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Francis Dufresne v. State of Florida

NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS DUFRESNE VERSUS STATE. MR. CHIEF JUSTICE

COUNSEL. JUSTICE HARDING WAS CORRECTING MY FRENCH, WHICH IS SPOKEN WITH AN ALABAMA ACCENT. WOULD YOU GIVE ME THE CORRECT PRONUNCIATION.

IT IS DUFRESNE. MR. CHIEF JUSTICE

DUFRESNE. MY HAT IS OFF TO JUSTICE HARDING. HCKED THAT UP AT WAKE FOREST NO DOUBT.

MY NAME IS MICHAEL DUBINER. I AM REPRESENTING DUFRESNE DUFRESNE, AND THE CASE IS HERE BECAUSE THE FOURTH DISTRICT COURT OF APPEALS CERTIFIED, AS A QUESTION OF GREAT PUBLIC IMPORTANCE, WHETHER FLORIDA STATUTE 827.03 IS UNCONSTITUTIONAL BECAUSE IT IS VAGUE IN USING THE PHRASE MENTAL INJURY, WITHOUT DEFINING THAT PHRASE. BRIEFLY, GO THROUGH THE FACTS OF THE CASE, MY CLIENT IS A SCHOOL TEACHER. SHE WAS ACCUSED OF VARIOUS ACTS. THE ACTS IN QUESTION HERE INCLUDE, IN THE STATE'S STATEMENT OF PARTICULARS BELOW, IN COUNT TWO, SCREAMING AT A CHILD OR TELLING A CHILD THE CHILD WAS BAD.

THIS CASE REALLY BOILS DOWN TO WHETHER OUR RECENT DECISION IN FUCHS APPLIES.

THAT'S CORRECT.

AND WHAT DEFECTIVE IT IS.

THAT'S CORRECT.

WOULD YOU TELL US WHY THIS CASE IS DISTINGUISHED.

FUCHS DID NOT SET OUT A STANDARD WHICH SAID WHENEVER TERMS OF USED IN ANOTHER STATUTE. THOSE DEFINITIONS ARE INCORPORATED INTO THE STATUTE IN QUESTION. THERE ARE NUMEROUS CASES WHERE STATUTES ARE READ IN PARRY MAKETER YEAH. IN -- IN MARIMATERIAN FUCHS THIS COURT SAID, BECAUSE THERE IS NO DEFINITION OF CHILD IN NEED OF SERVICES OR DELINQUENCY, THAT DOES NOT MAKE THE STATUTE VAGUE. IN THAT CASE, THOSE ARE TERMS OF ART. THE FUCHS COURT, THE LOWER COURT IN FUCHS, SAID THOSE ARE CLEARLY TERMS OF ART. THERE IS NO OTHER DEFINITION, WITHIN THE STATUTE OR WITHIN THE CASE LAW. IN THIS CASE, THE TERM IS MENTAL INJURY. AND IN EFFECT, WHAT IS BEING ARGUED AND WHAT IS THE FOURTH DISTRICT COURT OF APPEALS, IN ITS SECOND DECISION, SAID WE CAN TAKE A CRIMINAL STATUTE, 827.03, WHERE MENTAL INJURY IS NOT DEFINED, AND LOOK TO A CIVIL STATUTE, CHAPTER 39, WHICH HAS NOTHING TO DO WITH THE STATUTE IN QUESTION. CHAPTER 39 DEALS WITH DEPENDENCY DEPENDENCY. IT DEALS WITH SHELTER. IT DEALS WITH HOW TO TERMINATE PARENTAL RIGHTS, AND IN EFFECT WHAT THEY ARE READING THIS FUCHS DECISION TO MEAN IS THAT YOU CAN LOOK AT WHATEVER STATUTE USES THOSE TERMS AND INCORPORATE THAT DEFINITION INTO THE CRIMINAL STATUTE IN QUESTION, AND THEREFORE AVOID THE VAGUENESS ARGUMENT.

WELL, THE CRIMINAL STATUTE DOES REFER TO MENTAL INJURY TO A CHILD. IS THAT CORRECT?

THAT'S CORRECT.

CHAPTER 39 DOES HAVE SOMETHING TO DO WITH CHILDREN, DOES IT NOT?

IT DOES.

IT IS NOT AS IF IT WAS IN THE MOTOR VEHICLE LN LAW.

