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State of Florida v. Victor Giorgetti

MARSHAL: 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 UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING AND WELCOME. WE DO HAVE OTHER PROCEEDINGS AFTER THIS ORAL ARGUMENT, AND WE INVITE TO YOU STAY AND JOIN THOSE PROCEEDINGS. ALL RIGHT W THAT, WE WILL GO RIGHT TO STATE VERSUS GEORGETTI.

GOOD MORNING. MAY IT PLEASE THE COURT. DOUGLAS GLAID, Z ASSISTANT ATTORNEY GENERAL AND REPRESENTING THE STATE OF FLORIDA. THE DEFENDANT FAILED TO REPORT HIS ADDRESS WITHIN 48 HOURS, IN VIOLATION OF THE SECTION GOVERNING. PRIOR TO TRIAL HE CHALLENGED THE CONSTITUTIONALITY OF THE SEXUAL OFFENDER STATUTE, SINCE IT DID NOT INCLUDE INTENT OR MEN'S REA REQUIREMENTS.

CAN YOU TELL US WHAT NOTICE THAT THIS DEFENDANT HAD THAT IS IN THE RECORD, OF THE DUTYTY TO REGISTER?

YOUR HONOR, WE HAVE TESTIMONY THAT WAS DEDUCED DURING TRIAL, THAT HE WAS TOLD THAT HE HAD TO REGISTER.

BY THE PROBATION OFFICER?

CORRECT. IT WAS ESSENTIALLY, IT SEEMED LIKE IT WAS A PROBATIONARY VIOLATION HEARING. IT HAD THAT SENSE TO IT IN THE TRIAL, BUT --

BUT HE TESTIFIED THAT HE WASN'T TOLD, CORRECT? HE TESTIFIED THAT HE WASN'T TOLD.

CORRECT, YOUR HONOR.

AND THE JURY INSTRUCTION ASSUMED THAT HE COULD BE CONVICTED WITHOUT NOTICE.

CORRECT.

SO WREFTH -- SO WE HAVE GOT TO ASSUME THAT THERE WAS NO NOTICE GIVEN.

YES, YOUR HONOR. I THINK THE ISSUE HERE GOES TO THE CERTIFIED QUESTIONS --

CORRECT.

RIGHT. WHETHER INTENT OR MENS REA IS AN ELEMENT FOR THIS OFFENSE.

WHETHER NOTE CYST REQUIRED. WHETHER HE NEEDS TO KNOW THAT HE HAS TO REGISTER. IS THAT RIGHT?

CORRECT. THAT WOULD BE PART OF THE KNOWLEDGE REQUIREMENT.

YOU ARE SAYING THAT, UNDER THE STATUTE, THAT HE DOESN'T NEED TO KNOW THAT HE HAS TO REGISTER, IN ORDER TO VIOLATE THE STATUTE, CORRECT?

AS IT IS WRITTEN OUT, YOUR HONOR. AS THE STATUTE IS WRITTEN NOW.

THAT IS THE STATE'S POSITION, IS THAT HE DOESN'T NEED TO KNOW.

CORRECT. I MEAN THERE, IS NO KNOWLEDGE REQUIREMENT. AND THE STATE WOULD SUBMIT THAT THAT WITHIN THE PROVINCE OF THE LEGISLATURE TO DETERMINE CORRECTLY WHETHER HE HAS TO HAVE KNOWLEDGE OR NOT, AND IT IS DETERMINED THEY DO NOT.

LET ME UNDERSTAND JUSTICE CANTERO'S QUESTION. THE JURY INSTRUCTION IN THE FOURTH DISTRICT'S OPINION SAYS THE STATE DOES NOT HAVE TO PROVE THE ELEMENTS OF INTENT NOR DOES THE STATE HAVE TO PROVE THE DEFENDANT ACTED WITH MALICIOUS OR WRONGFUL MENTAL ATTITUDE. NOW, WAS THERE ANOTHER INSTRUCTION OTHER THAN THAT, THAT SAID TO THE JURY, THAT THIS DEFENDANT DID NOT HAVE TO HAVE NOTICE THAT HE HAD TO REGISTER, OR IS THIS THE JURY INSTRUCTION THAT WAS BEING REFERRED TO?

THAT WAS THE SPECIAL INSTRUCTION REQUESTED BY THE STATE THAT WAS GIVEN, YOUR HONOR, CORRECT.

WAS THERE ANOTHER INSTRUCTION?

NOT THAT I AM AWARE OF, YOUR HONOR.

SO WHAT IS THE ACTUAL INTENT WE ARE TALKING ABOUT? IS IT HIS INTENT NOT TO ACTUALLY REGISTER, OR ARE WE TALKING ABOUT THE FACT THAT HE DID NOT KNOW HE HAD TO REGISTER? THOSE ARE TWO DIFFERENT THINGS. ONE IS WHAT HE SUBJECTIVELY WANTED TO DO OR DID NOT DO, AND THE OTHER IS WHETHER OR NOT HE KNEW HE NEEDED TO DO SOMETHING. SO ARE WE TALKING ABOUT TWO DIFFERENT INTENT ELEMENTS HERE?

THAT IS A GOOD POINT, YOUR HONOR. SEE, THAT THE PROBLEM WITH THE FOURTH DISTRICT'S OPINION, BECAUSE JUDGE FARMER, IN HIS MAJORITY OPINION, REALLY DOESN'T CLARIFY THAT, SO WE DON'T KNOW.

WHAT IS YOUR POSITION THOUGH. YOU ARE NOT SAYING THAT SOMEBODY CAN VIOLATE A LAW THAT REQUIRES SOMEONE TO DO SOMETHING, IF THEY DON'T KNOW THEY HAVE TO DO IT. IS THAT WHAT THE STATE'S POSITION IS?

WELL, YOUR HONOR, THERE ARE STRICT LIABILITY CRIMES. I MEAN, THERE IS A LOT OF CRIMES -- THERE ARE WHAT?

STRICT LIABILITY TYPE CRIMES.

LIKE WHAT?

WELL, AS FAR AS TRAFFIC OFFENSES.

