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Jose Garcia v. State of Florida

NEXT CASE ON THE COURT'S DOCKET IS GARCIA VERSUS STATE OF FLORIDA. JUSTICE BELL WILL BE JOINING US FOR THAT CASE.

COUNSEL CAN BE AT THEIR EASE FOR JUST A MOMENT WHILE WE HAVE AUDIENCE COME IN.

IF YOU ALL IN THE BACK WOULD PLEASE AS QUICKLY AS YOU POSSIBLY CAN COME AND TAKE SEATS IN THE AUDIENCE. WE APOLOGIZE TO COUNSEL FOR THE DELAY AND COUNSEL IN OTHER CASES, BUT WE DO WANT TO WELCOME THE STUDENTS THAT HAVE JUST ENTERED THE COURTROOM FROM THE FSU COLLEGE OF LAW SUMMER PROGRAM FOR UNDERGRADUATE STUDENTS. I UNDERSTAND THAT THIS GROUP INCLUDES SOME 60 STUDENTS FROM ALL OVER THE UNITED STATES. AND THE PROGRAM IS DESIGNED TO ORIENT UNDERGRADUATE STUDENTS ON THE FSU LAW SCHOOL PROGRAM. AND TO TEACH THEM SOMETHING ABOUT OUR JUSTICE SYSTEM IN ADVANCE OF THEIR POSSIBLE ATTENDANCE AT LAW SCHOOL. SO WE WELCOME ALL OF YOU. AND WITH THAT, COUNSEL MAY NOW PROCEED IN THE CASE OF GARCIA VERSUS THE STATE OF FLORIDA.

GOOD MORNING.

GOOD MORNING. THANK YOU, YOUR HONOR. CHIEF JUSTICE AND JUSTICES. MAY IT PLEASE THE COURT, MY NAME IS CAROL WILSON AND I REPRESENT JORGE GARCIA IN HIS APPEAL FROM HIS CONVICTION AND SENTENCE FOR POSSESSION OF METHAMPHETAMINE. JORGE GARCIA WAS CONVICTED OF DRUG POSSESSION ON THE EVIDENCE THE TRIAL JUDGE HIMSELF DESCRIBED AS CERTAINLY CLOSE TO NONEXISTENT. AND BY A JURY GIVEN INSTRUCTIONS THAT THE DISTRICT COURT OPINION ITSELF DETERMINED WERE EXPRESSLY MISLEADING.

MA'AM, ON THESE JURY INSTRUCTIONS, WAS THERE A REQUEST FOR A MORE SPECIFIC JURY INSTRUCTION? THE ISSUE HERE HAS TO DO WITH WHETHER HE HAD KNOWLEDGE OF THE ILLICIT NATURE OF THE DRUG, CORRECT?

YES, YOUR HONOR.

AND WAS THERE A SPECIFIC REQUEST FOR AN INSTRUCTION ON THAT ISSUE?

THERE WAS A SPECIFIC REQUEST REGARDING THE TRAFFICKING CHARGE. AND IT WAS TRAFFICKING BY POSITION. -- BY POSSESSION, EXCUSE ME.

IT WAS GIVEN ON THAT.

IT WAS GIVEN ON THE TRAFFICKING CHARGE. AND THE INTERESTING FACT IN THIS UNIQUE CASE IS THAT HE WAS CONVICTED OF THE LESSER POSSESSION CHARGE --

WAS INSTRUCTED ON POSSESSION, CORRECT?

YES.

AND DID YOU REQUEST AS A PART OF THE POSSESSION CHARGE THAT THE ILLICIT NATURE INSTRUCTION ALSO BE GIVEN?

THAT WAS NOT REQUESTED IN THE TRIAL COURT. HOWEVER, IT IS OUR POSITION THAT THE TRIAL COURT WAS APPRIZED OF THE NEED TO REQUEST THAT.

HOW?