IT COULD JUST AS WELL BEEN IN THE MOTOR VEHICLE LIEN OR LAND LAW STATUTES. CHAPTER 39 DOES NOT DEAL WITH CRIMINAL CASES, CRIMINAL PENALTIES. IN EFFECT WHAT IT IS, IS AN INTERFAMILY STATUTE. WHAT HAPPENS IF FAMILIES ABUSE ABANDONED OR NEGLECT -- ABUSE, ABANDON OR NEGLECT CHILDREN. HOW DO YOU TERMINATE PARENTAL RIGHTS. WHAT HAPPENED BELOW IS SO SIGNIFICANT IN TERMS OF DEFINING THE VISIONNESS HERE. WHEN THE MOTION TO DISMISS WAS FILED, ARGUING VAGUENESS, THE PROSECUTOR IN THIS CASE DID NOT SAY LOOK TO CHAPTER 39 FOR THE DEFINITION OF MENTAL ILLNESS. THE ATTORNEY GENERAL, IN ARGUING BEFORE THE FOURTH DISTRICT COURT OF APPEALS, DID NOT SAY LOOK TO CHAPTER 39. THE FOURTH DISTRICT COURT OF APIECE, IN ITS FIRST OPINION, WHICH WAS WITHDRAWN THE NEXT DAY BECAUSE OF FUCHS, DID NOT SAY THERE IS CHAPTER 39 AND THERE IS A DEFINITION OFENTL INJURY.

I NOTICE THAT THE STANDARD JURY INSTRUCTIONS DO PICK UP ON THIS DEFINITION, THOUGH, AND HAVE, FOR SOME TIME, WITH REFERENCE TO THIS CRIMINAL STATUTE. IS THAT CORRECT?

THAT'S CORRECT. HOWEVER, I WOULD SUGGEST THAT THOSE STANDARD CRIMINAL INSTRUCTIONS WERE DESIGNED AS A RESULT OF A PRIOR STATUTE, PRIOR CHILD ABUSE STATUTE, WHICH DID HAVE A DIF DEFINITION. IN OTHER WORDS -- WHICH DID HAVE A DEFINITION. IN OTHER WORDS WHAT HAPPENED WAS THE STATUTE DID HAVE A DEFINITION, AND THEN DID NOT HAVE A DEFINITION, AND THOSE JURY INSTRUCTIONS, I WOULD SUGGEST, WERE DESIGNED WHEN THE STATUTE DID HAVE A DEFINITION. WE CANNOT EXPECT PEOPLE, ORDINARY, COMMON, EVERYDAY PLE, TO DETERMINE THE MEANING OF A STATUTE, WHEN NOBODY ELSE CAN, WHEN THE COURTS CANNOT, WHEN THE PROSECUTOR IN THE CASE CANNOT MAKE THAT DETERMINATION. MANY --

ARE YOU SAYING, THEN, BECAUSE THE STATUTE NO LONGER HAS THE DEFINITION BUT THE JURY INSTRUCTIONS STILL HAVE A DEFINITION, THAT THE DEFINITION IS NOT APPLICABLE? BECAUSE IT IS NO LONGER IN THE STATUTE?

THERE IS NO DEFINITION. WHAT I AM SAYING IS THAT THE STATUTE IS VAGUE, AND THEREFORE VIOLATIVE OF DUE PROCESS, BECAUSE THERE IS NO DEFINITION. WE CANNOT TELL, THIS COURT CANNOT TELL NOR CAN A TRIAL COURT TELL, WHETHER OR NOT THE STANDARD JURY INSTRUCTION DEFINITION IS THE DEFINITION THAT IS REQUIRED UNDER THE STATUTE, BECAUSE THE LEGISLATURE HAS NOT TOLD US WHAT THE DEFINITION IS. THEY SIMPLY HAVE SAID MENTAL INJURY. THEY COULD HAVE AND SHOULD HAVE DEFINED THAT TERMINOLOGY.

WE HAVE TO HAVE A DEFINITION THAT, FROM THE LEGISLATURE OR CAN WE USE A DEFINITION -- OBVIOUSLY THE STANDARD JURY INSTRUCTIONS HAVE SOME FORCE AND EFFECT, SO WHY IS IT IMPROPER IT USE THAT DEFINITION?

BECAUSE THAT DEFINITION IS A DEFINITION THAT A ROSE OUT OF ANOTHER STATUTE FROM ANOTHER TIME. WHAT WE HAVE HERE IS THE STATUTE THAT MAKES NO DEFINITION. IF I COULD JUST --

I MEAN, I AM REALLY STRUGGLING WITH WHY THAT SHOULD MAKE A DIFFERENCE. IT SEEMS TO ME THAT WHAT THAT ADDS TO THE WHOLE CASE IS THAT THIS DEFINITION HAS BEEN AROUND FOR A WHILE. AND MAYBE BECAUSE IT HAS BEEN, WE DON'T NEED TO HAVE IT REDEFINED IN THE

STATUTE.

WELL, I WOULD RESPECTFULLY DISAGREE, BECAUSE THE DEFINITION IN THE STANDARD JURY INSTRUCTIONS WAS AROUND, BECAUSE OF ANOTHER STATUTE, WHICH HAD THAT DEFINITION. THAT STATUTE NO LONGER EXIST THES, SO THAT DEFINITION NO LONGER EXIST THES.

I THOUGHT THAT THE STATUTE HAD JUST BEEN MOVED TO CHAPTER 39, AND SO THAT THE STANDARD JURY INSTRUCTION AND THE DEFINITION IN CHAPTER 39 ARE PRETTY MUCH THE SAME. ARE THEY NOT?