NAME ONE THAT IS PASSIVE. HERE IS MY CONCERN, AND HAVING TRIED THIS AS A TRIAL JUDGE, IN DOING THESE PROBATION HEARINGS ALL THE TIME, IT WAS MY UNDERSTANDING THAT SEX OFFENDERS, WHEN THEY LEAVE THE PRISON SYSTEM, ARE, SIGN DOCUMENTS NOTIFYING THEM OF THEIR REQUIREMENT TO REGISTER. WHEN THEY ARE PUT ON PROBATION, THEY ARE SUPPOSED TO BE INSTRUCTED ON THE REQUIREMENTS. IT IS PART OF THE PROBATION ORDER. THEY SIGN THEM. I DON'T SEE ANYTHING THIS RECORD HAS BEFORE ME, AND WE ARE ASSUMING THE

QUESTION THAT HE HAD ANY CONSTRUCTIVE KNOWLEDGE, MUCH LESS ANY DIRECT KNOWLEDGE OF HIS OBLIGATION TO REGISTER. ON THIS RECORD, AND THAT IS MY CONCERN IN THE DECISION BEFORE US AND THE FACTS BEFORE US, IF WE CAN'T FIND ANYTHING IN THIS RECORD THAT HE WAS EVER PLACED ON ANY DUTY TO NOTIFY BEYOND THE PERIOD OF, TO REGISTER, BEYOND HIS PERIOD OF PROBATION.

YOUR HONOR, THERE IS TESTIMONY IN THE TRIAL RECORD, I SUBMIT THAT, HE KNEW THAT HE HAD TO REGISTER.

WHERE IS IT? BECAUSE THE ONLY THING I SEE IS IN THE FOOTNOTE ONE OF THE OPINIONS SAYS, BOTH THE PROBATION OFFICER AND HIS ATTORNEY TESTIFIED THAT THEY DID NOT ADVISE HIM THAT, EVEN THOUGH HIS PROBATION WAS TERMINATED, HE WOULD CONTINUE TO BE UNDER A DUTY TO REGISTER CHANGES IN HIS ADDRESS, AND THERE IS PLENTY OF CASE LAW IN OTHER JURISDICTIONS AND OTHER STATES THAT EITHER TALK ABOUT CONSTRUCTIVE NOTICE OR THE NOTIFICATION THAT IT IS A LIFETIME OBLIGATION TO REGISTER, AND THERE IS NOTHING IN THIS RECORD THAT I KNOW OF, AND THAT IS WHY I AM ASKING, OF WHAT NOTICE THIS DEFENDANT, ONCE HE WAS CONVICTED OF A SEX OFFENSE CRIME, EITHER AT CONVICTION, UPON RELEASE FROM PRISON, UPON BEING PLACED ON PROBATION AND INSTRUCTED OR OTHERWISE, WHAT INFORMATION IS THERE IN THIS RECORD THAT THIS DEFENDANT HAD DIRECT, IN DIRECT, CONSTRUCTIVE, OR ANY OTHER TYPE OF KNOWLEDGE OF A DUTY TO REGISTER.

YOUR HONOR, THE STATE'S POSITION IS THAT YOU DON'T HAVE TO REACH THAT ISSUE IN THAT CASE, BECAUSE THE ISSUE, THE STATE'S POSITION IS REQUIREMENT OF KNOWLEDGE AND THE STATUTE, YOU DON'T HAVE TO REACH YOUR QUESTION JUSTICE BELL.

HE ANSWERED ANYWAY?

NOT THAT I AM AWARE OF. I COULD BE WRONG. ANOTHER PROBATION OFFICER, I MEAN, THERE IS NOTHING IN THIS RECORD THAT SAYS, WHILE HE WAS ON PROBATION, THE PROBATION OFFICER ACTUALLY TOLD HIM ABOUT THIS REGISTRATION REQUIREMENT, BECAUSE THAT IS DIFFERENT FROM IF TOLD WHILE YOU ARE ON PROBATION, YOU HAVE TO REGISTER, AND THEN WHETHER OR NOT THAT CARRIED OVER TO HIS REGISTRATION AFTER HIS PROBATION WAS TERMINATED.

CORRECT.

IS THERE OR ISN'T THERE? I THOUGHT I HAD SEEN SOMEPLACE, WHERE HE WAS TOLD --

THAT IS MY RECOLLECTION, YOUR HONOR. THAT IS ALL I CAN ANSWER.

LET'S GET BACK TO THE STATE'S POSITION IS THAT IT WOULDN'T MATTER WHETHER, BECAUSE THAT WOULD HAVE BEEN A JURY ISSUE, IF THE ISSUE WAS DID HE KNOW OR SHOULD HE HAVE KNOWN.

CORRECT.

LET'S JUST ASSUME THAT, THE SITUATION, SOMEONE IS A SEXUAL PREDATOR AND THE LEGISLATURE SAYS THAT SEXUAL PREDATORS HAVE TO, FOR THE REST OF THEIR LIFE, THEY HAVE TO BE IN AT FIVE O'CLOCK EVERYDAY AND NOT LEAVE THE HOUSE UNTIL THE NEXT DAY. SOME, ARE YOU SAYING THAT WE COULD, THAT THE STATE COULD PASS A LAW THAT WOULD CONVICT SOMEBODY OF LEAVING THEIR HOUSE, WHICH WOULD ORDINARILY BE A NONCRIMINAL BEHAVIOR, WITHOUT THEIR BEING A REQUIREMENT THAT THE PERSON WAS PUT ON NOTICE OF THAT RESTRICTION ON THEIR BEHAVIOR?

THE STATE IS SAYING THAT, BY PASSAGE OF SUCH A STATUTE, A PERSON IS CONSTRUCTIVELY PUT ON NOTICE OF THAT REQUIREMENT, AND WHAT I HAVE NOT MENTIONED IS THERE ARE CASES

THAT HAVE HELD IN THE FOURTH AND FIFTH DISTRICT, THAT THESE TYPE OF OFFENSES ARE CALLED REGULATORY OFFENSES, TO BE DISTINGUISHED FROM THE MALAMAN SAY.

THOSE CASES ARE ADDRESSING IN THIS PARTICULAR STATUTE, THE REQUIREMENT ITSELF, AND NOT THE CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH THE REQUIREMENT. THEY ARE SAYING, WELL, THE FACT THAT YOU HAVE TO REGISTER, THAT IS A REGULATORY STATUTE. THEY ARE NOT SAYING THE FACT THAT YOU ARE GOING TO GET SEVEN YEARS IN PRISON MAKES IT A REGULATORY STATUTE ANYWAY. AND THERE ARE CASES, I DON'T SEE HOW YOU DISTINGUISH LAMBERT VERSUS CALIFORNIA, DAVIS VERSUS UNITED STATES AND OUR OWN CHICONE CASE FROM THIS CASE, BUT I MEAN, CAN YOU DISTINGUISH THOSE?