WELL, I'M DISTINGUISHING IT FROM THOSE CASES IN WHICH AN INSTRUCTION WAS NOT REQUESTED. AND IT WASN'T AT ISSUE. LIKE THE HAND TO HAND SALE OF A MIS-ID DEFENSE. THIS IS A CASE IN WHICH DID MR. GARCIA KNOW ABOUT THE BLACK TAPE BALL? DID HE KNOW IT WAS IN HIS TRUCK? DID HE KNOW IT WAS INSIDE IT? DID HE KNOW WHAT WAS INSIDE WAS ILLICIT DRUGS?

THIS CASE THOUGH REALLY IS, IS LIKE THE CASES IN WHICH THE ISSUE PRESENTED IS THAT THE DEFENSE IS SAYING I DIDN'T KNOW THAT BLACK BALL WAS IN THE TRUCK AT ALL, PERIOD. NOT THAT I DIDN'T KNOW WHAT WAS IN IT. I MEAN IT IS -- I DIDN'T KNOW THAT THE BLACK BALL WAS THERE PERIOD. ISN'T THAT WHAT THE TESTIMONY WAS?

THE TESTIMONY WAS IN THIS INSTANT, IMPLICIT IF YOU LOOK AT THE CLOSING ARGUMENT OF THE STATE AND THE DEFENSE AND SEE MR. GARCIA'S TESTIMONY, WHICH HE DID TESTIFY. IT SAYS THE ISSUES ARE, DID HE KNOW OF THE BLACK TAPED BALL? AND DID HE KNOW WHAT WAS IN IT? AND I CAN READ YOU PORTIONS OF HIS TRANSCRIPT WHERE THE STATE PROSECUTOR HAS DEFINED THAT ISSUE. IN ARGUMENT TO THE TRIAL COURT AND IN ARGUMENT TO THIS JURY.

BUT WE HAVE GOT THIS SERIES OF CASES BEGINNING WITH DELVA THAT IS DRAWING ON THE FACT THAT IF, IF THE ISSUE IS THAT I DIDN'T KNOW THAT IT WAS IN, IN THE VEHICLE AT ALL, BUT IF I HAD KNOWN IT WAS IN THE VEHICLE, I WOULDN'T HAVE KNOWN WHAT IT WAS. AND THOSE LINE OF CASES SEEMS TO INDICATE THAT REALLY THE FIRST QUESTION IS WHAT THE DEFENSE IS ABOUT, AND THAT IS, I DIDN'T KNOW IT WAS THERE AT ALL. PERIOD. ISN'T THAT REALLY WHAT THIS CASE IS ABOUT?

JUSTICE, I DO NOT THINK THAT IS WHAT THIS CASE IS ABOUT. WHAT I THINK THAT THE ISSUE THAT THIS COURT IS POSED WITH IS, IS THE -- WHAT IS ENCOMPASSED BY -- WHAT IS THE DISPUTE HERE? WHEN YOU DISPUTE THE PRESENCE OF THE SUBSTANCE, DOESN'T THAT ALSO UNDER THIS COURT'S DECISION IN SCOTT, ENCOMPASS A DISPUTE ABOUT THE ILLICIT NATURE OF THE SUBSTANCE?

BUT IN DELVA WE SAID IT DID NOT.

BUT THAT WAS A DIFFERENT CASE. BECAUSE IN DELVA, UNFORTUNATELY WE DON'T HAVE ALL THE FACTS OF THE CASE. BUT IF YOU DO LOOK AT THE THIRD DISTRICT DECISION AND YOU LOOK AT THE DECISION FROM THIS COURT, THERE IS DISCUSSION OF A PACKAGE. WE DON'T HAVE THE ISSUE THAT'S SO KEY TO THIS CASE. MR. GARCIA'S CASE OF THIS INNOCUOUS BLACK TAPE BALL. DELVA WAS ABOUT A PACKAGE. WE DON'T KNOW WHAT KIND OF PACKAGE IT WAS BUT I CAN ASSUME, SINCE THE LEARNED COURT OF THE THIRD DISTRICT AND THIS LEARNED COURT WAS READING THAT RECORD AND SAID IT WAS NOT INNOCUOUS CONTAINER.

