVE HAD THE BENEFIT OF THAT -- FILE POLICY. WHO WAS THAT LAWYER?

THAT WAS MR. CASS.

AND HE TESTIFIED AT THIS HEARING. IS THAT CORRECT?

HE DID.

AND THE PROSECUTOR TESTIFIED AT THE HEARING. IS THAT CORRECT?

THAT'S TRUE.

AND THE PROSECUTOR SAID I HAVE -- I HAD A -- FILE POLICY, AND IF THESE LETTERS, THE LETTERS HAD BEEN WRITTEN AT THAT TIME, AND THEY WOULD HAVE BEEN IN THE FILE, SINCE THEY WERE HIS FILE, AND THEN, SO, PRESUMABLY ACCESSIBLE TO THE DEFENSE LAWYER SO WHAT DID THE DEFENSE LAWYER SAY ABOUT THAT? WHEN QUESTIONED.

HE SAID HE LOOKED AND WENT THROUGH NORMAL DISCOVERY PROCEDURES. HE SAID HE HAD, I THINK HE SAID HE HAD QUESTIONS ABOUT THEIR -- FILE POLICY, BECAUSE SOMETIMES WHEN HE LOOKS THERE, THEY AREN'T THERE, AND ANYWAY HE TESTIFIED UNEQUIVOCALLY THAT HE DID NOT HAVE THOSE LETTERS AT THE TIME OF TRIAL. HE HAD NOT ACQUIRED THEM, AND THEY, BOTH, SAID THAT THEIR MEMORIES HAD FADED.

WAIT A MINUTE. BEFORE YOU GO ON WITH THAT, YOU SAY HE DID SAY HE DID NOT HAVE THE LETTERS? WHERE IS THAT?

WHEN DID HE SAY THAT? BECAUSE IT IS MY UNDERSTANDING, IN READING, EVEN, YOUR BRIEF, THAT HE WAS NOT SURE WHETHER HE RECEIVED IT OR NOT. HAVE I MISREAD YOUR BRIEF?

WELL, I BELIEVE SO. I DON'T BELIEVE THERE IS A CENTILLA OF EVIDENCE HERE, ANYWHERE IN THE RECORD, THAT DEFENSE COUNSEL MIGHT HAVE HAD THOSE LETTERS, AND --

ARE YOU ASSERTING HERE, BEFORE US NOW, TODAY, THAT DEFENSE COUNSEL DID NOT RECEIVE THE LETTERS, THAT THEY WERE NOT SENT TO HIM?

YES, SIR.

ARE YOU MAKING THAT AS AN OFFICER OF A COURT, YOU ARE MAKING THAT ASSERTION, OR CAN YOU MAKE IT?

I BELIEVE I CAN.

NOT BASED ON YOUR KNOWLEDGE, BUT THAT THE TRANSCRIPT OF THE TESTIMONY WILL SHOW THAT THE TRIAL LAWYER DENIED EVER HAVING ACCESS OR SEEING THOSE LETTERS.

I THINK IN THE EVIDENTIARY HEARING, IT SAYS THAT HE DID NOT HAVE THEM, THAT HE WISHED HE DID HAVE THEM. IF HE HAD THEM, HE WOULD HAVE USED THEM FOR IMPEACHMENT.

ISN'T AT LEAST THE SUMMARY WE HAVE IS THAT HE SAID HE DIDN'T RECALL HIM PROVIDING HIM THE LETTERS. IF THEY HAD BEEN PROVIDED, HE WOULD HAVE UTILIZED THEM TO IMPEACH McDONALD.

THAT SOUNDS LIKE A SUMMARY OF HIS TESTIMONY.

THAT GOES TO YOUR ALTERNATIVE THAT IT WOULD HAVE BEEN DEFICIENT PERFORMANCE, IF HE HAD THESE LETTERS, NOT TO HAVE USED THEM.

HONESTLY I DON'T THINK THIS CASE GETS TO THAT POINT.

IS IT YOUR POSITION, UNDER GIGLIO, THAT, ONCE THE QUESTION WAS ASKED WERE THERE ANY DEALS MADE, THEN THE PROSECUTION HAD AN OBLIGATION TO AFFIRMATIVELY CORRECT THE TESTIMONY OF McDONALD ON THIS ISSUE?

CERTAINLY THE DUTY WAS THERE. WHAT I AM SAYING IS THAT THIS RECORD IS CLEAR. WE HAVE A SERIES OF SEVEN LETTERS BEFORE THIS COURT THAT REFLECT AN EXCHANGE HAD BEEN GOING ON, OVER A YEAR AND-A-HALF PERHAPS AS MUCH AS A TWO-YEAR PERIOD OF TIME, BETWEEN JACK McDONALD, THE PROSECUTOR IN THIS CASE, AND THE U.S. ATTORNEY'S OFFICE, WHICH SHOWED THAT THERE WAS A CLEAR PATTERN OF -- THERE WAS HORSE TRADING OVER THESE FEDERAL CHARGES AND OVER THIS FAILURE TO REPORT FOR A SENTENCE PREVIOUSLY IMPOSED, WHICH I WILL CALL BOND JUMPING, BECAUSE IT IS TOO LONG TO SAY THAT OVER AND OVER AGAIN. THE PROSECUTOR, IN THIS CASE, VIRTUALLY BEGGED THE U.S. ATTORNEY'S OFFICE, WHILE JACK McDONALD WAS STILL A FUGITIVE, TO GIVE HIM PROBATION ON THE SENTENCE HE HAD ALREADY RECEIVED AND EVENTUALLY WHEN McDONALD WAS APPREHENDED --

THE ESSENCE OF THE DEAL WAS THAT AS LONG AS HE COOPERATES WITH YOU, I.E. THE STATE PROSECUTOR, AND TESTIFIES OR WHATEVER, WE WON'T PROSECUTE HIM ON THESE OTHER CHARGES.

AND, ALSO, HELP HIM OUT IN THE PAROLE ISSUE.

HOW DID YOU FIND THESE LETTERS?

THAT IS A VERY GOOD QUESTION. I AM WITH CCRC. I DON'T KNOW. WHAT I HAVE BEEN TOLD IS THAT THEY WERE IN THE STATE ATTORNEY'S BOX.

BUT YOUR OFFICE FOUND THEM SOMEPLACE?

SO FAR AS I KNOW, YES, OR AT LEAST THE CCR SYSTEM FOUND THEM IN POSTCONVICTION.

UNDER THE PRODUCTION THAT WAS ORDERED, IN OTHER WORDS, THEY WERE PART OF THE RECORDS THAT WERE PROVIDED TO THE DESPOSITORY.

YES. THE 119. NOT THE DESPOSITORY. THE 119 PROCESS.

IT WAS BEFORE THAT.