THE CHAPTER 39 CONTAINS A DEFINITION OF MENTAL INJURY, AND THE FOURTH DISTRICT COURT OF APPEALS INDICATES THAT IT WENT FROM ONE PLACE TO ANOTHER. THERE IS NO INDICATION ANYWHERE THAT --

WHAT I AM ASKING NOW, THOUGH, WE ARE JUST TALKING ABOUT THE JURY INSTRUCTIONS, THERE IS A STATUTE IN CHAPTER 39 THAT DEFINES MENTAL INJURY. IS THAT CORRECT?

THAT'S CORRECT.

AND THE STANDARD JURY INSTRUCTION THAT WE ARE DISCUSSING NOW, PRETTY MUCH MIRRORS THE DEFINITION THAT IS IN CHAPTER 39 NOW. IS THAT CORRECT, TOO?

THAT'S CORRECT.

I REALIZE THAT IT IS MOOT, AND -- WHAT PRINCIPLE WOULD YOU HAVE US APPLY, IF THERE IS A PRINCIPLE THAT WE CAN APPLY, TO SOLVE THIS RIDDLE? THAT IS OF WHEN THERE DOES APPEAR TO BE A DEFINITION AT SOME POINT, YOU KNOW, IN THE STATUTES, BUT IT IS NOT IN THE CRIMINAL STATUTE THAT SETS OUT THE DEFINITION OF THE CRIME. YOU KNOW. HOW -- OBVIOUSLY IN FUCHS, WE HAVE ALREADY LOOKED TO ANOTHER STATUTE. WE FOUND, YOU KNOW, THAT IT IS RELATED, AND THAT IT IS PROBABLY THE LOGICAL PLACE THAT ANYBODY WOULD GO, AND SO I GUESS MAYBE THAT IS MY QUESTION TO YOU. WHY WOULDN'T IT BE LOGICAL TO GO TO CHAPTER 39 AND USE THAT DEFINITION?

BECAUSE THE STATUTES ARE IN NO WAY INTERRELATED. MY CLIENT WOULD HAVE NO WAY OF KNOWING TO LOOK TO A CIVIL STATUTE THAT HAS NOTHING TO DO WITH HER ALLEGED CRIMINAL ACTIVITY.

DOESN'T IT HAVE TO DO, THOUGH WITH THE PROTECTION OF CHILDREN?

IN GENERAL TERMS, YES. THE STATUTE --

DOESN'T THE CRIMINAL STATUTE HAVE TO DO WITH PROTECTION OF CHILDREN?

YES. THEY BOTH --

THEY BOTH DEAL WITH PROTECTING CHILDREN. ONE PROTECTING A CHILD FROM MENTAL INJURY, OKAY, AND THE OTHER, VERY BROAD STATUTORY SCHEME, TO PROTECT THEM IN ALL KINDS OF WAYS.

WELL, CHAPTER 39 TALKS ABOUT HOW TO PROTECT THEM IN THE HOME AND HOW TO REMOVE THEM FROM THE HOME, HOW TO TERMINATE PARENTAL RIGHTS. IT DOES NOT TALK ABOUT CHILD ABUSE IN THE SENSE THAT A THIRD PARTY OUTSIDER IS LOOKING TO MAKE A DEFINITION OR LOOKING TO PROTECT THEMSELVES OR NOT. IF I COULD JUST GIVE YOU A COUPLE OF EXAMPLES FROM THE TRIAL COURT ORDER DISMISSING THIS CASE, THE TRIAL COURT ASKED THE PROSECUTOR, IN THE CASE, IF A CHILD IS HUMILIATED, IS THAT A FELONY, UNDER THIS STATUTE?

AND THE PROSECUTOR RESPONDED THAT IS A JURY QUESTION. THE PROSECUTOR WAS ASKED, IS A PARENT CALLING A CHILD STUPID PROSECUTABLE AS A FELONY UNDER THIS STATUTE, AND THE PROSECUTOR HONESTLY ANSWERED, I CANNOT ANSWER THIS. A JURY HAS TO DECIDE T.

BUT ISN'T THAT A FRUSTRATION WITH THE DEFINITION OF MENTAL INJURY, AS OPPOSED TO WHERE IT IS LOCATED?