HERE IT IS IRRELEVANT WHETHER IT IS A BLACK TAPE BALL OR BAGGY FULL OF COCAINE BECAUSE HE IS SAYING HE DIDN'T KNOW IT WAS IN THE CAR AT ALL. SO WHAT IT LOOKED LIKE WAS IRRELEVANT TO THE FACTS IN THIS CASE BECAUSE HE IS SAYING I DIDN'T KNOW IT WAS IN THERE. HE IS NOT SAYING YEAH, I SAW A BLACK TAPE BALL IN MY CAR, BUT I HAD NO IDEA IT HAD METHAMPHETAMINE IN IT. I JUST THOUGHT IT WAS SOME BLACK BALL.

IT IS RELATIVE WHETHER YOU'RE DETERMINING WHAT KIND OF AREA. OBVIOUSLY IF IT IS, PRE-CHICONE APPLIES. YOU HAVE TO DECIDE WHETHER IT GOES TO FOUNDATION OF THE CASE IF IT IS FUNDAMENTAL ERROR. YOU HAVE A DIFFERENT ERROR WHEN YOU HAVE A PACKAGE IN A

VEHICLE THAT ANYBODY COULD TELL WHAT IT IS.

ISN'T THAT THE DIFFERENCE BETWEEN DELVA AND SCOTT? IN SCOTT YOU HAD REQUEST FOR JURY INSTRUCTION. AND SCOTT REVOLVED AROUND WHETHER THE COURT SHOULD HAVE GIVEN THE SPECIAL INSTRUCTION OR WAS IT THE STANDARD JURY INSTRUCTION WAS CORRECT? IT DID NOT DEAL WITH THE ISSUE OF WHETHER IT WAS A DISPUTE, A DISPUTED ISSUE IN THIS CASE, WHICH IS WHAT DELVA AND THE FUNDAMENTAL ERROR CASES DEAL WITH. ISN'T THAT RIGHT?

SCOTT WAS A DIFFERENT CASE BECAUSE IT WAS A PRESERVED ISSUE. BUT I THINK THE LANGUAGE IN THAT CASE TALKING ABOUT WHETHER -- WHEN YOU ASSERT THE DEFENSE OF PRESENCE, WHETHER THAT ENCOMPASSES THE GUILTY KNOWLEDGE ABOUT THE ILLICIT SUBSTANCE. I THINK THAT THE LANGUAGE IN SCOTT APPLIES TO THIS CASE AND IS KEY IN DECIDING THE FUNDAMENTAL ERROR QUESTION HERE.

IS THAT LANGUAGE DICTUM?

YES, JUSTICE, IT IS NOT THE HOLDING. HOWEVER, BECAUSE IT IS NOT A FUNDAMENTAL ERROR CASE, SCOTT. BUT NOW WE HAVE COME UP TO THIS POINT. DELVA WAS ONE POINT WITH FUNDAMENTAL ERROR. AND IF THIS COURT HAS WRITTEN ABOUT FUNDAMENTAL ERROR, ESPECIALLY RECENTLY, IT IS A CASE-BY-CASE DETERMINATION. THERE IS NO WAY TO DECIDE BASED ON DELVA IF THERE IS FUNDAMENTAL ERROR IN THIS CASE.

BUT I THINK WHEN YOU LOOK AT OUR DECISION IN CHICONE AND IN SCOTT, WHAT YOU END UP HAVING HERE IS THAT WE SAY THAT THE ILLICIT NATURE IS AN ELEMENT OF THE OFFENSE, CORRECT?

YES.

AND IF YOU ASK FOR AN INSTRUCTION BASICALLY WHETHER YOU ARE JUST PUTTING THE STATE TO ITS PROOF OR YOU ACTUALLY ARE DEFENDING, BASED ON HAVING NO KNOWLEDGE OF THE NATURE OF THE DRUG UNDER EITHER OF THOSE CIRCUMSTANCES, IF YOU REQUEST THE INSTRUCTION, YOU ARE ENTITLED TO HAVE THE INSTRUCTION. AND ISN'T THAT WHAT CHICONE AND SCOTT REALLY BOIL DOWN TO?

YES, THAT'S WHAT THEY BOIL DOWN TO, JUSTICE.

SO IN THIS CASE, WHERE THERE WAS NOT A DEFENSE BASED ON THE ILLICIT NATURE, AND THERE WAS NO REQUEST FOR THE INSTRUCTION, THEN YOU DON'T HAVE EITHER A SCOTT OR CHICONE SITUATION, DO YOU?