THESE LETTERS, I BELIEVE, WERE ALLEGED, IN A 1994 POSTCONVICTION MOTION, AN AMENDMENT, SO I THINK THEY HAVE BEEN KNOWN SINCE THAT TIME.

PUBLIC RECORDS DISCLOSURE, THOUGH, AT SOME POINT, THEY CAME THROUGH.

YES, SIR.

YOU ARE IN YOUR REBUTTAL TIME BUT OBVIOUSLY THERE HAS, ALSO, GOT TO BE A MATERIALITY PORTION. THAT IS, UNDER BOTH GIGLIO AND BRADY, IT HAS GOT TO BE SUCH AS -- GIVE THE STANDARD, AND CAN YOU -- THE TRIAL JUDGE SEEMS TO HAVE FOUND IT PROBABLY MET THE STANDARD, AND WE HAVE AN INDEPENDENT OBLIGATION TO LOOK AT THAT. WHAT IS YOUR QUICK RESPONSE ON THE SECOND OR THIRD PRONG OF THOSE?

THE QUICK RESPONSE IS THAT, WELL, GIGLIO HAS, ABOUT THE LEAST MATERIALITY REQUIREMENT IN ORDER TO OBTAIN RELIEF AMONGST TRADITIONAL POSTCONVICTION CLAIMS. THE LANGUAGE THAT I SEE IS AFFECT THE JUDGMENT OF THE JURY, AND THAT LANGUAGE IS PRECEDED BY A REASONABLE PROBABILITY, A REASONABLE POSSIBILITY, A REASONABLE LIKELIHOOD, I THINK, DEPENDING ON WHICH CASE IS BEING READ, BUT IT IS CLEAR THAT IT IS A VERY, VERY SMALL STANDARD, AND THIS COURT, ON DIRECT APPEAL, TURNED JACK McDONALD, THE KEY WITNESS FOR THE STATE. HE WAS ACKNOWLEDGED TO HAVE BEEN THE STAR WITNESS FOR THE STATE. THIS EVIDENTIARY HEARING WOULD HAVE SHOWN TESTIMONY SPECIFIC, A NEW REASON FOR THE BIAS ON THE PART OF THE JURY THAT IT WOULD NOT HAVE HEARD, FOR A NUMBER OF REASONS, AND I WOULD LIKE TO TALK MORE ABOUT THAT LATER ON.

MAY IT PLEASE THE COURT. MY NAME IS JUDY TAYLOR RUSH. I AM AN ASSISTANT ATTORNEY GENERAL AND I REPRESENT THE STATE OF FLORIDA IN THIS CASE. I WOULD LIKE TO ADDRESS A STATEMENT THAT MR. GRUBER MADE EARLY ON, IN HIS ARGUMENT. HE MAINTAINED, HERE, BEFORE THIS COURT, TODAY, THAT IT WAS LIEUTENANT HUDSON WHO TESTIFIED THAT THE STATE DID NOT BELIEVE IT HAD A CASE AGAINST McDONALD OR VENTURA, WITHOUT THE OTHER. IN HIS BRIEFS, HOWEVER, HE HAS MAINTAINED THAT IT WAS POSTAL INSPECTOR BERGER WHO TESTIFIED TO THAT EFFECT, AND HE QUOTES IT AND SETS THAT TESTIMONY OUT IN HIS REPLY BRIEF, THAT IT WAS POSTAL INSPECTOR BERGER. THE REASON THAT IS IMPORTANT IS POSTAL INSPECTOR BERGER WAS INVOLVED IN THE FEDERAL CASE, AND WHAT HE SAID WAS OUR POSITION WAS WE DON'T BELIEVE THERE WAS ENOUGH EVIDENCE TO DO ONE OR WITHOUT THE OTHER, BUT I BELIEVE HE WAS REFERRING TO WAS THE FEDERAL BANK ROBBERY SCHEME. THEY DIDN'T BELIEVE THEY HAD ENOUGH EVIDENCE FOR THE FEDERAL BANK ROBBERY SCHEME, ONE WITHOUT THE OTHER. ALSO --

WHAT WAS THE EVIDENCE? WITHOUT McDONALD, OR IF McDONALD WAS SIGNIFICANTLY IMPEACHED, WHAT WAS THE EVIDENCE AGAINST VENTURA?

THERE WAS A GREAT DEAL OF EVIDENCE AGAINST VENTURA, INCLUDING WHAT I WOULD SUBMIT IS THREE CONFESSIONS BY VENTURA. IT STARTED WITH THE MURDER OCCURRED IN APRIL, APRIL 15 OF 1981. AND IN LATE FEBRUARY, OR EARLY MARCH, VENTURA SPOKE TO MR. BARRETT IN CHICAGO, A FRIEND OF HIS, LONG TIME FRIEND OF HIS, AND HE TOLD MR. BARRETT THAT HE WANTED HIM TO CALL AN INSURANCE COMPANY FOR HIM AND ASK THEM A QUESTION, AND THE QUESTION WAS A VERY SPECIFIC QUESTION, WHICH IS IS THE SITUATION WE HAD IN THIS CASE. THAT QUESTION WAS CALL THEM AND ASK THEM IF THERE IS A KEY MAN LIFE INSURANCE POLICY, AND THE PERSON WHO IS COVERED BY THAT POLICY IS NO LONGER WORKING FOR THE EMPLOYER, AND DIES BEFORE THE POLICY IS TERMINATED, WILL YOU STILL PAY? AND THE

OTHER QUESTION WAS HOW LONG WILL IT TAKE YOU TO PAY? WELL, MR. BARRETT DID NOT MAKE THE CALL, BUT HE TESTIFIED THAT SOMETIME LATER, VENTURA CAME BACK TO HIM AND ASKED HIM FOR A GUN, AND HE SUPPLIED HIM WITH A GUN.

DID BARRETT HAVE ANY RELATIONSHIP WITH McDONALD? AND IF SO, WHAT WAS THE RELATIONSHIP?

BARRETT KNEW McDONALD BUT NOT -- HE DIDN'T HAVE THE SAME RELATIONSHIP THAT HE HAD WITH HIM THAT HE HAD WITH VENTURE A HE WAS A FRIEND.

AND HE WAS IMPLICATED IN THIS WHOLE FEDERAL FRAUD SCHEME WITH THE OTHERS?

BARRETT WAS NOT CHARGED. PIKE WAS IMPLICATED AND WAS CONVICTED. I BELIEVE HE PLED. BUT HE DID NOT RECEIVE ANYTHING FOR HIS STATEMENT ABOUT MURDER, THE VENTURA'S PART IN THE MURDER MURDER.

HE AND PIKE WERE BOTH IMPLICATED IN THE SAME SCHEME WITH VENTURA?