THE WHOLE POINT IS, I WOULD RESPECTFULLY SUGGEST, THAT THIS PROSECUTOR, THIS JUDGE, THE ATTORNEY GENERALS, THE FOURTH DISTRICT COURT OF APPEALS, DID NOT KNOW WHERE TO LOOK, BECAUSE THERE IS NO NEXUS. IN THE CASES THAT THIS COURT HAS DECIDED, WHERE STATUTES ARE DETERMINED IN PARIMATERIA, AND PERHAPS THIS WILL ANSWER YOUR QUESTION, IF STATUTES ARE REFERENCED, ONE REFERENCING THE OTHER, THEN THEY CERTAINLY CAN BE, THEY CAN USE THE DEFINITION FROM ONE TO ANOTHER, OR IF THEY ARE CLOSELY INTERRELATED. FOR EXAMPLE IF, UNDER 827, THERE WAS A DEFINITION OF MENTAL INJURY, THAT IS THE CHILD ABUSE STATUTE, THERE WAS A DEFINITION OF MENTAL INJURY IN ONE OF THE STATUTES, ONE COULD COMMONLY BE ASSUMED TO LOOK TO THE OTHER STATUTE FOR THAT DEFINITION. ONE CANNOT BE EXPECTED TO GO FROM A CHILD ABUSE STATUTE, WHICH DOES NOT DEFINE MENTAL INJURY, TO A JUVENILE STATUTE, A CIVIL STATUTE, WHICH HAS NOTHING TO DO WITH 827, AND IT BE EXPECTED TO LOOK TO WHERE THIS DEFINITION IS. AND NOBODY ELSE DID, BEFORE THIS COURT SAID, IN FUCHS, YOU CAN LOOK TO ANOTHER STATUTE.

EXCUSE ME. YOU SAY THERE IS NO OTHER FLORIDA CASE THAT SAYS YOU CAN'T LOOK TO OTHER STATUTES FOR A DEFINITION?

NO, SIR. I AM SORRY. IF THAT IS WHAT I SAID THAT, IS NOT AT ALL WHAT I MEANT. YOU CAN CERTAINLY LOOK TO CASE LAW. YOU CAN LOOK TO DICTIONARIES, IN FACT.

BUT YOU CAN NOT LOOK TO STATUTES? THAT IS YOUR POSITION?

AND YOU CAN LOOK TO OTHER STATUTES, IF THERE IS SOME INTERRELATIONSHIP BETWEEN THE STATUTES. YOUR COURT, YOUR RULINGS, WITH REGARD TO --

WELL, ISN'T THAT THE ISSUE, REALLY, THAT WE GET DOWN TO IT, IS WHETHER THERE IS A SUFFICIENT RELATIONSHIP BETWEEN CHAPTER 39 AND THIS CRIMINAL STATUTE, AS FAR AS PROTECTING CHILDREN, THAT THERE IS A SUFFICIENT RELATIONSHIP THAT YOU COULD REASONABLY EXPECT SOMEONE TO BE ON NOTICE THAT THERE IS A DEFINITION IN THAT CHANTER?

I WOULD SUGGEST THAT THAT IS ONE WAY OF PHRASING THE ARGUMENT AND YES, SIR. THAT -- IS THERE A SUFFICIENT NEXUS? AND I WOULD SUGGEST, IN LOOKING TO WHAT THE COMMON MAN, WHAT THE COMMON UNDERSTANDING, WHAT SOMEBODY, A REASONABLE PERSON WOULD DO, YOU WOULD LOOK TO EXACTLY WHAT HAPPENED BELOW. YOU WOULD LOOK TO WHAT THE PROSECUTOR IN THE CASE DID OR DID NOT DO OR KNEW OR NOT TO DO. THE TRIAL JUDGE AND THE FOURTH DISTRICT COURT OF APPEAL AND THE ATTORNEY GENERAL'S OFFICE BEFORE FUCHS. NOBODY KNEW TO LOOK TO CHAPTER 39, IN DEFINING, A CIVIL STATUTE, IN DEFINING 827, BECAUSE THERE IS NO RELATIONSHIP. NUMBER ONE, THERE IS NO REFERENCE TO CHAPTER 39, CHAPTER 39 DEALS WITH ISSUES THAT HAVE NOTHING TO DO WITH THE THIRD PARTY ALLEGATION FOR CHILD ABUSE.

BUT IN FUCHS, THE ONLY THING THAT HAD OCCURRED IS THAT THE LEGISLATURE HAD REMOVED A SENTENCE FROM THE STATUTE AND HISTORICALLY THEY HAD ALWAYS LOOKED TO THOSE STATUTES FOR THOSE DEFINITIONS. NOW, WHAT IS THE SITUATION HERE? DO WE HAVE ANYTHING SIMILAR TO THAT?