WELL, YOUR HONOR, I THINK YOU KNOW, WHAT I THINK THIS COURT HAS TO DEAL WITH IS THE PRECEDENT THAT WAS SET BY THIS COURT IN STATE VERSUS GRAY.

DON'T WE ALSO HAVE TO FOLLOW, IF THE U.S. SUPREME COURT SAYS IT IS A MATTER OF DUE PROCESS, SOMEONE WHO IS GOING TO BE CONVICTED OF A FELONY AND SPEND SEVERAL YEARS IN PRISON FOR VIOLATING THE LAW, SHOULD HAVE NOTICE THAT HE IS REQUIRED TO COMPLY WITH SOME REGISTRATION LAW, AS A MATTER OF DUE PROCESS. DON'T WE HAVE TO FOLLOW THE U.S. SUPREME COURT LAW?

YEAH. I WOULD AGREE WITH THAT, YOUR HONOR.

OKAY. THEN HOW DO YOU DISTINGUISH LAMBERT VERSUS CALIFORNIA AND DAVIS VERSUS UNITED STATES? LAMBERT WAS A REGISTRATION REQUIREMENT IN 1958 AND DAVIS WAS THE GUN REGISTRATION REQUIREMENT.

WELL, THE STATE WOULD SUBMIT THAT THOSE ARE MORE MALAMAN SAY OFFENSE, AS OPPOSED TO WHAT WE ARE DOING HERE, AS OPPOSED TO MALAMAN PROHIBITUM.

THE STATE SAYS THAT OWNING A GUN IS NOT MALAMAN SAY, AND THERE IS A NOTICE TO A GUN OWNER, BECAUSE NOT ALL GUNS HAVE TO BE REGISTERED, ONLY AUTOMATIC WEAPONS AND OTHER WEAPONS, AND THE MALAMAN SAY SAID THAT SIMPLY HAVING NOTICE THAT HE IS REQUIRED TO REGISTER A GUN DOES NOT REQUIRE THAT HE KNOW THAT HE HAD TO REGISTER A GUN. HOW DO YOU DISTINGUISH THAT FROM THIS CASE?

WHAT I WOULD BEG THE COURT TO DO IS LOOK BACK AT THE STATE VERSUS GRAY, WHICH I CITED IN MY SUPPLEMENTAL AUTHORITY, WHICH I BELIEVE IS DIRECTLY ON POINT, AS FAR AS HOW THIS COURT SHOULD ADD AN ELEMENT OR NOT ADD AN ELEMENT OR WHEN THE COURT HAS A POWER TO ADD AN ELEMENT INTO AN OFFENSE.

HOW DO YOU DISTINGUISH THIS CASE FROM CHICONE?

IT IS SIMPLE, YOUR HONOR, IN MY OPINION. CHICONE WAS CLEARLY A MALL A MAN SAY -- A MALAMAN SAY, AN INHERENTLY EVIL OFFENSE OF POSSESSION OF CONTROLLED SUBSTANCES, MARIJUANA, WHAT HAVE YOU, COCAINE, IN VIOLATION OF 893, AND TO GET BACK TO GRAY, YOU KNOW, WHAT THE GRAY CASE DEALT WITH WAS A WITNESS TAMPERING STATUTE. THE DCA ADDED AN ELEMENT, JUST LIKE THE COURT DID HERE. THEY ADDED THE ELEMENT TO THE WITNESS TAMPERING. AND THIS COURT HELD IN 1983, THAT UNLESS THE STATUTE WAS REQUIRED TO PROVE THE SIERNAN INTENT, IT WOULD RESULT IN THE PUNISHMENT OF INNOCENT PERSONS. THE PROBLEM WITH THE COURT'S ANALYSIS IS THE COURTS HAVE NO POWER, AGAIN, THE COURTS HAVE NO POWER TO CONDUCT INNOCENT, TO DECLARE INNOCENT, I AM SORRY, WHEN THE LEGISLATURE HAS DECLARED OTHERWISE. AGAIN, THE COURTS HAVE NO POWER TO DECLARE CONDUCT INNOCENT, WHEN, AND THAT IS EXACTLY WHAT THEY DID HERE.

THAT IS INNOCENT CONDUCT. WHAT WE ARE TALKING ABOUT HERE IS PASSIVE CONDUCT. EVERY

CITIZEN IN THE UNITED STATES HAS THE FREEDOM, BASICALLY, TO MOVE FROM ONE PLACE TO ANOTHER, AND THIS GENTLEMAN HERE, ABSENT ANY KNOWLEDGE, MOVED FROM ONE PLACE TO ANOTHER PLACE AND FAILED TO DO SOMETHING THAT WE HAVE NOTHING IN THE RECORD THAT HE HAD ANY NOTICE OF THE REQUIREMENT TO DO.

WELL --

IT IS PURELY PASSIVE.

I DON'T BELIEVE IT IS PURELY PASSIVE, JUDGE. I MEAN, AS FAR --

WHAT ACTIVE, UNLIKE IN THAT CASE, WHEN YOU ARE TAMPERING WITH A WITNESS, IN THE JUDICIAL CONDUCT, CONTEXT, THAT MAY IMPACT THE TRIAL.

CORRECT. YOU ARE SAYING THE DEFENDANT DIDN'T, HE FAILED TO DO SOMETHING.

IN THIS CASE, WHAT ACTIVE MORALLY OR OTHER CONDUCT, DID THIS GUY TAKE THAT WAS NEGATIVE? THAT HE WOULD BE UNDER ANY SENSE OF KNOWLEDGE TO KNOW THAT IT WAS WRONG TO MOVE FROM ONE PLACE TO ANOTHER, WITHOUT REGISTERING WITHIN 48 HOURS. I MEAN, I AM MOVING NOW AND I AM NOT REGISTERING.

THE STATE IS SAYING THAT IS NOT REQUIRED. YOU KNOW, THE KNOWLEDGE --

I REALIZE IT IS NOT REQUIRED, BUT DOES DUE PROCESS AND SIMPLE UNDERSTANDING OF FAIRNESS REQUIRE IT?

THE STATE'S POSITION IS, WHEN YOU ARE DEALING WITH REGULATORY OFFENSES AS WE ARE HERE, YOU DON'T NEED TO REQUIRE THAT.