BUT BARRETT WAS NOT CHARGED. THE DEGREE OF HIS IMPLICATION I AM NOT CLEAR ON. I KNOW THAT HE WAS BROUGHT INTO THE FEDERAL INVESTIGATION BY PIKE, AND, BUT, HIS DEGREE OF PARTICIPATION IN THE UNDERLYING SCHEME, I AM NOT SURE OF, BUT I KNOW HE WAS NOT CHARGED, SO PRESUMABLY IT WASN'T AS GREAT, IF HE DID PARTICIPATE. BUT AFTER GETTING THE GUN FROM MR. BARRETT, VENTURA GOES BACK TO BURDICK AND SAYS -- AND THIS WAS A FEW DAYS BEFORE HE LEFT THE CHICAGO AREA, AND HE SAID THAT JACK McDONALD WANTED HIM TO COME DOWN, WHERE HE WAS, AND BURN SOMEONE, AND MR. BARRETT TESTIFIED THAT, IN THE VERNACULAR OF THE CIRCLES THEY TRAVELED IN, BURN SOMEONE MEANT TO MURDER SOMEONE, AND THAT HE KNEW FOR A FACT THAT VENTURA DID LEAVE THE AREA. HE GOT A TELEPHONE CALL FROM VENTURA THREE OR FOUR DAYS BEFORE THE MURDER, WHERE HE LEFT A PHONE NUMBER ON MR. BARRETT'S ANSWERING MACHINE. PLEASE CALL ME BACK. HE CALLED HIM BACK, AND IT WAS A DELAND OR DAYTONA PHONE NUMBER, SO HE WAS DEFINITELY IN THE AREA.

YOU SAID THAT YOU CAN PROSECUTE WITHOUT McDONALD, BUT WE, IN OUR 1990 OPINION, WE IDENTIFIED THE STATE'S KEY WITNESS WAS VENTURA'S CODEFENDANT. WAS THAT INCORRECT, WHEN THIS COURT SAID THAT McDONALD WAS THE KEY WITNESS AGAINST VENTURA?

WELL, UNQUESTIONABLY, McDONALD PROVIDED A LOT OF ADDITIONAL DETAIL OF THE MURDER. BUT I DON'T BELIEVE THAT HIS TESTIMONY WAS ESSENTIAL TO A CONVICTION.

BUT YOU WOULD AGREE, THOUGH, HE WAS THE KEY WITNESS.

IN THE SENSE THAT HE PROVIDED ADDITIONAL DETAIL. HOWEVER, BOTH PIKE AND BARRETT, BOTH, PROVIDED THE EVIDENCE THAT THIS WAS A CAREFULLY THOUGHT OUT PLAN REGARDING AN INSURANCE POLICY. THAT THIS JOB WAS DONE TO GET MONEY. SO THE AGGRAVATORS WERE ALL, YOU KNOW, COVERED IN THEIR TESTIMONY.

DID I UNDERSTAND YOU CORRECTLY, NOW, THIS CONVERSATION THAT VENTURA HAD WITH BARRETT IN CHICAGO, TOOK PLACE BEFORE THE MURDER.

THAT'S CORRECT.

AND HOW LONG BEFORE?

APPROXIMATELY -- WELL, THE FIRST CONVERSATION -- THERE WERE SEVERAL THAT I JUST WENT OVER, BUT THE FIRST ONE, HE SAID, WAS IN LATE FEBRUARY, AND THE MURDER WAS APRIL 15.

AND THEN, WHEN HE GOT BACK, HE WENT BACK AND TALKED TO BARRETT AGAIN, AND HE SAID YOU KNOW, I AM BACK. I HAVE DONE THE JOB, AND I AM WAITING ON MY MONEY, AND JACK IS GOING TO GET IT FROM THE GUY WHO HELD THE INSURANCE POLICY.

LET'S ASSUME THAT WE THINK THAT McDONALD WAS A KEY WITNESS, AND THEREFORE IMPEACHING McDONALD WAS -- WOULD BE AN IMPORTANT PART OF A DEFENSE CASE IN TERMS OF TRYING TO SHOW THAT SOMETHING ELSE HAD HAPPENED. THE -- WHAT IS THE STATE'S POSITION ON IF THESE LETTERS EXISTED, WHETHER IT WOULD HAVE BEEN REQUIRED, AND THE STATE KNEW ABOUT IT, THAT THESE LETTERS SHOW A DEAL HAD BEEN MADE, AND THAT, FOR THE JURY TO THINK THAT THERE WAS NOTHING THAT HAD BEEN DONE, WITH REFERENCE TO THE STATE, AND VENTURA WAS FALSE TESTIMONY, UNDER GIGLIO, WHAT IS YOUR SPECIFIC RESPONSE TO THAT? IF WE WERE TO START AND NEW TODAY AND KNOWING WHAT YOU -- START A NEW TODAY AND -- START ANEW TODAY AND KNOWING WHAT THE JURY HAD TO KNOW ABOUT THESE JURORS, WOULD YOU HAVE NEEDED TO RECEIVE THAT INFORMATION, TO KNOW ABOUT McDONALD TESTIMONY?

NO. I WOULD NOT SAY THAT.

SO IF YOU HAD THOSE LETTERS IN YOUR FILE, AND McDONALD TESTIFIES, HE CAN'T SAY THERE IS NO DEAL, BECAUSE THESE LETTERS SHOW THAT THERE WERE, CERTAINLY, EXCHANGES FOR HIS TESTIMONY.

I BELIEVE THE LETTERS SHOW THAT THERE WERE DISCUSSIONS ABOUT THE POSSIBILITY OF NOT FILING BOND JUMPING CHARGES, BUT THEY CERTAINLY, ALSO, SHOW THAT IT WAS CONTINGENT. ANY FORBEARANCE TO FILE THOSE CHARGES WAS CONTINGENT UPON McDONALD TELLING THE TRUTH AT VENTURA'S TRIAL.

SO WOULD THAT, AGAIN, BE SOMETHING THAT THE DEFENSE -- FIRST OF ALL SHOULD HAVE TO BE PRODUCED TO THE DEFENSE? WOULD YOU AGREE IT WOULD BE BRADY MATERIAL?

YES, AND IT WAS IN THE STATE'S FILE, AND THE DEFENSE -- IT WAS IN THE DEFENSE FILE, AND THE STATE HAD THE OPPORTUNITY TO GO AND GET THAT, BUT THE THING ABOUT --

SO YOU AGREE IT WAS BRADY. YOU SAY IT WAS PRODUCED. THAT IS YOUR POSITION.