I WOULD SUGGEST NOT. I WOULD SUGGEST THE DIFFERENCE BETWEEN FUCHS AND THIS CASE IS,

IS THAT IN FUCHS, WHEN YOU ARE TALKING ABOUT DEPENDENCY, WHEN YOU ARE TALKING ABOUT CHILDREN IN NEED OF SERVICES, WHEN YOU ARE TALKING ABOUT DELINQUENCY, YOU ARE TALKING ABOUT SPECIFIC TERMS OF ART, AS I BELIEVE IT WAS THE FIFTH DISTRICT OUT OF APPEALS -- COURT OF APPEALS INDICATED IN FUCHS, YOU ARE TALKING ABOUT TERMS THAT YOU CANNOT LOOK TO ANY OTHER PLACE, OTHER THAN STATUTES AND CASE LAW. IF YOU GO TO LOOK TO TER 39, YOU WILL FIND A DEFINITION OF MENTAL INJURY. IF YOU LOOK IN PERSONAL INJURY CASES, YOU WILL FIND OTHER DEFINITIONS OF MENTAL INJURY. WHAT YOU ARE ASKING THE COMMON PERSON TO DO IS SEARCH, THROUGHOUT THE STATUTES AND THE CASE LAW, AND I WOULD SUGGEST THAT YOU ARE GOING TO COUP WITH MULTIPLE DEFINITIONS -- TO COME UP WITH MULTIPLE DEFINITIONS AND WEBSTERS DOESN'T HAVE A DEFINITION OF WHAT MENTAL INJURY IS. BLACK'S LAW DOESN'T HAVE A DEFINITION OF WHAT MENTAL INJURY IS, AND THE CASE LAW IS REplete WITH DEFINITIONS THAT ARE DIFFERENT. WHY? CHAPTER 39. THE ONLY NEXUS IS THAT THAT IS THE ONLY PLACE WHERE MENTAL INJURY, IN THE STATUTES, IS MENTIONED, AND I WOULD SUGGEST THAT THE COMMON PERSON SHOULD NOT BE REQUIRED TO NOR WOULD THEY LOOK TO CHAPTER 39, IN ORDER TO DETERMINE THE MEANING OF MENTAL INJURY AND AN EXTRAORDINARILY VAGUE TERM, UNDER CHAPTER 27. I WOULD LIKE TO RESERVE THE REST OF MY TIME, IF I COULD. MR. CHIEF JUSTICE

THANK YOU.

MAY IT PLEASE THE COURT. GEORGE I KNOW A JIMINEZ -- ---GEORGINA JIMINEZ-OROSA, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE. I WILL GET RIGHT TO THE POINT. THE DEFINITION OF MENTAL INJURY IN THE UTE, THAT WHEN HIS COURT, N197, DECIDED THAT ALTHOUGH IT WAS VAGUE. SINCE THEN THE DEFINITION WAS TAKEN OUT, AND IT IS NOW THE DEFINITION THAT THIS COURT FOUND TO BE NOT VAGUE IN 1979, IN CHAPTER 39.

WHAT IS THE TEST FOR VAGUENESS?

YOUR HONOR, I WOULD SAY THAT THE PROBLEM WITH THIS CASE IS THAT, WHEN THE DEFENDANT MADE THE MOTION TO DISMISS IN THE TRIAL COURT, THEY WERE MAKING A FACIAL VAGUENESS ARGUMENT, NOT PER SE THAT THE DEFINITION OF MENTAL INJURY WAS NOT IN THE STATUTE. AND THE TRIAL COURT DID NOT MAKE A STUDY OF WHAT THE FACTS WERE, TO SEE WHETHER FACIALLY IT WOULD APPLY TO THIS DEFENDANT, BUT JUST WENT ON HYPOTHETICALS.

BUT THE DISTRICT COURT DEALT WITH VAGUENESS.

THEN THE DISTRICT COURT WENT TO SAY THAT THE TRIAL COURT HAD FOUND, BECAUSE THE TRIAL COURT, IN THE SENTENCE, SAID IT IS, THE DEFINITION, MENTAL INJURY GOES UNDEFINED, SO THE TRIAL COURT, THE FOURTH DISTRICT COURT OF APPEALS SAID IT IS NOT OVERBROAD AND WE ARE NOT DEALING WITH THAT BUT THE TRIAL COURT FOUND MENTAL INJURY NOT TO BE DEFINED, AND THAT IS THE BASIS FOR, JUST TO SAY THAT IT IS VAGUE.

DOESN'T THIS SITUATION IN THIS STATUTE, REALLY, DIFFER FROM FUCHS, IN THAT IN FUCHS, WE WERE CONFRONTED WITH THE FACT THAT THE LEGISLATURE HAD DELETED THIS PHRASE IN THE STATUTE, AND THAT IT, AS TO, AS REFERENCED BY LAW OR WHATEVER THE PHRASE WAS, AND THAT THERE WERE, IN THE STATUTES, VARIOUS THINGS THAT WERE EASILY IDENTIFIED AS HAVING TO DO WITH THE DEPENDENCY, HAVING TO DO WITH DELINQUENCY, HAVING TO DO WITH FAMILIES IN NEED OF SERVICES. BUT HERE, YOU HAVE TO REVERT TO A PROVISION IN 39.01, AND THE STATUTE SPECIFICALLY SAYS WHEN USED IN THIS CHAPTER. THAT THIS IS THE DEFINITION OF MENTAL INJURY. NOW, AN ORDINARY PERSON IS READING THAT, ARE THEY GOING TO BELIEVE THAT THAT IS WHAT MENTAL INJURY MEANS, WHEN IT IS USED IN THIS CHAPTER? CHAPTER 39. NOT THIS OTHER LAW.