SO YOU SEE, I THINK THIS ISSUE ABOUT REGULATORY OFFENSES, AND IT GOES BACK TO WHAT JUSTICE CAN'T CAPITAL WAS ASKING, IF THERE IS NO CRIMINAL PUNISHMENT FOR THIS REGULATORY OFFENSE, WHAT I AM HAVING TROUBLE UNDERSTANDING IS HOW WE WOULD HAVE CASE LAW, REALLY, THAT, IF WE EXAMINE IT, THAT WOULD SAY THAT, IF SOMEBODY DOES SOMETHING THAT MOST PEOPLE WOULD KNOW WOULD BE CRIMINAL, LIKE EVEN IN GRAY, TAMPERING WITH A WITNESS, THAT WE WOULD SAY, WELL, THERE YOU EITHER MIGHT OR MIGHT NOT NEED INTENT, BUT IF WE ARE GOING TO CRIMINALIZE, WITH A SUBSTANTIAL PENALTY, CONDUCT THAT WOULD ORDINARILY BE INNOCENT, HOW COULD THERE NOT BE AN INTENT REQUIREMENT CONSISTENT WITH DUE PROCESS? IN OTHER WORDS YOU ARE SAYING THE WORST THE CRIME IS -- THE WORST CRIME IS, THE MORE IMPORTANT IS THE INTENT, THE MORE LIKELY IT IS OF CRIMINAL CONDUCT, YOU COULD HAVE INTENT, BUT IF IT IS CONDUCT THAT COULD BE INNOCENT, YOU DON'T NEED INTENT TO CRIMINALIZE IT? IS THAT WHAT THE STATE IS SAYING?

JUDGE, AGAIN, THE FOCUS IS ON THE REGULATORY NATURE THAT YOU DON'T, IT IS WITHIN THE PROVINCE OF THE LEGISLATURE TO MAKE THESE DETERMINATIONS. THAT IS THE CAN KEY POINT I WANT TO MAKE HERE, IS THAT IT IS NOT, WITH ALL DUE RESPECT TO THE JUDICIARY, IT IS NOT WITHIN THE PROVINCE, AND THIS GOES TO JUDGE ROBEY'S DISSSENT IN THE FOURTH DISTRICT CASE, IT IS NOT THE PROVINCE OF THE JUDICIARY TO REWRITE THE LAWS OF THE STATE.

YOU SAID THERE WAS A CONSTITUTIONAL ATTACK ON THE STATUTE PRETRIAL.

CORRECT, YOUR HONOR.

IS THAT STILL UP HERE, AS FAR AS IF THE LEGISLATURE INTENDED TO HAVE THIS CRIME BE PUNISHMENTABLE AS A THIRD-DEGREE FELONY, WITHOUT ANYONE KNOW THEY HAD TO DO IT, THAT THAT WOULD BE A CONSTITUTIONALLY INFIRM STATUTE, IF THE LEGISLATURE DID INTEND

TO PASS IT WITHOUT ANY --

WELL, JUDGE, THAT ISSUE WASN'T DECIDED BY THE FOURTH DISTRICT. SEE, THEY JUST LIMITED THEIR DECISION TO THE PROPRIETY OF THE TRIAL, OF THE STATE'S SPECIAL INSTRUCTIONS, SO JUDGE FARMER, IN HIS MAJORITY OPINION, DID NOT REACH THE ISSUE, DIDN'T DECIDE THE CONSTITUTIONALITY OF THE STATUTE PER SE.

BUT I AM ASKING YOU, THOUGH, SO YOU ARE SAYING THAT WE CAN'T WRITE, WE CAN'T SAVE THE STATUTE BY WRITING IN A REQUIREMENT THAT, THAT IS WHAT I AM HEARING THE STATE SAYING, SO EITHER IF WE THINK THAT THERE HAS TO BE A REQUIREMENT CONSISTENT WITH DUE PROCESS, WE HAVE GOT, WOULD HAVE TO FIND THE STATUTE UNCONSTITUTIONAL.

WELL, JUDGE, YEAH, I PRESUME SO, BUT I DON'T KNOW THE PROCEDURAL POSTURE OF THIS CASE, WHERE I DON'T KNOW IF THE COURT CAN REALLY DO THAT, IN LIGHT OF THE WAY THIS CASE HAS COME BEFORE THE COURT. I WOULD HAVE TO RESEARCH THAT OR, IF YOUR HONOR WOULD WANT SUPPLEMENTAL BRIEFING ON THAT, BUT --

LET ME ASK YOU THIS, THE FOURTH DCA'S CERTIFIED QUESTION ASKS DOES CHICONE APPLY IN THESE CIRCUMSTANCES, AND THE CHICONE, WE SAID THAT THERE WAS A LONG STANDING PRINCIPLE IN COMMON LAW THAT WE READ A MENS REA REQUIREMENT INTO A STATUTE THAT PROVIDES FOR SUBSTANTIAL CRIMINAL PENALTIES FOR VIOLATION OF THE STATUTE. WHY ISN'T THIS CASE GOVERNED BY THAT ASPECT OF CHICONE?

YOUR HONOR, WE ARE NOT DEALING WITH A COMMON LAW OFFENSE HERE. WE ARE DEALING WITH --

CHICONE WAS A STATUTE AS WELL, AND WE APPLIED THAT PRINCIPLE TO A STATUTE.

WELL, AGAIN, AS I MENTIONED BEFORE, YOUR HONOR, I BELIEVE CHICONE IS STRICTLY MALL A MAN -- MALAMAN SAY, CLEARLY EVIL OFFENSES THAT WE ARE INVOLVED WITH, POSSESSION, DISTRIBUTION OF CONTROLLED SUBSTANCES. WE DON'T HAVE THAT SITUATION HERE.

SO IN CASES WHERE IT IS MALAMAN SAY, SO A DEFENDANT SHOULD KNOW ANYWAY THAT THEY ARE DOING SOMETHING WRONG, WE READ AN INTENT REQUIREMENT INTO THE STATUTE, BUT IN CASES WHERE A DEFENDANT ISN'T GOING TO KNOW THAT HE IS DOING ANYTHING WRONG, BECAUSE IT IS NOT MALMAN SAY, THEN WE DON'T READ AN INTENT REQUIREMENT INTO THE STATUTE? ISN'T THAT BACKWARDS?

NO, YOUR HONOR, I DON'T BELIEVE IT IS, IN LIGHT OF THE DICHOTOMY OF THE CRIMINAL STATUTES FROM THE REGULATORY STATUTE.

AND IN CHICONE, DIDN'T WE REJECT THAT DICHOTOMY BETWEEN MALAMAN SAY AND MALAMAN PROHIBITUM?