I BELIEVE -- THE TESTIMONY AT THE EVIDENTIARY HEARING, THE WAY I READ THE TESTIMONY WAS, FROM MR. STARK, WHO WAS THE PROSECUTOR, HE SAID I WROTE THE LETTERS, YOU KNOW, AND I PUT THEM IN MY FILE, THE STATE'S FILE. THE ONLY THING I EVER KEPT OUT OF THAT FILE WAS MY OWN PERSONAL HANDWRITTEN NOTES. OUR OFFICE POLICY WAS THAT THE DEFENSE HAD COMPLETE OPEN ACCESS TO THAT FILE. ANY TIME THEY WANTED TO LOOK AT IT, THEY COULD HAVE COPIES OF ANYTHING IN THE FILE.

SO WOULD YOU THINK, AS A REASONABLE DEFENSE LAWYER, IF THAT WAS IN THE FILE, WOULD ANY REASONABLE DEFENSE LAWYER USE THOSE TYPE OF LETTERS TO IMPEACH A KEY STATE WITNESS?

NOT NECESSARILY, AND THE REASON FOR THAT IS THIS, THAT DEAL WAS CONTINGENT UPON McDONALD TELLING THE TRUTH. THEREFORE, WHEN McDONALD, IF THIS WAS BROUGHT OUT AT THE TRIAL, THE DEFENSE ATTORNEY WOULD RUN THE RISK OF ENHANCING McDONNELL'S -- McDONALD'S CREDIBILITY. IN OTHER WORDS McDONALD ONLY GOT SOMETHING, IF HE TOLD THE TRUTH. IF HE GOT UP THERE AND LIED.

ARE ANY DEALS SAYING -- YOu KNOW, YOU CAN EITHER LIE OR TELL THE TRUTH, AND EITHER WAY, ISN'T IT, ALWAYS, WOULD THE STATE EVER MAKE A DEAL, WHERE THEY WOULD SAY WE WANT YOU TO LIE AND THEN WE WILL DISMISS YOUR CHARGES?

WELL, FIRST OF ALL IT WASN'T THE STATE MAKING THE DEAL HERE. IT WAS THE FEDERAL GOVERNMENT, WHOSE PROSECUTOR WROTE BACK AND SAID WE WILL FORE BEAR FILING ANY BOND JUMPING CHARGES.

IS THAT THE REQUEST OF THE STATE?

YES. THE STATE ASKED THEM TO CONSIDER DOING THAT. THEY WROTE BACK AND SAID, YES, THEY WOULD DO THAT, AS LONG AS HE TOLD THE TRUTH, SO IF HE HAD TESTIFIED THAT THEY HAD THIS AGREEMENT OUT THERE, CERTAINLY IT WOULD HAVE COME OUT THAT, YES I MAY BE ABLE TO AVOID BOND JUMPING CHARGES, BUT I HAVE TO TELL THE TRUTH.

LET ME ASK YOU AGAIN. DO YOU KNOW OF ANY DEAL THAT THE STATE MAKES, WHICH IS NOT CONTINGENT ON THE WITNESS TELLING THE TRUTH AT TRIAL?

THAT IS A VERY BROADED QUESTION. I DON'T KNOW OF -- THAT IS A VERY BROAD QUESTION. I DON'T KNOW OF ANY SPECIFIC KASICH TELL YOU ABOUT AT THIS TIME.

BUT HOW WOULD THE STATE EVER ENTER INTO A DEAL WHERE PART OF IT WAS YOU HAVE GOT TO TELL THE TRUTH AT TRIAL?

WELL, THEY -- OBVIOUSLY THE STATE WANTS THEM TO TELL THE TRUTH AT THE TRIAL, AND YOU KNOW IF THEY DON'T, THE STATE IS NOT GOING TO BE HAPPY ABOUT THAT. IN THIS CASE THERE WAS A VERY SPECIFIC CONSEQUENCE THAT WAS GOING TO FLOW FROM HIS NOT TELLING THE TRUTH. THAT WAS VERY PART AND PARCEL OF THE DEAL MADE BY THE FEDERAL PROSECUTOR.

WHOSE TRUTH AS TO McDONALD BLAMING VENTURA? THAT WAS WHAT WAS -- I AM TRYING TO UNDERSTAND, IF YOU ARE SAYING THAT THIS TESTIMONY ABOUT THE DEAL WAS SOMETHING THE PROSECUTOR COULD SIT BACK AND ALLOW McDONALD TO TESTIFY, WITHOUT THE JURY KNOWING THIS. YOU ARE SAYING, AS AN OFFICER OF THE COURT, THAT YOU DON'T THINK THIS WOULD BE THE TYPE OF INFORMATION THAT A PROSECUTOR WOULD HAVE AN OBLIGATION TO REVEAL TO THE COURT, TO MAKE SURE THAT EVERYTHING IS KNOWN ABOUT THE CONDITIONS UNDER WHICH AN INDIVIDUAL IS TESTIFYING.

THAT IS A DIFFERENT QUESTION THAN WHAT YOU ASKED ME PREVIOUSLY. ALL TOGETHER DIFFERENT QUESTION. AS TO WHETHER THE PROSECUTOR HAD AN OBLIGATION TO REVEAL IT TO THE COURT, WHEN McDONALD SAID NONE WHATSOEVER, THAT HASN'T -- WHAT WE HAVE, HERE, IS THE DEFENDANT SAYING THAT McDONALD, HIMSELF, PROBABLY REGARDED THIS ALLEGED DEAL AS TOO INSIGNIFICANT TO EVEN CONSIDER, AND THAT --

ARE YOU CONCEDING, THEN, THAT McDONALD WAS, IN FACT, TOLD ABOUT THIS COURSE OF CORRESPONDENCE BETWEEN THE PROSECUTOR -- THE STATE PROSECUTOR AND THE FEDERAL PROSECUTOR? BECAUSE I THOUGHT A PART OF THE ARGUMENT WAS THAT WE DON'T KNOW IF HE WAS EVER TOLD OR NOT.

WE DON'T KNOW, BUT WHAT THE --

BUT YOU SEEM TO BE CONCEDING THAT HE WAS.

WHAT THE DEFENSE SAID, IN THEIR BRIEF, IS THAT HE KNEW ABOUT IT, BUT HE REGARDED IT AS TOO INSIGNIFICANT TO EVEN CONSIDER IT A DEAL. HE ALREADY HAD 15 YEARS OF SENTENCE.

THE CONSEQUENCES TO HIM WERE GOING TO BE VERY SEVERE, IF HE DIDN'T TELL THE TRUTH.

THE CONSEQUENCES TO McDONALD?

RIGHT.

YES. IF HE DIDN'T -- WELL, HE WAS ONLY GOING TO GET ANYTHING UNDER THE DEAL, IF HE TOLD THE TRUTH. THAT IS THE ONLY WAY HE COULD GET ANYTHING.

HOW DID HE KNOW THAT?