WELL, IT CAN'T BE SCOTT OR CHICONE BECAUSE IF YOU DO NOT FIND THE ERROR PRESERVED, THEN THOSE CASES ARE NOT SQUARELY ON POINT. HOWEVER, WHEN YOU'RE LOOKING AT FUNDAMENTAL ERROR, IT IS SO IMPORTANT TO LOOK AT THE FACTS OF THE CASE.

BUT, OKAY, AND YOU LOOK AT THESE TWO CASES AGAIN, AND DON'T YOU COME AWAY WITH THE PROPOSITION THAT IF YOU DON'T ASK FOR IT, YOU'RE NOT ENTITLED TO IT AND THEREFORE CANNOT BE FUNDAMENTAL ERROR?

THEY SAY YOU HAVE TO ASK FOR THE INSTRUCTION, CORRECT?

I BELIEVE THAT THIS CASE IS CONTROLLED BY THE TRIED AND TRUE LAWS THAT CONTROL ALL CASES. INCLUDING -- I DON'T THINK THERE IS AN EXCEPTION TO THE FUNDAMENTAL ERROR PROPOSITION FOR CHICONE AND SCOTT CASES.

WELL, IF YOU GO BACK TO THE BLACK LETTER, YOU LOOK AT DELVA, AND DELVA ACTUALLY

SAYS EVEN THOUGH IT'S AN ELEMENT OF THE DEFENSE, IT IS NOT A DISPUTED ISSUE, YOU DON'T REQUEST THE INSTRUCTION, YOU DON'T -- THERE IS NO HARMFUL ERROR HERE.

JUSTICE, IT WAS DISPUTED IN THIS CASE. IF YOU DON'T FIND IT WAS A DISPUTED ISSUE, THEN IT IS NOT FUNDAMENTAL. I MEAN THAT IS THE --

HOW WAS IT DISPUTED IN THIS CASE?

IT WAS DISPUTED BECAUSE MR. GARCIA TOOK THE STAND AND SAID I DIDN'T KNOW ABOUT THE BALL. HIS LAWYER ARGUED HE DIDN'T KNOW ABOUT THE BALL AND HE DIDN'T KNOW WHAT WAS INSIDE THE BALL.

BUT IF HE DIDN'T KNOW ABOUT THE BALL BEING IN HIS CAR, HOW CAN HE HAVE ANY KNOWLEDGE, ANY INFORMED CONSCIENCE ABOUT WHAT WAS IN THE BALL? YOU CAN'T DETERMINE WHETHER THERE IS SOMETHING INSIDE SOMETHING YOU DON'T KNOW EVEN EXISTS.

BUT YOU CAN'T FORECLOSE AN INSTRUCTION -- IN THIS CASE ESPECIALLY -- I'M JUST TALKING ABOUT THE, WHAT HE TESTIFIED TO AT TRIAL AND WHAT YOU'RE ARGUING, HE SAID HE DIDN'T KNOW THE BALL WAS IN THE CAR. IF HE DIDN'T KNOW THE BALL WAS IN THE CAR, HOW COULD HE FORM ANY KNOWLEDGE ABOUT WHAT'S IN THE BALL?

HE COULDN'T. BUT THEN WHY WOULD HE BE FORECLOSED FROM HAVING THE PROPER INSTRUCTION ON THAT ELEMENT EITHER?

AREN'T THOSE TWO THINGS MUTUALLY EXCLUSIVE? YOU EITHER ARE ARGUING THAT YOU DIDN'T KNOW ABOUT IT OR YOU'RE SAYING YES, I KNEW ABOUT IT, BUT I DIDN'T KNOW WHAT IT CONTAINED.

I DO NOT THINK THEY ARE MUTUALLY EXCLUSIVE. YOU CANNOT KNOW ABOUT IT AND NOT KNOW WHAT IT CONTAINS.