NO, YOUR HONOR, I DON'T BELIEVE THAT YOU DID, BUT IF YOU DID, THEN YOU SHOULD RETHINK THAT POSSESSION, AND AS FAR AS IN CHICONE, AS YOU KNOW, I SEE I AM RUNNING OUT OF TIME, IF I CAN FINISH THIS.

CHIEF JUSTICE: YOU CAN FINISH.

JUSTICE CANTERO, AS YOU WELL KNOW, 893.101, THE LEGISLATURE CAME OUT AND CLARIFIED ITS INTENT AND SAID, IN CHICONE, WE DIDN'T MEAN THAT WE DON'T WANT THERE TO BE AN INTENT. SO THAT IS WHAT WE HAVE HERE. SO UNLESS THE COURT HAS ANY QUESTIONS, I WOULD SAVE MY COUPLE OF MINUTES FOR REBUTTAL.

CHIEF JUSTICE: THANK YOU VERY MUCH.

GOOD MORNING. MY NAME IS DEA ABRAMSCHMITT, AND I AM THE ATTORNEY FOR THE RESPONDENT VICTOR GEORGETTI.

WHY ISN'T IT ENOUGH TO PUT THE DEFENDANT ON NOTICE? DO YOU HAVE TO GET A LETTER FROM THE SELECTIVE SERVICE TO KNOW THAT YOU MUST REGISTER TO DRAFT? WHY DOESN'T EVERYBODY HAVE NOTICE OF WHAT THE STATUTORY LAWS ARE AND WHY ISN'T THAT ENOUGH NOTE IS?

WELL, IF THAT WAS TRUE, THEY PROBABLY WOULD HAVE, THE U.S. SUPREME COURT IN LAMBERT, WOULD PROBABLY HAVE HELD THE SAME THING, BECAUSE THEY HAD AN ORDINANCE ON THE BOOKS. THE PERSON HAD LIVED THERE FOR YEARS AND YEARS, BEFORE SHE WAS, ACTUALLY THIS WHOLE THING CAME UP. I JUST, IT SCARES ME THAT WE COULD EVEN THINK ABOUT CRIMINALIZEING BEHAVIOR THAT NO ONE WOULD ORDINARILY THINK WAS --

ISN'T THAT A DIFFERENT ISSUE? I MEAN, THE ISSUE THAT I UNDERSTAND JUSTICE ANSTEAD WAS ASKING IS, YOU KNOW, AS YOUR OPPONENT WAS ABOUT TO SAY, I THINK, AND THE THING THAT I AM THINKING ABOUT, IF I AM DRIVING THROUGH A SCHOOL ZONE GOING 40 MILES AN HOUR, AND I AM PULLED BY THE TALLAHASSEE POLICE, I AM NOT ABLE TO SAY, YOU KNOW, I DIDN'T KNOW THAT THE SPEED LIMIT WAS 20 MILES PER HOUR.

EVERY SCHOOL ZONE I HAVE BEEN THROUGH, THEY HAVE GOT LITTLE SIGN POSTS THAT MAKE YOU FULLY AWARE OF SOMETHING LIKE THAT.

BUT IT DOESN'T SAY THAT IT IS AGAINST, IT SAYS THAT THE SPEED LIMIT IS 20 MILES AN HOUR THERE, BUT THIS IS NOT, UNDER THAT CONCEPT, REALLY, AN ISSUE OF INTENT. IT, IS IT? IT IS AN ISSUE OF NOTICE. IS THAT RIGHT?

AND WHAT YOU ARE TALKING ABOUT, AND IN THIS CASE, IT, I THINK OF IT AS A BROAD KNOWLEDGE REQUIREMENT THAT GEORGETTI'S OPINION WAS SAYING THAT THERE WAS A PROBLEM HERE, AND I, I AM SORRY. GO AHEAD. AND PARIENTE, I DEFINITELY TAKE THE POSITION THAT PARIENTE WAS TALKING ABOUT, THAT IT IS THE JUDICIARY'S POSITION, AND THIS COURT HAS EVEN SAID THAT IN CHICONE, THAT THAT IS THEIR JOB TO POSSIBLY READ IN, WHEN THE STATUTE IS SILENT ABOUT MENS REA, TO READ IN, ESPECIALLY IF IT WOULD SAVE IT FROM CONSTITUTIONAL CHALLENGE. WE HAVE GOT SERIOUS DUE PROCESS PROBLEMS HERE.

IT SEEMS TO ME, AND I WOULD LIKE FOR YOU TO DISCUSS THIS, THAT THIS CASE DOES SUBSTANTIALLY DIFFER FROM CHICONE, IN THAT IN CHICONE, THE ISSUE WASN'T WHETHER MR. CHICONE KNEW THAT POSSESSION OF COCAINE WAS AGAINST THE LAW. THE QUESTION THERE WAS WHETHER HE KNEW WHAT HE HAD WAS COCAINE, WAS IT NOT?

RIGHT, AND I THINK THAT IS THE DIFFERENCE BETWEEN OUR CASE HERE AND A SLIGHTLY DIFFERENT THING, BECAUSE EVEN IN CHICONE, THERE WAS ALWAYS, THE STATE ALWAYS HAD TO PROVE THAT THE PERSON KNEW THAT THEY POSSESSED SOMETHING. IT WAS MORE OF A SPECIFIC INTENT ISSUE, WHETHER THEY KNEW WHAT THE SUBSTANCE WAS, AND NOW THE STATUTE HAS COME OUT AND SAID YOU DON'T NEED THAT PART. I DON'T TAKE POSITION ON THAT PERSONALLY. I WONDER IF SOMEONE CHALLENGES THAT, IF IT WOULD PASS CONSTITUTIONAL MUSTER, BUT THAT IS NOT REALLY A GENERAL INTENT OR GENERAL KNOWLEDGE, BROAD TYPE OF KNOWLEDGE THAT YOU HAVE GOT, IF YOU ARE DOING SOMETHING PRO ACTIVE, YOU HAVE GOT AT LEAST AT SOME LEVEL, YOU KNOW THAT YOU ARE DOING THIS PARTICULAR ACT, WHETHER IT IS RUNNING GUNS OR DEALING IN HAND GRENADES OR ANY OF THE OTHER TYPES OF THINGS WHERE YOU ARE ACTIVELY DOING SOMETHING. THIS IS WHOLLY PASSIVE. YOU KNOW, TO SAY THAT, BECAUSE THERE IS A STATUTE ON THE BOOK THAT EVERYONE IS GOING TO GO THROUGH AND READ, LET ME SEE, IS BREATHING AGAINST THE LAW TODAY, IS, IF I WALK DOWN THE

STREET, IS THAT AGAINST THE LAW. THERE WAS NOTHING HERE TO PUT --

WHAT I AM HAVING DIFFICULTY WITH IS WHERE DO YOU DRAW THAT LINE? I MEAN, THE OLD MAXIMUM -- THE OLD MAX YOU MEAN THAT I GO -- THE OLD MAXIM THAT IGNORANCE OF THE LAW IS NO EXCUSE, HAS SOME DEGREE OF VALIDITY, BECAUSE THERE COULDN'T BE A WAY TO HAVE ORDER IN SOCIETY, IF A DEFENSE WOULD BE I DIDN'T KNOW THAT WAS AGAINST THE LAW!