I --

IN OTHER WORDS HOW WAS HE TO TELL THE TRUTH, IF HE DIDN'T KNOW ABOUT IT?

HE WAS SWORN TO TELL THE TRUTH. YOU MEAN, HOW WAS -- THE DEAL IMPORTANT? THAT THAT WAS A PART OF THE DEAL IF HE DIDN'T KNOW THAT THAT WAS PART OF THE DEAL? IS THAT WHAT YOU ARE ASKING?

RIGHT. YOU SAID, A LITTLE WHILE AGO, THAT THE CONSEQUENCES TO HIM WERE GOING TO BE VERY SEVERE, IF HE DIDN'T TELL THE TRUTH. EYE DIDN'T SAY THEY WOULD BE VERY SEVERE, BECAUSE I DON'T BELIEVE THE BOND JUMPING CHARGE WAS A SEVERE CHARGE OR OFFENSE. THE EVIDENCE AT THE TRIAL WAS THAT MOST OF THE TIME THE FEDERAL GOVERNMENT DIDN'T EVEN FILE THEM, ANYWAY. HE, ALREADY, HAD A 15-YEAR PRISON SENTENCE. ANYTHING HE MIGHT HAVE GOTTEN FOR THE BOND JUMPING CHARGE WAS NEGLIGIBLE, COMPARED TO THAT.

DOES THE CORRESPONDENCE REFER TO THAT?

I DON'T KNOW IF THE CORRESPONDENCE DID, BUT I KNOW THAT WAS THE TESTIMONY AT TRIAL.

PARDON?

THAT WAS THE TESTIMONY AT THE EVIDENTIARY HEARING.

WAS HE UNDER -- SO HE HAD A 15-YEAR SENTENCE. WAS HE SERVING IT, AT THE TIME THAT HE TESTIFIED AT THE VENTURA TRIAL?

IT IS MY UNDERSTANDING THAT HE WAS, YES, MA'AM.

AND THE BOND JUMPING CHARGES WOULD HAVE BEEN OR FAILURE TO APPEAR WOULD HAVE BEEN AN ADDITIONAL FIVE YEARS ON TOP OF THAT.

THERE IS NO EVIDENCE OF THAT IN THE RECORD ANYWHERE. THAT WAS ALLEGED IN THE REPLY BRIEF THAT THE DEFENSE FILED, THAT THAT WOULD HAVE BEEN THE SENTENCE, BUT I BELIEVE THE WAY THEY ALLEGED IT WAS THAT WOULD BE THE SENTENCE TODAY. I DON'T THINK THEY SAID THAT WOULD BE THE SENTENCE THEN. BUT I AM NOT SURE.

WHAT IS YOUR POSITION ABOUT HOW DID THE TRIAL JUDGE TREAT THESE TWO ISSUES, THE BRADY ISSUE AND THE GIGLIO ISSUE? WHAT DID THE TRIAL JUDGE, WHAT IS YOUR POSITION AS TO HOW THE TRIAL JUDGE DISPOSED OF THOSE TWO ISSUES?

WELL, I MEAN, HE OBVIOUSLY DISPOSED OF THEM IN FAVOR OF THE STATE.

DO YOU AGREE, THOUGH, OTHER THAN JUST DENYING THEM, THAT HE DID NOT DISCUSS THESE ISSUES IN HIS ORDER?

HE DIDN'T GO INTO DETAIL, REGARDING THE ISSUES IN HIS ORDER. THAT IS BASICALLY WHAT HE DID WAS DENY THEM.

WHAT DID HE DO?

HAVING HEARD THE EVIDENCE, YOU KNOW, AT THE EVIDENTIARY HEARING.

SO WE HAVE NO IDEA OF HIS REASONING.

HE DIDN'T EXPLICATE IT IN HIS ORDER. THAT'S CORRECT.

HE WENT INTO SOME DETAIL ABOUT THE OTHER CLAIMS. THAT IS WHY WE ARE ASKING. THIS IS A FAIRLY DETAILED ORDER AS TO THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM, AND I CAN'T EVEN TELL, FROM LOOKING AT THIS ORDER, WHERE THE JUDGE LOOKED AT THIS, WHICH AT LEAST LOOKS LIKE IT NEEDS EVALUATION. I MEAN WE ARE SAYING, YOU ARE SAYING IT MIGHT HAVE BEEN INSIGNIFICANT OR SIGNIFICANT, AND WE CAN REVIEW THESE CLAIMS INDEPENDENTLY, BUT I JUST-HE THIS WAS A FAIRLY -- I JUST -- THIS WAS A FAIRLY SIGNIFICANT PART OF THE EVIDENTIARY HEARING, WAS IT NOT?

YES, IT WAS ONE OF THE ISSUES AT THE EVIDENTIARY HEARING, AND OF COURSE THE JUDGE HEARD ALL OF THE EVIDENCE, AND THEN HE ENTERED HIS ORDER AND HE FOUND THAT THERE WAS NO BASIS FOR RELIEF AT THIS TIME.

BUT, AGAIN, THERE IS NOT EVEN ANYTHING WHERE HE USES THE WORD BRADY OR GIGLIO. HE TALKS ABOUT STRICKLAND FOR FOUR PAGES.

WHAT WAS THE DEFENDANT ANSWERS ASSERTION, AS YOU CAN -- THE DEFENDANT'S ASSERTION, AS YOU CAN RECALL, RELATIVE TO WHETHER OR NOT HE GOT THESE LETTERS OR HAD ACCESS TO THESE LETTERS?

THE TRIAL COUNSEL CASS? FIRST OF ALL, HE WAS AT A MAJOR DISADVANTAGE AT THE EVIDENTIARY HEARING, AS HE TESTIFIED TO, BECAUSE CCR HAD HAD HIS TRIAL FILE FOR TEN YEARS. THEY HAD NOT GIVEN HIM ACCESS TO IT TO REVIEW IT BEFORE THE EVIDENTIARY HEARING. HE COULDN'T REMEMBER A LOT OF WHAT HAD HAPPENED. MANY YEARS BEFORE, IT HAD BEEN TEN YEARS SINCE HE HAD HAD THE FILE, AND HE SAID AS MUCH. HE SAID MY OPINIONS AND STRATEGY DECISIONS BACK IN '88 WERE A LOT BETTER THAN THEY ARE HERE, TESTIFYING ON DIRECT, AND THEN, BETWEEN THE DIRECT AND CROSS-EXAMINATION OF TRIAL COUNSEL CASS, THE STATE WAS ABLE TO GET THE FILE FROM C COUNTERCCR. CAST SKIMMED THROUGH IT -- FROM CCR. CAST SKIMMED THROUGH IT IN -- CASS SKIMMED THROUGH IT, IN THE TIME THAT HE HAD, AND ON SOME OF THE POINTS HE WAS ABLE TO CLARIFY THEM, MORE, ON CROSS.