LET ME MOVE YOU TO YOUR FIRST, TO THE FIRST ISSUE, WHICH REALLY DOES GET TO WHETHER -- WHAT IS THE BASIS HERE UPON WHICH THE CASE COULD BE DECIDED BY THE JURY AS TO HIS KNOWLEDGE OF WHAT WAS IN THE -- THAT IT WAS IN THE TRUCK AT ALL? AND IS THAT -- AND WHAT IS THE STRONGEST CASES ON YOUR SIDE OF THAT ARGUMENT?

THE LAW THAT NEEDS TO BE APPLIED TO THE SUFFICIENCY ISSUE HERE, THAT YOU CAN'T STACK THE INFERENCES. THE ONLY EVIDENCE THAT THE STATE HAD IN THIS CASE WAS THAT MR. GARCIA WAS DRIVING THE TRUCK. THEY DID NOT HAVE ANYTHING ELSE. IN DELVA, WE HAD A COCAINE PACKAGING LIST.

IT IS HIS TRUCK, CORRECT?

IT IS HIS TRUCK.

HE WAS DRIVING HIS TRUCK. NOT THAT HE WAS DRIVING SOMEBODY ELSE'S TRUCK. SO THAT IS PRIMA FACIE SUFFICIENT, ISN'T IT, TO GET THAT TO THE JURY?

I DON'T THINK IT IS, CHIEF JUSTICE. AND THE REASON IS BECAUSE -- YOU HAVE TO STACK FOUR TIMES TO GET TO THE INFERENCE THAT HE THEN KNEW THAT THERE WERE DRUGS INSIDE THAT BALL.

WHY, IF IT WAS A WEAPON, AN ILLEGAL WEAPON, TO MAKE THE HYPOTHETICAL, THIS WAS UNDERNEATH THE PASSENGER SEAT, IS THAT CORRECT?

UNDERNEATH THE PASSENGER SEAT.

SO IF IT WAS A WEAPON, AN ILLEGAL WEAPON, YOU'RE SAYING THAT HIS OWNERSHIP OF THE TRUCK AND HIS DRIVING THE TRUCK AND CONTROLLING THE TRUCK, BEING IN CONTROL OF IT AT THE TIME THAT HE WAS STOPPED AND THE ILLEGAL WEAPON WAS FOUND THEN, WOULD NOT BE ENOUGH TO GET THAT ISSUE TO THE FACT FINDER?

WELL, THE WEAPON IS VERY DIFFERENT. I THINK WHAT'S REALLY IMPORTANT IN THIS CASE IS THAT THE OFFICERS TESTIFIED AND IT WAS CLEAR FROM THIS RECORD THEY DIDN'T KNOW WHAT THIS THING WAS. THEY TOOK IT OUT AND DIDN'T FINGERPRINT OR DO ANYTHING TO PRESERVE THE EVIDENCE BECAUSE FROM THE PROSECUTOR'S STATEMENT AND FROM THE OFFICERS' STATEMENT, THEY THOUGHT -- THEY DIDN'T HAVE A CLUE.

YOU DON'T KNOW WHAT IT IS UNTIL YOU OPEN IT UP, RIGHT?

THEY WERE DOING THE INVENTORY.

WHETHER IT WAS A BOX OR WHETHER IT WAS A TAPED WRAPPED THING. BUT HIS POSSESSION AND CONTROL OF THE VEHICLE WHERE IT WAS LOCATED AND THEN WHEN YOU ADD IN THE FACT THAT HE OWNS THAT VEHICLE, TELL ME AGAIN WHY THAT'S NOT ENOUGH TO GET THAT TO THE JURY?

BECAUSE IT'S AN INNOCUOUS LOOKING OBJECT. IT IS NOT ORDINARILY A CONTAINER. I HAVE A LOT OF STUFF IN MY VAN. IF I HAVE TO KNOW WHAT'S INSIDE THE BASKETBALLS AND THE THINGS THAT DON'T LOOK LIKE CONTAINERS, THEN -- AND I'M CRIMINALLY LIABLE FOR WHAT'S INSIDE OF THEM, THAT'S WHAT THE STATE PROVED.

WHAT IS YOUR STRONGEST CASE ON THAT POINT?

I DO NOT HAVE A SPECIFIC CASE THAT GOES TO MY POINT. THAT FINDS THAT, THAT HAS THESE SIMILAR ELEMENTS.