WELL, JUST AS OLD A MAXIM, SINCE THE TIME THAT OUR COUNTRY STARTED, WE DECIDED THAT DEFENDANTS ARE INNOCENT UNTIL PROVEN GUILTY, AND THE STATE HAS GOT A BURDEN TO SHOW THAT, TO PROVE CERTAIN ELEMENTS THAT THEY COMMITTED SUCH, WHATEVER PARTICULAR CRIME THERE WAS. WE DON'T RUN ON A SYSTEM THAT YOU HAVE GOT TO PROVE THAT YOU ARE INNOCENT. YOU HAVE GOT TO PROVE --

WHAT, EXACTLY, IS THE KNOWLEDGE THAT YOU THINK THE STATE HAS TO PROVE? IS IT THAT THE STATE HAS TO PROVE THAT HE HAD NOTICE OF THE STATUTE AND INTENTIONALLY DID NOT REGISTER, OR JUST NOTE IS?

WELL, PERSONALLY, I THINK THAT IF A PERSON, IF THE STATE EVEN SHOWED, PRESENTED EVIDENCE THAT THE PERSON WAS ON NOTICE, THAT THEY HAD KNOWLEDGE, A GENERAL KNOWLEDGE THAT THERE WAS A REQUIREMENT. IF THEY DIDN'T DO IT THEN, IT IS LIKE A LOT OF THINGS, IF YOU, YOU KNOW, IT IS LIKE --

DIDN'T THE RECORD ACTUALLY DEMONSTRATE THAT AT SOME POINT, THE PROBATION OFFICER DID TALK TO THE DEFENDANT ABOUT THE REGISTRATION REQUIREMENT UNDER THE STATUTE?

RIGHT, AND THE CONFUSION WAS, AND THE PROBATION OFFICER EVEN ADMITTED THAT AT TRIAL, AND HIS OLD ATTORNEY, THE PROBLEM WAS, VICTOR FELL UNDER THIS STATUTE WHEN IT WAS NEWLY-AND ACTED. -- NULL ILL-ENACTED. HE WAS -- NEWLY ENACTED. HIS ATTORNEY WASN'T SURE IF HE FELL UNDER THIS AND EVEN IF IT APPLIED. HE WAS TOLD, AND YOU KNOW, HE WENT AND REGISTERED AND HE TOLD THE DMV. HE WENT RIGHT FROM THERE. HIS TESTIMONY WAS THAT HE WENT AND COMPLIED. THE PROBLEM WAS, EVERYONE SEEMED TO THINK THAT, ONCE HE WAS DONE WITH PROBATION, HE WAS DONE. AND I MEAN, BAD LUCK, TEN DAYS AFTER HE IS OFF PROBATION --

DIDN'T THE STATUTE SPECIFICALLY SAY THOSE WHO ARE NO LONGER ON PROBATION OR NO LONGER UNDER THE SUPERVISION OF THE DEPARTMENT, ALSO HAVE TO REGISTER?

THAT, I COULDN'T TELL YOU A FIRM YES OR NO. I AM NOT THAT FAMILIAR WITH EVERY LITTLE DETAIL OF THE LAW, WHETHER IT SAYS THAT OR NOT. I KNOW IT TALKS ABOUT THAT IT APPLIES TO PEOPLE ON PROBATION. THEY WEREN'T SURE WHETHER THAT MEANT ADMINISTRATIVE PROBATION. THAT WAS THE TESTIMONY AT TRIAL. BUT, AND THAT IS WHAT IS WHAT WAS SO ODD ABOUT THIS WHOLE TRIAL, BECAUSE ALL THIS EVIDENCE CAME IN ABOUT WHETHER OR NOT HE KNEW, AND THEN THEY CHECK MATED HIM AT THE VERY END, BY SAYING JURY, FORGET ALL THAT, BECAUSE IT DOESN'T MATTER IF HE KNEW. DOESN'T MATTER IF --

DID THEY SAY THAT?

THE JURY INSTRUCTIONS SAID YOU DON'T HAVE TO CONSIDER THIS AND WE DON'T HAVE TO PROVE INTENT.

TELL ME EXACTLY WHAT YOU ARE SAYING THAT THE JURY WAS INSTRUCTED. THAT SAID THAT.

OKAY. I THINK THE JURY INSTRUCTION WAS IN THE --

WAS IN THE FOURTH DISTRICT OPINION?

YES, IN THE FOURTH DISTRICT OPINION.

WELL, THAT HAS TO DO WITH WHETHER THERE WAS, THE STATE DOES NOT HAVE TO PROVE THE ELEMENTS OF INTENT NOR DOES THE STATE HAVE TO PROVE THAT IT ACTED WITH MALICIOUS OR WRONGFUL MENTAL ATTITUDE.

BUT I DON'T KNOW HOW YOU CAN DIVORCE INTENT BEFORE YOU CAN HAVE INTENT, YOU HAVE GOT TO AT LEAST HAVE KNOWLEDGE. YOU HAVE GOT TO BE ON NOTICE THAT THERE IS SOMETHING REQUIRED. THAT IS WHERE YOU GET INTO THIS, A STATUTE THAT SAYS YOU HAVE A DUTY TO DO SOMETHING THAT YOU WOULDN'T ORDINARILY KNOW THAT YOU HAVE TO DO, AS OPPOSED TO DON'T DO SOMETHING, WHEN YOU ARE TAKING AN ACTION. SOMETIMES THE ACTIONS ARE SO INHERENTLY DANGEROUS, THAT IT WOULD PUT A PERSON ON NOTICE. MAYBE I BETTER CHECK OUT AND SEE IF THIS IS GOING TO RUN ME AFOUL OF THE LAW. I DON'T KNOW ANYTHING ABOUT GOING ABOUT YOUR DAILY LIFE OR EVEN MOVING, THAT WOULD PUT AN ORDINARY PERSON, I MEAN, EVEN IN A VIOLATION OF PROBATION HEARING WHERE THE RULES OF EVIDENCE ARE RELAXED, EVEN THEN THE STATE HAS GOT TO PROVE THAT THE PERSON KNEW ABOUT WHAT HE VIOLATED.