WAS THERE EVER A DEFINITIVE STATEMENT BY COUNSEL THAT I KNOW I DIDN'T GET THESE LETTERS?

I DON'T RECALL A DEFINITIVE STATEMENT THAT I KNOW I DIDN'T. I KNOW I RECALL THAT HE SAID I CAN'T REMEMBER HAVING SEEN THEM. I RECALL THAT HE INDICATED THAT, AT SOME UNSPECIFIED TIME IN SOME UNSPECIFIED CASES, HE FELT HE HAD HAD SOME PROBLEMS, UNSPECIFIED, AGAIN, WITH THE STATE'S OPEN FILE POLICY. HE HAD TO TESTIFY IN VAGUE TERMS BECAUSE HE DIDN'T HAVE ANYTHING TO REFRESH HIS RECOLLECTION IN THE CASE, AND IT WAS TEN YEARS OLD.

THE PROSECUTOR TESTIFIED THE SAME WAY, DID HE NOT? MR. STARK?

SOME OF HIS TESTIMONY, ALSO, WAS VAGUE, DUE TO THE PASSAGE OF TIME. THAT'S CORRECT.

BUT HE DID TESTIFY, DEFENSE ATTORNEY DID, IN FACT, SAY, IF I HAD HAD THESE LETTERS, I WOULD HAVE USED THEM.

HE DID SAY THAT, AND I BELIEVE HE SAID THAT ON DIRECTION, AND THAT WAS BEFORE HE HAD

HAD TIME, BECAUSE WHEN WE GOT TO CROSS-EXAMINE, IF YOU WILL LOOK AT THE FILE, HE HAD BEGUN TO REMEMBER MORE, HAVING SKIMMED THROUGH THE TRIAL FILE, ABOUT WHAT WENT ON.

DID HE CHANGE THAT TESTIMONY?

I DON'T REMEMBER HIM SPECIFICALLY CHANGING THAT TESTIMONY. I DON'T REMEMBER HIM BEING ASKED ABOUT THAT FURTHER. HE WAS ASKED ABOUT A NUMBER OF OTHER THINGS, AND HE DID CHANGE SOME OTHER THINGS, WHEN HE, AFTER HAVING SKIMMED THROUGH IT AND BEING ASKED ABOUT QUESTIONS ON CROSS.

ANYTHING ABOUT THIS ISSUE? DID HE CHANGE ANYTHING ON THIS ISSUE?

ON WHETHER HE HAD SEEN THE LETTERS? I DON'T SPECIFICALLY REMEMBER IF HE DID OR NOT. YOUR HONOR.

I BELIEVE THAT IS ALL THAT WE HAVE. UNLESS YOU HAVE ANY FURTHER QUESTIONS, WE WILL RELY ON OUR BRIEF AND THE RESPONSE TO THE HABEAS PETITION.

AS SOON AS WE FIND THAT IT WAS INFORMATION THAT WOULD CONSTITUTE BRADY MATERIAL THAT WAS NOT DISCLOSED, ORALITYTIVELY THAT IT CONSTITUTES EVIDENCE UNDER GIGLIO, COULD YOU ADDRESS THOSE TWO STANDARDS AND TELL US HOW, EVEN IF YOU FIND THAT, IS IT THE STATE'S POSITION THAT IT WOULD NOT MEET THE SECOND OR THIRD PRONG OF EITHER BRADY OR GIGLIO?

THAT'S CORRECT. IN OUR PLEADINGS THAT WE FILED BEFORE THE COURT, WE ALLEGE THAT IT WOULD NOT MEET THE MATERIALITY STANDARD.

EXPLAIN WHY THAT WAS, WHY THAT WOULDN'T BE VERY POWERFUL IMPEACHMENT.

MR. CASS IMPEACHED MR. McDONALD VERY HEAVILY AT TRIAL, ANYWAY. HE IMPEACHED HIM WITH PRIOR CONVICTIONS, 15-YEAR SENTENCE, THE BANK FRAUD SCHEME AND HE HAD JUMPED BAIL AND FLED. HE GOT OFF ON AN INSTANT MURDER, THE TECHNICALITY, THE SPEEDY TRIAL THING. HE HAD BEEN INVOLVED IN OTHER ILLEGAL ACTS. HE LIED UNDER OATH AT DEPOSITION SO HE IMPEACHED HIM.

SO HE SHOWS A DEFENSE LAWYER THAT WAS USING WHATEVER HE COULD TO IMPEACH HIM, BUT YET THIS KEY INFORMATION THAT WOULD HAVE IMPEACHED HIM ON SAYING THAT HE WAS TESTIFYING, NOW, OUT OF THE GOODNESS OF WANTING TO MAKE IT RIGHT, COULD HAVE BEEN SIGNIFICANTLY IMPEACHED, IF THE JURY KNEW, IN FACT, NO, HE WAS TESTIFYING, BECAUSE IF HE DIDN'T TESTIFY, HE WOULD HAVE BEEN SUBJECT TO ANOTHER FIVE-YEAR SENTENCE.

I DON'T BELIEVE THAT THAT WAS KEY TO IMPEACHING McDONALD. I THINK HE HAD ALREADY SUCCESSFULLY IMPEACHEDMENT. HE HAD DONE ALL THE DAMAGE, BASICALLY, HE WAS GOING TO BE ABLE TO DO.

BUT THOSE THINGS THAT HE WAS IMPEACHED WITH, DO THEY, REALLY, GO TO HIM HAVING ANY KIND OF MOTIVE TO LIE ABOUT MR. VENTURA? THAT SEEMS, TO ME, TO BE THE ESSENCE OF WHAT THIS ALLEGED GIGLIO CLAIM IS ALL ABOUT, IS THAT THIS DEMONSTRATES SOMETHING IN ADDITION, BECAUSE IT ACTUALLY GOES TO A MOTIVE FOR LYING ABOUT VENTURA.