SO THE CASES THAT ARE AGAINST YOU? WOULD YOU AGREE THAT PARTNER OUT OF THE FIFTH DISTRICT'S AGAINST YOU?

YES. BUT I DON'T THINK IT IS THE SAME CASE AS MR. GARCIA'S CASE.

THAT ODOM OUT OF THE SECOND DISTRICT IS AGAINST YOU?

YES -- ODOM CAME AFTER MR. GARCIA.

HOW ABOUT RUSS?

I'M NOT FAMILIAR WITH THAT CASE.

BACK IN '01, WAS UNDER THE DRIVER'S SIDE OF THE DASHBOARD.

STRONGEST CASE I HAVE WOULD BE RITA OUT OF THE FIRST. RITA IS THE CASE IN WHICH THE MARIJUANA WAS FOUND LOCKED IN THE BACK, A LOCKED COMPARTMENT IN THE TRUCK. AND I THINK THAT THE REASONING BEHIND THAT CASE, IT WAS HARD FOR ME TO FIND CONCEALED INNOCUOUS CONTAINER TYPE CASES. I REALLY LOOKED, IN ALL JURISDICTIONS. THAT IS THE MOST ANALOGOUS CASE BECAUSE THEY ARE LOOKING TO SEE. THE MAN WAS DRIVING A TRUCK. HE HAD A WHOLE LOT OF MARIJUANA LOCKED IN THE BACK, BUT HE HAD NO WAY OF ACCESS TO IT. THEY HAD NO WAY OF PROVING HE COULD GET BACK INTO THAT TRUCK. THEY FOUND THAT WAS INSUFFICIENT EVIDENCE.

HE DIDN'T HAVE THE KEYS?

HE DIDN'T HAVE THE KEYS TO IT.

ONE OF YOUR ARGUMENTS IS THAT THE INSTRUCTION ON THE PRESUMPTION FROM EXCLUSIVE POSSESSION SHOULD NOT HAVE BEEN GIVEN.

EXACTLY.

BUT IF THERE WAS ENOUGH EVIDENCE BECAUSE HE WAS IN POSSESSION OF THE TRUCK TO GIVE THE PRESUMPTION, WASN'T THE PRESUMPTION ENOUGH FOR THE, WITH EXCLUSIVE POSSESSION OR TO GO TO THE JURY, IF THE PRESUMPTION IS BOTH AS TO THE PRESENCE OF SUBSTANCE AS WELL AS THE KNOWLEDGE OF ITS ILLICIT NATURE?

WHEN YOU LOOK AT THE CASE IN MEDLIN THAT APPLIES THAT, IT IS A COMPLETELY DIFFERENT SITUATION. AND THIS COURT SAID IN SCOTT THAT MEDLIN PRESUMPTION ONLY APPLIES WHEN YOU HAVE PHYSICAL POSSESSION OF SOMETHING.

BUT ISN'T THERE A CASE AFTER SCOTT, WHICH ACTUALLY SAYS THAT THE MEDLIN PRESUMPTION IS APPLICABLE TO ACTUAL POSSESSION AND EXCLUSIVE CONSTRUCTIVE POSSESSION? ISN'T THAT WHAT WE SAID? AND I BELIEVE IT IS WILLIAMSON THAT THE MEDLIN PRESUMPTION IS APPLICABLE IN BOTH OF THOSE SITUATIONS.

I BELIEVE THE FOOTNOTE IN SCOTT SAID IT MAY BE APPLICABLE. DEPENDING ON THE FACTS OF THE CASE. THAT IS MY RECOLLECTION OF THE CASE.

THE MARSHAL HAS REMINDED YOU THAT YOU'RE IN THAT REBUTTAL TIME THAT YOU ASKED TO BE REMINDED OF.

WELL THANK YOU. I WILL THEN RESERVE MY TIME FOR REBUTTAL. THANK YOU VERY MUCH.

GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT, I AM JOHN KLAWIKOFSKY. I REPRESENT THE STATE. INITIALLY I WOULD LIKE TO POINT OUT THAT THERE IS NO EXPRESS CONFLICT IN THIS CASE. THE SECOND DISTRICT CITED CONFLICT WITH THE GOODMAN CASE OUT OF THE FIRST DISTRICT. IN GOODMAN, THE APPELLATE COURT FOUND ILLICIT KNOWLEDGE WAS A DISPUTED ELEMENT OF THE CRIME AND IT WAS DISPUTED. IN GARCIA, SECOND DISTRICT SAID ILLICIT KNOWLEDGE WAS NOT A DISPUTED ELEMENT. SO THEREFORE JUST ON THE FACE OF BOTH OPINIONS THERE IS NO EXPRESS --

ARE THEY BOTH UNPRESERVED ERROR?

YES, THEY BOTH WERE UNPRESERVED.

YOU DO, JUST UNDERSTANDING, ASSUMING THERE IS CONFLICT. YOU CONCEDE THAT WHERE GUILTY KNOWLEDGE IS IN DISPUTE, THEN THERE WOULD BE FUNDAMENTAL ERROR?

CORRECT, YOUR HONOR. IF ILLICIT KNOWLEDGE IS A DISPUTED ELEMENT, IT WOULD BE FUNDAMENTAL ERROR UNDER CHICONE SCOTT.

DIDN'T GARCIA ARGUE THAT THE STATE FAILED TO PROVE THE DEFENDANT KNEW THE BALL WAS IN THE TRUCK OR THAT HE KNEW WHAT WAS IN IT? WASN'T THAT AN ARGUMENT MADE BY THIS DEFENSE LAWYER TO THE JURY?

PRIMARILY -- THE PRIMARY DEFENSE WAS HE DID NOT KNOW THE PRESENCE OF THE SUBSTANCE. AS JUSTICE CANTERO POINTED OUT, IT IS ENCOMPASSED IN THAT.

HE ARGUED, NOT JUST IMPLICITLY IT WAS BEING ARGUED. IT WAS EXPRESSLY ARGUED TO THE JURY THAT THE STATE HAD NOT -- FAILED TO PROVE THE DEFENDANT KNEW THAT THE BALL WAS IN THE TRUCK OR THAT HE KNEW WHAT WAS IN IT.

CORRECT.

AND IN SCOTT, WHEN THIS ARGUMENT WAS MADE THAT THEY REALLY WERE SAYING HE DIDN'T KNOW, IF SCOTT KNEW WHAT THE PRESENCE, THAT THE DRUGS WERE IN HIS LOCKER, WE SAID THAT SCOTT WASN'T ARGUING TWO ALTERNATIVE DEFENSES. IT IS A SINGLE ARGUMENT THAT HE DIDN'T POSSESS THE DRUGS. SCOTT'S ARGUMENT THAT HE DIDN'T POSSESS THE DRUGS AND HAD NO KNOWLEDGE OF THE DRUG'S PRESENCE ENCOMPASSES THE ARGUMENT THAT HE WAS UNAWARE OF THE ILLICIT NATURE OF THE SUBSTANCE.

CORRECT. AS JUSTICE QUINCE WROTE IN SCOTT, THE DEFENDANT ENTITLED TO ALL THE ELEMENTS AND AS LONG AS YOU REQUEST IT, AND AT SCOTT IT WAS A REQUESTED INSTRUCTION, THIS CASE IS FUNDAMENTAL ERROR.

I KNOW WE ARE STEALING, I GUESS THE QUESTION IS, HOW WAS IT NOT DISPUTED IF THE DEFENDANT SPECIFICALLY DISPUTES IT? SPECIFICALLY SAYS NOT ONLY DID HE TAKE THE STAND AND SAY I DIDN'T KNOW THE BALL WAS IN THE TRUCK, BUT THE DEFENSE LAWYER SAYS ALTERNATIVELY THAT HE DIDN'T KNOW WHAT WAS IN THE BALL?

DELVA SAYS IT IS NOT DISPUTED. OUR FACTUAL SCENARIO --

AGAIN, THIS -- I DON'T KNOW WHAT THE PACKAGE LOOKED LIKE IN DELVA. IF YOU HAD IT -- IF WHAT WAS FOUND WERE TEN MARIJUANA CIGARETTES.