USUALLY IN THOSE CASES AND BACK TO WHAT JUSTICE BELL SAID, STANDARD CONDITIONS ARE GIVEN TO A PROBATIONER. THEY ARE SIGNED.

THEY BRING THAT EVIDENCE IN. WE ARE NOT ASKING, YOU KNOW, THIS IS NOT, THAT IS THE THING THAT REALLY --

LET ME ASK WHAT, DID THE DEFENDANT ASK FOR AN ALTERNATIVE JURY INSTRUCTION OR JUST NOT --

THEY OBJECTED TO THE STATE'S JURY INSTRUCTION. OFFHAND, I DON'T RECALL THAT THEY ASKED FOR A SPECIAL JURY INSTRUCTION, BUT I AM NOT SURE. I DON'T RECALL. THAT.

IS IT YOUR POSITION THAT WE HAVE TO, THAT, IN ORDER TO SAVE THE STATUTE, THE INTENT ELEMENT NEEDS TO BE READ IN, OR IS THERE A CONSTITUTIONAL CHALLENGE, I GUESS, BEING RAISED NOW, OR JUST THAT IT WAS ERROR TO GIVE THIS JURY INSTRUCTION.

I THINK IT WAS ERROR TO GIVE THE JURY INSTRUCTION, AND MY POSITION IS OUR POSITION IS THAT, IF THIS COURT DECIDES THAT, NO, WE DON'T HAVE TO READ IT, SOME TYPE OF BROAD KNOWLEDGE OR INTENT REQUIREMENT INTO THE STATUTE, YES, I DO THINK THAT THAT CAUSES SOME CONCERN ABOUT DUE PROCESS.

WELL, IS THAT BEING, IS THAT RAISED? IS THE CONSTITUTIONALITY?

I RAISE IT IN MY BRIEF, YES.

OF THE STATUTE. THAT WAS PRESERVED BELOW, THAT THAT WAS RAISED FIRST AN ATTACK ON THE CONSTITUTIONALITY.

YES. I RAISED THAT IN THE FOURTH DCA.

JUST ON THE BASIS OF THE NOTICE ISSUE NOT ON WHAT THE THIRD DISTRICT DECIDED IN, WHERE THEY STRUCK THE WHOLE STATUTE DOWN?

NO. WELL --

THAT IS NOT BEFORE US.

THAT WAS WAY AFTER.

THAT WASN'T RAISED IN THIS CASE.

NO. THE THIRD DISTRICT CASE THAT I SUPPLEMENTED THE RECORD WAS, WAS NOT DECIDED WHEN I ARGUED THIS CASE BEFORE THE COURT.

THAT CASE WOULD MOOT THIS WHOLE ISSUE OUT, IF THAT WHOLE STATUTE WAS UNCONSTITUTIONAL.

WITH WELL, THAT WAS A SEXUAL PREDATOR. THIS WAS A SEXUAL OFFENDER, SO IT IS A DIFFERENT STATUTE ANYWAY. I THINK IT IS APPLICABLE IN A GENERAL SENSE, BUT IT IS NOT THE EXACT SAME STATUTE. YOU KNOW, I DON'T KNOW IF SOMEONE ELSE IS GOING TO COME OUT AND SAY THE SAME THING HOLDS TRUE BECAUSE THERE IS SOME CORRELATION THERE, OF COURSE BUT THIS IS NOT INCREASING. WE ARE NOT ASKING THE STATE TO INCREASE THEIR BURDEN TERRIBLY. WE ARE ONLY ASKING THEM TO DO WHAT THEY WOULD DO NORMALLY IN ANY OTHER CASE WHERE THERE THEY ARE PROSECUTING A FELONY. NOW, I, OUR COMMON LAW AND OUR BACKGROUND OF OUR WHOLE ANGLE OF AMERICAN JURISPRUDENCE IS BASED ON HAVING SOME KIND OF KNOWLEDGE, HAVING SOME KIND OF GUILTY MIND, IN ORDER TO DO SOMETHING. THAT IS THE PROBLEM WITH THESE PAST --

IS THERE ANY ARGUMENT MADE TO THE JURY BY THE STATE, ABOUT THE ISSUE OF KNOWLEDGE? THAT IS DID THE STATE ARGUE TO THE JURY THAT HE DOESN'T NEED TO HAVE KNOWLEDGE OF THE REGISTRATION PROCESS.

I KNOW THE JURY INSTRUCTION WAS THERE. I REMEMBER IN THE ARGUMENT THAT THEY TALKED ABOUT WHETHER OR NOT HE DID HAVE KNOWLEDGE. IT IS WHAT I THOUGHT WAS ODD ABOUT IT, BECAUSE YOU KNOW, THE TRIAL WAS CONDUCTED AS IF KNOWLEDGE OR INTENT WAS PART OF WHAT THEY NEEDED TO PROVE, AND YET THEN THE JURY INSTRUCTION KIND OF CONTRADICTED THAT. I DO NOT RECALL IF THEY SAID WE DON'T HAVE TO PROVE THAT IN THEIR JURY INSTRUCTION. I WOULD HAVE TO LOOK AT THAT. I MEAN, NOT IN THE JURY INSTRUCTION. IN CLOSING ARGUMENT. I JUST, I DON'T RECALL THAT.

WHAT WAS THE DEFENSE IN THE CASE?

THE DEFENSE SAID HE DIDN'T KNOW HE HAD TO REGISTER. THAT WAS HIS WHOLE DEFENSE.

THAT WAS HIS WHOLE DEFENSE.

RIGHT, AND, I MEAN, THE EVIDENCE WAS THERE. HIS OWN ATTORNEY CAME UP AND TESTIFIED FOR HIM IN TRIAL AND SAID, HEY, I MADE A MISTAKE. I DIDN'T THINK HE DID NEED TO REGISTER. I TOLD HIM GO ABOUT YOUR BUSINESS.

SO BASICALLY THE JURY INSTRUCTION, THEN, THAT WAS IT FOR THE DEFENSE.