YOUR HONOR, I WOULD SAY THAT THIS IS RIGHT IN LINE WITH FUCHS AS JUSTICE ANSTEAD SAID EARLIER, BECAUSE THE DEFINITION OF MENTAL INJURY, WHICH IS STILL THE SAME DEFINITION,

WAS IN THE SAME STATUTE BACK IN '79. THE DEFINITION HAS NOT CHANGED. IT WASN'T IN THE STATUTE THAT WE ARE LOOKING AT BACK IN '79, WHEN THIS COURT, IN REICHER, SAID IT WAS NOT VAGUE. THEN WAS TAKEN OUT. SO I BELIEVE IT IS RIGHT ON POINT WITH FUCHS.

BUT DON'T WE HAVE TO LOOK AT THE STATUTE ON A VAGUENESS CHALLENGE, ON THE BASIS OF WHAT IT WAS AT THE TIME THAT THE PERSON WAS BEING PROSECUTED?

ABSOLUTELY.

AND SO I AM STRUCK BY WHAT JUDGE KLEIN SAYS IN HIS CONCURRING OPINION. I MEAN, WHAT IS THE TEST OF SOME CITIZEN, IN COMBING THROUGH THE STATUTES, AND MAKING A DETERMINATION AS TO WHERE TO FIND A DEFINITION OF MENTAL INJURY?

BECAUSE MENTAL INJURY, THE DEFINITION WAS THERE, IN '79, AND IT HAS NOT, THE DEFINITION HAS NOT CHANGED AND IS STILL CONSISTENT, LIKE THIS COURT SAID IN FUCHS, LIKE THIS COURT JUST RECENTLY, IN BRAKE, SAID THE SAME THING. YOU CAN LOOK AT THE STATUTE. THE DEFINITION HAS NOT CHANGED. STILL IN 39, LIKE JUSTICE ANSTEAD KEEPS POINTING TO, IT DEALS WITH CHILDREN. THE DEFINITION, THIS IS THE SAME DEFINITION THAT WAS THERE IN '79. IT HAS NOT CHANGED, AND IT CAN BE LOOKED AT. THE TRIAL COURT DID NOT LOOK AT IT, ALLEGEDLY BECAUSE THE PROSECUTOR DIDN'T SHOW, DIDN'T REFER TO IT. HAD THE PROSECUTOR REFERRED TO IT, THEN IT WOULD HAVE CHANGED EVERYTHING. I DON'T BELIEVE SO. IT WAS THE DUTY OF THE TRIAL COURT, WHEN THE FOURTH DCA GOT AHOLD OF IT AND RESPECTED OH, WE CAN LOOK TO THE STATUTES IN PARIMATERIA TO FIND THE DEFINITION. THEN THEY FOLLOWED THE STANDARD, WHICH THIS COURT REMINDED THE BAR AND THE FOURTH DCA THAT WE CAN LOOK FOR DEFINITIONS IN THE STATUTES TO SUPPLY THE DEFINITION, AND IT CLEARED EVERYTHING UP, AND THAT IS, IF YOU READ THE FIRST OPINION, THAT CAME OUT IN, ON SEPTEMBER 13, AND YOU COMPARE IT TO THE OPINION BEFORE THIS COURT RIGHT NOW, YOU SEE THAT, HAD THE PROSECUTOR OR I POINTED OUT THAT THE DEFINITION IS THE SAME, THAT FIRST OPINION WOULD NEVER HAVE COME OUT. SO FUCHS DID NOT SET A NEW STANDARD. FUCHS JUST SAYS THIS IS WHAT YOU DO, UNDER PROPER STATUTORY CONSTRUCTION RULES, AND APPLYING THOSE RULES, THE FOURTH DISTRICT COURT OF APPEAL PROPERLY DECIDED THIS CASE.

YOUR OPPONENT RAISES THE ISSUE, THOUGH, OF JUST HOW FAR CAN WE EXPECT PEOPLE TO BE ON NOTICE, AND UNRELATED STATUTES THAT MAY CONTAIN DEFINITIONS, WHEN THEY ARE PUT ON NOTICE BY THE CRIMINAL STATUTE, MAKING CERTAIN CONDUCT CRIMINAL, AND SO HOW, WHAT KIND OF A TEST WOULD YOU HAVE US APPLY? FOR INSTANCE JUSTICE WELLS, IN READING THE CHAPTER 39 DEFINITION, THERE, SAYS THESE DEFINITIONS ARE DEFINITIONS TO BE USED IN CHAPTER 39. THE IMPLICATION BEING EX-INCLUDES I FEEL IN CHAPTER 39 -- EXCLUSIVELY IN CHAPTER 39. WHAT KIND OF A TEST CAN YOU PERCEIVE THAT WOULD PUT PEOPLE NOTICE THAT THEY NOT ONLY HAVE TO LOOK FOR THE DEFINITION OF THE CRIME THAT THEY MAY BE CHARGED WITH, IN ORDER TO GET A DEFINITION OF THE CRIME, BUT THEY, ALSO, HAVE TO SEARCH THE STATUTE BOOKS TO FIND OTHER DEFINITIONS FOR THE TERMS USED IN THE CRIMINAL STATUTE.