I BELIEVE HE DID. NOW THAT YOU MENTION IT, JUSTICE QUINCE, THAT HE DID GET SOME STATEMENTS FROM McDONALD THAT HE HAD SOME FEELINGS OR -- OF RANCOR TOWARD VENTURA FOR, PERHAPS, HAVING GIVEN INFORMATION IN THE FEDERAL BANK SCHEME, SO HE DID BRING SOME OF THAT OUT, BUT, AGAIN, I SUBMIT THAT THERE WAS -- WOULD HAVE BEEN

DANGER WITH HIM BRINGING FORT THIS DEAL, BECAUSE UNDER THE TERMS OF THE DEAL, McDONALD ONLY GETS SOMETHING IF HE TELLS THE TRUTH, SO THEREFORE HE WAS ENHANCING THE LIKELIHOOD THAT WHAT McDONALD WAS SAYING AT TRIAL WAS TRUTHFUL, BY PUTTING ON EVIDENCE OF THIS DEAL, AND FURTHERMORE, THE STATE'S POSITION IS THAT WE DIDN'T HAVE TO HAVE McDONALD TO CONVICT VENTURA. WE HAD THREE CONFESSIONS, ESSENTIALLY, FROM VENTURA. ONE TO BARRETT, ONE TO PIKE, ONE TO --

THAT IS NOT WHAT HIS LETTER SAID, DID IT? I THOUGHT THE PROSECUTOR'S LETTERS, HERE, SAID WE HAVE GOT TO HAVE THIS GUY, AND PLEASE DO ANYTHING THAT YOU CAN TO HELP US GET HIS COOPERATION. IS THAT RIGHT OR NOT?

THE PROSECUTOR'S LETTER, OF COURSE, WAS PRETRIAL, BEFORE THE EVIDENCE WAS ACTUALLY PRESENTED.

HOW MANY LETTERS WERE THERE?

I BELIEVE THERE WERE -- I DON'T KNOW. I KNOW THERE WAS MORE THAN ONE LETTER BACK AND FORTH BETWEEN THE TWO OF THEM.

THE LETTERS SAY WHAT THEY SAY.

THE PROSECUTOR INDICATES -- THAT'S CORRECT. AND HE INDICATED THAT HE BELIEVED HE WAS A SIGNIFICANT WITNESS, AND HE WAS A SIGNIFICANT WITNESS, BUT HE WASN'T CRITICAL TO THE CONVICTION. WE HAD THREE CONFESSIONS TO PIKE AND TO BARRETT AND TO ARVIDA, THAT WERE INDEPENDENT OF McDONALD'S TESTIMONY, SO WE ASK YOU TO UPHOLD THE TRIAL COURT'S ORDERS IN THIS CASE.

THANK YOU. COUNSEL.

THANK YOU, YOUR HONOR. AS I SAID, THERE WAS TESTIMONY FROM DETECTIVE HUDSON AT THE TRIAL THAT THEY COULDN'T GET A CONVICTION AGAINST ONE WITHOUT THE OTHER. PETER VENTURA POSTED A BOND, AFTER HE WAS ARRESTED, AND THEN JUMPED BOND, HIMSELF, AND JACK McDONALD SAT PAT IN JAIL, UNTIL SPEEDY TRIAL EXPIRED, AND HE ESCAPED PROSECUTION ON THIS CHARGE BECAUSE OF THE EXPIRATION OF SPEEDY TRIAL. AT THAT TIME, LET ME BACK UP A MINUTE, REGINALD BARRETT AND JOSEPH PIKE WERE THE VERY INFORMANTS IN THE FEDERAL BANK SCAM WHO WERE WORKING FOR POSTAL INSPECTOR EDBERGER. IT WAS THEIR INFORMATION THAT LED TO THE ARREST OF THESE TWO INDIVIDUALS, SO THE STATE HAD, AT THE TIME THAT McDONALD WAS SITTING IN JAIL, THE INFORMATION FROM JOSEPH PIKE AND REGINALD BARRETT. THEY HAD THEM AVAILABLE TO TESTIFY, AND THEY THREW IN THE TOWEL.

THE REASON THEY LET THE SPEEDY TRIAL EXPIRE ON McDONALD WAS THEY FELT THEY COULDN'T GET A CONVICTION ON McDONALD WITHOUT VENTURA?

THEY COULDN'T GET A CONVICTION.

WHERE IS THAT IN THE RECORD? WAS IT IN THE RECORD?

IT IS CITED IN THE BRIEF. IT WAS IN THE DIRECT APPEAL, AND IT IS QUOTED IN THE REPLY BRIEF, I THINK, ON ABOUT THE SECOND OR THIRD PAGE.

BUT WE HAVE -- WE KNOW, FROM THIS RECORD, WHAT INFORMATION BARRETT AND PIKE HAD AGAINST VENTURA. YOU KNOW, THE TELEPHONE CALLS IN -- THE CONVERSATIONS IN CHICAGO, ET CETERA. BUT WHAT DO WE KNOW ABOUT WHAT BARRETT AND PIKE KNEW ABOUT McDONALD? IN REGARDS TO THIS MURDER. NOT THE BANK FRAUD BUT THIS MURDER.

I KNOW SOME THINGS, BECAUSE I LOOKED AT JERRY WRIGHT'S TRIAL TRANSCRIPT.

BUT IN THIS RECORD, WE DON'T HAVE ANYTHING THAT TELLS US WHAT -- THAT PIKE AND BARRETT COULD HAVE HAD WITNESSES IN A PROSECUTION AGAINST McDONALD FOR THIS MURDER?

SURE. THEY WERE TAILORED TOWARDS THE VENTURA TRIAL, OBVIOUSLY, BUT WHAT I AM SAYING IS THAT THEY WERE THE INFORMANTS WHO WERE USED TO ARREST BOTH OF THEM AND WHO LED TO THE STATEMENT WE COULDN'T GET A CONVICTION AGAINST ONE WITHOUT THE OTHER, WITHOUT SPEAKS FYING ONE WITHOUT THE OTHER. I DO WANT TO RESPOND TO ONE THING, ESPECIALLY WHAT SHE TALKED ABOUT, ABOUT TESTIMONY-SPECIFIC IMPEACHMENT, AS OPPOSED TO GENERAL IMPEACHMENT, AND THE LANGUAGE OF THE SAN PHILLIP-LINE OF CASES THAT I TALKED -- SAN FILIPO LINE OF CASES THAT I TALKED ABOUT. THE ONLY CASE SENSITIVE TESTIMONY OF IMPEACHMENT SAID HERE, WHERE DEFENSE COUNSEL SAID DON'T YOU HARBOR SOME FEELINGS OF RANCOR AGAINST MR. VENTURA, BECAUSE OF THE BANK SITUATION? THE ANSWER, THERE, WAS, QUOTE, NONE WHATSOEVER. THAT IS IT. EVERYTHING ELSE IS SHADY BACKGROUND, ON THE PART OF McDONALD.

LET ME ASK YOU THIS. IN RESPECT TO THE CALL THAT WENT TO THE VICTIM BY THE ALIAS NAMED WAS IT MART SNIN.

ALEX MARTIN. YES, SIR -- MARTIN?

ALEX MARTIN. YES, SIR.

WASN'T IT ESTABLISHED IN THIS RECORD THAT THAT WAS AN ALIAS USED BY VENTURA?

I AM SORRY.

BY VENT AIR?