RIGHT. IT JUST COMPLETELY NEGATED HIS WHOLE --

I GUESS THE STATE'S THEORY --

HE ADMITTED THAT HE WAS OVER, HE BASICALLY SAID, YES, I HAVE BEEN STAYING HERE. YES. MY ID SAYS I LIVE SOMEPLACE ELSE. THAT IS IT. THAT IS ALL THE STATE SAID THEY HAD TO PROVE. IF YOU DID IT, THAT IS IT. WHICH WOULD BE OKAY, YOU KNOW, IF IT WAS \$5, \$10, \$100 FINE, BUT HE GOT OVER 6 AND-A-HALF YEARS, PARTLY BECAUSE OF HIS, YOU KNOW, HIS OWN BACKGROUND, BUT YOU KNOW, EVEN SOMEONE WITHOUT HIS BACKGROUND COULD HAVE GOTTEN FIVE YEARS.

AS I UNDERSTAND IT, YOU ARE NOT MAKING AN EIGHTH AMENDMENT ARGUMENT HERE, RIGHT, THAT THE PUNISHMENT CONSTITUTED CRUEL AND UNUSUAL PUNISHMENT BECAUSE HE GOT SEVEN YEARS FOR FAILING TO REGISTER?

I DIDN'T MAKE IT. MAYBE I SHOULD HAVE. HA HA! THAT IS A GOOD IDEA. BUT NO, NO, THAT IS SOMETHING I DID NOT ARGUE BELOW OR HIM ARGUING HERE. IF THERE IS NO MORE QUESTIONS, I WILL SIT DOWN.

CHIEF JUSTICE: THANK YOU.

CHIEF JUSTICE: HOW MUCH TIME LEFT FOR REBUTTAL? OKAY. YOU HAVE GOT A COUPLE OF MINUTES.

THANK YOU, YOUR HONOR. JUST BRIEFLY, THE STATE WOULD JUST RESPECTFULLY SUBMIT, RESUBMIT THAT IT IS WITHIN THE PROVINCE OF THE LEGISLATURE NOT TO REQUIRE INTENT OR GUILTY KNOWLEDGE INSERT CRIMES SUCH AS THESE REGULATORY OFFENSES, AND AS JUSTICE WELLS POINTED OUT, YOU HAVE THE CASES WHERE A PERSON COULD BE GOING AT AN EX-OR HASN'T SPEED -- AS AN EXORBANT SPEED, RECKLESS DRIVING, I AM THINKING ABOUT ANOTHER OFFENSE, DUI, DOESN'T REQUIRE ANY INTENT OR KNOWLEDGE AND NONETHELESS, IT --

JUSTICE ADVERTISE BELL HAS -- JUSTICE BELL HAS ASKED YOU ABOUT PASSIVE CONDUCT, AS OPPOSED TO THESE EXAMPLES THAT PEOPLE ARE ALL DOING SOMETHING AFFIRMATIVELY AND PART OF THE UNDERLYING THEORY THERE IS THAT THEY SHOULD KNOW THAT THAT IS A VIOLATION OF THE LAW AND THAT IS A REASONABLE PERSON WOULD, DUI, RECKLESS DRIVING. HERE WE ARE TALKING ABOUT PASSIVE CONDUCT, THE FAILURE TO DO SOMETHING THAT WE HAVE A STATUTE THAT REQUIRES THEM TO DO, TO TAKE SOME ACTION, SO ISN'T THERE A DISTINCTION BETWEEN THOSE TWO KINDS OF STATUTES?

WELL, JUDGE, I REALLY DON'T THINK SO.

THAT DOESN'T MAKE ANY DIFFERENCE IN THE ANALYSIS.

WELL, WHEN YOU ARE TALKING ABOUT THIS TYPE OF STATUTE, LIKE I SAY, THE REGULATORY OFFENSE NATURE, THE REGISTRATION, I THINK WE COULD, THE COURTS MUST BE CAREFUL HERE, BECAUSE YOU COULD, I MEAN, I CAN'T THINK OF ONE RIGHT NOW, BUT I AM SURE THERE ARE OTHER PASSIVE OFFENSES OUT THERE.

TELL US AGAIN, BECAUSE IF I UNDERSTOOD YOUR ANSWER TO ONE OF THE JUSTICES' QUESTIONS BEFORE, WHEN THEY ASKED YOU TO DISTINGUISH THE UNITED STATES SUPREME COURT CASE IN LAMBERT, YOU CANDIDLY SAID THAT YOU COULDN'T DISTINGUISH IT. IS THAT, WAS THAT YOUR ANSWER?

YES, YOUR HONOR.

WHY, AREN'T WE, THEN, COMPELLED TO FOLLOW THE U.S. SUPREME COURT'S HOLDING? YOU KNOW, WHICH HAS SUCH CONSTITUTIONAL IMPLICATIONS IN AN ALMOST IDENTICAL SITUATION?

JUDGE --

THAT WAS A REGISTRATION REQUIREMENT, RIGHT?

YES.

AND THEY SAID THERE HAD TO BE NOTICE. SO HOW CAN WE ESCAPE, IF YOU SAID YOU CAN'T DISTINGUISH THAT, AND WE APPRECIATE, OBVIOUSLY, YOUR CANDOR ABOUT THAT, ISN'T THIS

COURT BOUND TO FOLLOW THAT CONSTITUTIONAL RULING?

IF THE STATUTE IS IDENTICAL. NOW, I DON'T KNOW THAT, AS FAR AS --

THAT IS WHY WE ASKED YOU IF YOU COULD DISTINGUISH IT, AND YOU SAID, IF I UNDERSTOOD YOU HAVE JUST ACKNOWLEDGED AGAIN, THAT YOU FELT CANDIDLY THAT YOU COULDN'T DISTINGUISH IT. IS THAT YOUR ANSWER?

WELL, JUDGE, I WOULD ASK FOR PERMISSION, PERHAPS, TO SUPPLEMENTALLY BRIEF OR FILE A MOTION, IF I, IF THE STATE CAN DISTINGUISH IT. I WOULD ASK FOR A LITTLE BIT MORE TIME.

I MEAN, YOU HAVE BEEN ON NOTICE OF THE EXISTENCE OF THAT CASE, HAVE YOU NOT?

YES, SIR. ALL RIGHT. THANK YOU. IF THERE ARE NO FURTHER QUESTIONS, I APPRECIATE IT.

CHIEF JUSTICE: THANK YOU BOTH VERY MUCH, ESPECIALLY FOR RESPONDING TO OUR QUESTIONS. THE COURT WILL NOW STAND IN RECESS.

MARSHAL: PLEASE RISE.