WELL, YOUR HONOR, THE, WHAT THE STATUTE IS, NEEDS TO BE CLEAR AS TO THE CONDUCT. AND IN READING YESTERDAY, TRYING TO PREPARE MYSELF, I WAS LOOKING AT THE DOCTRINE, AND LIKE THIS COURT SAID IN FUCHS AND, AGAIN, IN BRAKE, IF, THE STATUTE JUST NEEDS TO BE CLEAR AS TO THE CONDUCT. IF THE QUESTION ARE A RISES TO A LAY PERSON, WHERE THEY HAVE TO GO TO COLEEHER THE STATUTE APPLIES, THEN IT IS REALLY THE ATTORNEY'S RESPONSIBILITY TO FIND THE STATUTE. SO THEREFORE, REALLY, THE STATUTE IS CLEAR AS TO WHETHER THIS, THE CONDUCT OF THIS DEFENDANT APPLIES, AND SO IF, THEN, IT COMES TO THE COUNSEL, THE COURT, TO SEE WHETHER THE DEFINITION CAN BE FOUND. AND JUST NOTICE IS WHAT THE STATUTE NEEDS TO BE CLEAR ON, AS TO THE LAY PEOPLE, AND THEN FROM THEN ON, WHETHER THE STATUTE IS CONSTITUTIONAL OR NOT IS GOING TO BE TAKEN UP BY THE COURTS AND

COUNSEL'S INTERPRETATION OF WHERE MENTAL INJURY SHOULD BE FOUND.

SO HERE YOU WOULD SAY THE CONDUCT WOULD BE THE INFLICTION OF INJURY ON A CHILD. IS THAT?

ABSOLUTELY, YOUR HONOR, AND I THINK THAT IS THE PROBLEM IN THIS CASE, THAT, REALLY, WHAT THEY WERE TRYING TO DO IS WAS HER CONDUCT SUFFICIENT TO CAUSE MENTAL INJURY? NOT WHETHER, WHAT THE DEFINITION OF MENTAL INJURY IS, SO THAT IS A FACIAL VAGUENESS ARGUMENT, WHICH HAS NEVER REALLY BEEN CONDUCTED. BECAUSE YOU HAVE TO LOOK AT HER CONDUCT, NOT THE HYPOTHETICAL THAT THE TRIAL COURT OR THE DISTRICT COURT REALLY LOOKED TO, TO DECIDE WHETHER THIS IS APPLICABLE TO HER OR NOT. AND THAT IS WHERE ANOTHER, ANOTHER TIME. SO MY ARGUMENT, REALLY, IS THAT THE DEFINITION HAS ALWAYS BEEN HERE. THIS COURT HAS SAID THAT MENTAL INJURY IS NOT VAGUE. BACK IN 1979, IN REICHER. SINCE THE FOURTH DISTRICT COURT OF APPEAL HELD THIS STATUTE AFTER LOOKING AT THE PROPER STATUTORY CONSTRUCTION OF THIS STATUTE, I DON'T BELIEVE THAT THIS COURT EVEN NEEDS TO ACCEPT JURISDICTION AND SHOULD JUST SEND THE CASE BACK DOWN FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH THE FOURTH DISTRICT COURT'S OPINION -- WITH THE FOURTH DISTRICT COURT'S OPINION. IF THERE ARE NO OTHER QUESTIONS, I WOULD URGE THE COURT TO AFFIRM AFFIRM. THANK YOU, YOUR HONOR. MR. CHIEF JUSTICE

THANK YOU. REBUTTAL.

I WOULD LIKE TO RESPOND TO A COUPLE OF QUESTIONS AND ISSUES THAT WERE BROUGHT UP. I WOULD LIKE TO GO BACK TO YOUR QUESTION OF WHAT THE TEST SHOULD BE, AND HAD A COUPLE OF NOTES THINK ABOUT. NUMBER ONE, I THINK IF THE FACTS REFERENCED, THEN CERTAINLY THAT WOULD BE PART OF IT, IT WOULD DEFEAT A VAGUENESS ARGUMENT, OR IF THE STATUTES ARE SO CLOSELY RELATED AS TO BE IN PARIMATERIA WITH EACH OTHER, THEN THE STATUTE WOULD NOT BE DEFEATED FOR VAGUENESS ISSUES.

WHAT IS THE EFFECT OR HOW SHOULD WE CONSIDER THE FACT THAT THERE WAS, AT SOME POINT, A DEFINITION FOR MENTAL INJURY IN THE STATUTE?