IT HAS NEVER BEEN ESTABLISHED THAT VENTURA EVER USED THAT ALIAS. NO. IF I AM UNDERSTANDING WHAT YOU ARE SAYING. I DON'T -- I AM NOT SURE I AM UNDERSTANDING WHAT YOUR QUESTION IS.

MY QUESTION WAS, THERE IS SOME INDICATION IN THE BRIEFS THAT THE CALL THAT WAS THAT WAS MADE TO THE VICTIM TO GET THE VICTIM TO COME TO THE BARNETT BANK IN DELAND, WAS MADE BY SOMEBODY NAMED MARTIN.

RIGHT.

AND THAT THAT PERSON WAS -- THE USE OF THAT NAME WAS ESTABLISHED TO HAVE BEEN BY VENTURA, AND I JUST WANTED TO CLARIFY THAT IN MY MIND.

IT WAS ESTABLISHED, IF YOU BELIEVE EVERYTHING McDONALD SAID AT TRIAL, AND THAT IS THE ONLY WAY IT WAS EVER ESTABLISHED. OTHER THAN THAT YOU HAVE SOMEONE WHO WAS ALEX MARTIN MAKING THE CALL, BUT IT IS IN THE RECORD, AND I APPRECIATE YOUR BRINGING THAT UP, THAT TINA CLEMENTE, THE VICTIM'S WIDOW, SAID THAT ALEX MARTIN WAS THE ONE THAT MADE THAT CALL THAT LED TO THE MEETING, AND SHE SAID HER HUSBAND SHOWED UP AT THE STORE A COUPLE OF TIMES WITH PETER VENTURA, SO THE TWO KNEW EACH OTHER, SO WHY IN THE WORLD WOULD VENTURA USE A FAKE NAME? THAT IS A FACTUAL POINT THAT IS ADDRESSED IN THE BRIEF. I AM GLAD THAT YOU BROUGHT THAT UP. WITH REGARD TO WHAT OCCURRED AT THE EVIDENTIARY HEARING, COLLATERAL COUNSEL, THERE, CITED GIGLIO, ARGUED GIGLIO, PROVED UP THE LETTERS THROUGH THE PROSECUTOR, AND ASKED THE PROSECUTOR DO YOU RECOGNIZE AN OBLIGATION TO CORRECT FALSE TESTIMONY THAT YOU

HAVE KNOWINGLY HE LISTED? SO -- ELICITED? SO THE GIGLIO ISSUE WAS CALLED UP AND PROVED BEFORE THE COURT, AND AS NOTED, THE COURT DID NOT ADDRESS IT, AND THERE IS ONE THING I DON'T THINK I AM GETTING ACROSS. MY POSITION IS THAT THE PROSECUTOR, WHAT HE MAY HAVE SAID OR WHAT HE MAY NOT HAVE SAID AT THE EVIDENTIARY HEARING, HAD NO INTENTION OF TURNING OVER THOSE LETTERS. WE HAVE A SERIES OF LETTERS, WHERE THE PROSECUTOR, FIRST, WAS ASKING THE FEDERAL GOVERNMENT TO GO BACK ON THE SENTENCE THAT HAD ALREADY BEEN IMPOSED, PROBATION, WAS VIRTUALLY PLEADING WITH THE FEDS TO GIVE THEM SOME SORT OF DEAL THAT THEY COULD WORK WERE TO CONVINCE McDONALD TO TESTIFY. McDONALD, HIMSELF, WHILE HE WAS STILL A FUGITIVE, HAD WRITTEN TO SAY, IN HIS WORDS, IF, BY SOME FLUKE I AM APPREHENDED WITHOUT A DEAL, I WILL ROT IN HELL BEFORE I GIVE YOU ANY TESTIMONY IN THIS CASE. THAT IS A PROMISE. THOSE ARE McDONALD'S WORDS, AND THOSE ARE INCLUDED IN THE LETTERS. EVENTUALLY THE LETTER IN QUESTION, AND THERE ARE SOME TALKS ABOUT THAT. IT IS FROM MR. VALUCAS, OF THE U.S. ATTORNEY'S OFFICE, TO MR. STARK, SHOULD MR. McDONALD FAIL TO TESTIFY TRUTHFULLY IN THAT CASE OR IN SOME OTHER WAY FAIL TO COOPERATE WITH YOUR OFFICE, WE WILL, THEN, BE FREE TO PURSUE BOND-JUMPING CHARGES, AND THE LETTER THAT PROMPTED THIS ONE BY RETURN MAIL FROM MR. STARK, I AM SORRY, WAS TO FORMALLY REQUEST THAT YOU REDUCE BOND-JUMPING CHARGES, AND IN THAT SAME LETTER, I BELIEVE HE INCLUDED A REQUEST THAT YOU SEND A COPY OF THE JUDGMENT AND CONVICTION, SO THAT HE COULD COMPLY WITH OUR STATE DISCOVERY RULES. NOW, I KNOW THIS IS STRONG LANGUAGE, BUT I AM SAYING THAT MR. STARK KNOWINGLY COMMITTED PERJURY IN THIS CASE. HE KNEW WHAT HE WAS DOING.

YOU HAVE TO CONCEDE, THOUGH THAT, IN ORDER, IN A BRADY SITUATION, THE BURDEN IS UPON THE DEFENDANT TO SHOW THAT EVIDENCE HAS BEEN SUPPRESSED BY THE STATE, EITHER WILLFULLY OR INADVERTENTLY. THAT IS ONE OF THE PRONGS OF BRADY. WOULD YOU AGREE?

ABSOLUTELY. YES, YOUR HONOR. OF COURSE I DON'T HAVE TO PROVE WHAT I JUST SAID, IN ORDER TO OBTAIN RELIEF UNDER GIGLIO, BUT I AM, ALSO, WITH REGARD TO BRADY I JUST SAID WHAT I HAVE SAID. I HAVE SAID SAID THAT THE PROSECUTOR NEVER HAD ANY INTENTION OF TURNING OVER THOSE LETTERS AND DID NOT TURN OVER THOSE LETTERS, BUT THERE WAS, ALSO, A SUPPRESSION OF EVIDENCE, FOR BRADY PURPOSES, AT THE MOMENT THE PROSECUTOR ASKED MR. McDONALD ANY DEALS BEEN MADE TO GET YOU TO TESTIFY HERE? ANSWER, NONE WHATSOEVER. QUOTE END QUOTE. THERE WAS A SUPPRESSION THAT OCCURRED RIGHT THERE, AND, OF COURSE, DEFENSE COUNSEL WAS NOT UNDER A DUE DILIGENCE OBLIGATION AT THAT POINT IN THE TRIAL, BECAUSE ALL HE COULD DO WOULD BE TO RERING THE BELL. I AM SUPPOSED TO STOP.

THANK YOU.

THANK YOU.

COUNSEL. THANKS TO BOTH OF YOU.