I AM SAYING THIS RESPECTFULLY BUT AT ONE TIME THERE WAS PROHIBITION, AND NOW THERE IS NOT, AND I WOULD SUGGEST TO THE COURT THAT THE COMMON CITIZEN SHOULD NOT LOOK AT STATUTES THAT HAVE SINCE BEEN REPEALED, TO MAKE A DETERMINATION AS TO WHAT A DEFINITION OF A STATUTE IS. IN OTHER WORDS, THE STATUTE IS WHAT IT IS TODAY, AND WHAT A DEFINITION WAS AT SOME OTHER TIME, SHOULD NOT MATTER. REICHER WAS DECIDED WAY BACK WHEN. THE STATUTE, THIS COURT UPHELD THE DEFINITION OF MENTAL INJURY, BECAUSE THERE WAS A DEFINITION BACK THEN. THE FACT THAT THERE WAS ONE BACK THEN DEFEATED VAGUENESS BACK THEN BUT CERTAINLY DOES NOT DEFEAT VAGUENESS NOW, WHEN THERE IS NO --

WHEN WAS IT TAKEN OUT OF THE STATUTE?

I BELIEVE IT WAS CHANGED IN 1995 OR 1996. I AM NOT SURE ON EXACTLY WHEN -- I AM NOT CLEAR ON EXACTLY WHEN THAT WAS.

THERE IS NO ARGUMENT TO BE MADE THAT MENTAL ILLNESS, UNLIKE OTHER TERMS, SUCH AS THE ONE IN FUCHS BECAME SUCH A TERM OF ART THAT WE DIDN'T NEED TO HAVE IT?

I WOULD SUGGEST NOT, AND IN PART, BECAUSE OF THE QUESTIONING THAT WENT ON AND THE CONFUSION OF THE JUDGE, AND TO THIS DAY, YOU KNOW, THE STATEMENT OF PARTICULARS SAYS MY CLIENT SCREAMED AT AN AUTISTIC STUDENT. IS THAT VAGUE? EXCUSE ME. IS THAT CHILD ABUSE OR IS THAT NOT? THAT IS THE PROBLEM WITH THIS STATUTE. WE DON'T KNOW. GOING BACK TO CHIEF JUSTICE, AS YOU POINTED OUT, 39.01, INDICATES THAT THE DEFINITION OR AS-

USED IN THIS CHAPTER, SOMEBODY OF ORDINARY INTELLIGENCE, LAWYERS, JUSTICES, ARE NOT GOING TO ASSUME THAT, WHEN A PHRASE LIKE THAT IS USED IN DEFINITIONS, THAT YOU ARE TO USE THAT TERM IN OTHER CHAPTERS.

WE HAVEN'T ALWAYS, CERTAINLY, HONORED A RULE LIKE THAT, THOUGH HAVE WE? THAT IS WE HAVE GOT MANY CRIMINAL STATUTES WITH REFERENCE O THE MOTOR VEHICLE LAWS AND HER SUTORY SCHEMES IN ALMOST EVERY SEPARATE CHAPTER OF THE STATUTES, WHEN THEY GIVE DEFINITIONS, IT USUALLY HAS THAT PREPARATORY STATEMENT ABOUT WHEN USED IN THIS STTE, BUT THAT HASN'T PREVENTED US FROM CROSS-REFERENCING CRIMINAL STATUTES INVOLVING MOTOR VEHICLE LAWS TO THOSE MOTOR VEHICLE CHAPTERS, HAS IT?

IT HAS NOT, AND THE REASON, IN YOUR CASES, MANY OF THESE CASES WERE DETERMINED OR MANY OF THE PHRASES WERE DETERMINED NOT TO BE VAGUE OR THE STATUTES WERE DETERMINED NOT TO BE VAGUE, SIMPLY BECAUSE THE STATUTES WERE CLOSELY RELATED. YOU HAD THE MIAMI DOLPHINS CASE. YOU HAD A SITUATION WHERE IT WAS DEALING WITH ONE TAX AND ANOTHER TAX, AND THE STATUTE WAS REFERENCED. THERE ARE A NUMBER OF CASES WHERE YOU HAVE SAID THEY ARE IN PARI MATERIA, SIMPLY BECAUSE THEY ARE PUT ON NOTICE. HERE NO ONE IS PUT ON NOTICE.

AGAIN, DO YOU BELIEVE THAT TO BE THE KEY? THAT IS THERE A SUFFICIENT RELATIONSHIP THAT WOULD PUT SOMEBODY ON NOTICE TO GO LOOK IN CHAPTER 39?

THAT'S CORRECT, AND I WOULD SUGGEST THAT THE FACTS HERE SHOW THAT THAT RELATIONSHIP IS NOT PRESENT. WE ARE ASKING THAT THIS COURT DETERMINE THAT 827.03, AS IT RELATES TO MENTAL INJURY ONLY, BE DETERMINED TO BE VAGUE AND IN VIOLATION OF DUE PROCESS, AND IF THERE ARE NO OTHER QUESTIONS. MR. CHIEF JUSTICE

THANK YOU, COUNSEL. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE. THE COURT WILL TAKE ITS MORNING RECESS. THE COURT WILL BE IN RECESS FOR 15 MINUTES.