THE PACKAGE IS IRRELEVANT. BECAUSE THE STATE IS ENTITLED TO ITS MEDLIN PRESUMPTION IN THIS CASE. AND THAT IS THE KEY DISTINCTION TO ALL FUNDAMENTAL CASES.

I DON'T THINK WE ARE ARGUING -- I KNOW THE DEFENSE IS ARGUING, THE MEDLIN PRESUMPTION ACTUALLY GIVES YOU BOTH THE TIES THAT, IF THERE IS POSSESSION THAT THERE IS A PRESUMPTION OF BOTH, THAT THEY KNEW OF THE PRESENCE OF THE SUBSTANCE AND ITS ILLICIT NATURE.

SO THEREFORE IT IS NOT A DISPUTE UNTIL THE DEFENSE AFFIRMATIVELY PUTS IT INTO DISPUTE. HIM SAYING I DON'T KNOW THIS BLACK BALL EXISTED DOES NOT PUT THE ILLICIT KNOWLEDGE.

SO YOU'RE SAYING IF GARCIA HADN'T TAKEN THE STAND AND THE ONLY, THAT THE DEFENDANT'S LAWYER ARGUED TO THE JURY IN CROSS-EXAMINING WITNESSES ON THIS BASIS, THAT, YOU KNOW, WHAT EVIDENCE WAS THERE OR THAT THERE WAS, THAT THIS WAS AN ILLEGAL DRUG, AND ARGUED TO THE JURY THAT THERE IS NO EVIDENCE THAT HE KNEW WHAT THE SUBSTANCE WAS AND WHAT WAS IN IT, THAT THAT WOULDN'T BE DISPUTING IT?

NO, BECAUSE THE STATE -- THE STATE IS ENTITLED TO MEDLIN PRESUMPTION. FOR POSSESSION THERE ARE FOUR ELEMENTS. THE THIRD AND FOURTH ELEMENTS ARE THE KEY ELEMENTS HERE.

HOW WOULD THE DEFENDANT DISPUTE WITHOUT TAKING THE STAND GUILTY KNOWLEDGE? IN OTHER WORDS, THE CASES I THOUGHT WE WERE TALKING ABOUT WERE CASES WHERE THEY'RE SAYING IT WASN'T ME, WASN'T MY TRUCK, YOU KNOW, WHATEVER. WHERE IDENTITY WAS AN ISSUE.

THIS IS A CASE OF EXCLUSIVE POSSESSION OF THE VEHICLE. AND IT IS ALSO A CASE OF EXCLUSIVE CONSTRUCTIVE POSSESSION AND AS JUSTICE QUINCE WROTE IN SCOTT AND WILLIAMSSON THAT THE STATE IS DEPENDING ON THE FACTS OF THE CASE, THE STATE IS ENTITLED TO ITS MEDLIN PRESUMPTION WHEN THEY HAVE SHOWN EXCLUSIVE POSSESSION.

LET ME GO TO THE LAST POINT THAT WE WERE DISCUSSING WITH YOUR OPPONENT. AND THAT IS, IN A SITUATION IN WHICH YOU'RE DEALING WITH DRUGS, TRACING THIS BACK TO TRYING TO FIGURE OUT WHAT IS A BASIS UPON WHICH TO PRESUME KNOWLEDGE OF THE BLACK OBJECT IN THE VEHICLE, I COME UP WITH THE FACT THAT THIS GOES BACK TO A CASE OUT OF THE FIFTH CALLED CANTERRA, WHICH IT CITES TO BROWN.

THAT IS WITH AN A, NOT AN O, RIGHT?

RIGHT. AND IN THAT CASE, AS IN BROWN VERSUS STATE, WHICH IS THIS COURT'S CASE, BUT IT WAS A HOUSE CASE. IT SAID TO ESTABLISH CONSTRUCTIVE POSSESSION, THE STATE MUST ESTABLISH THE ACCUSED HAD DOMINION CONTROL OVER THE CONTRABAND, KNEW THE CONTRABAND WAS WITHIN HIS PRESENCE. NOW, MY QUESTION TO YOU IS, WHAT BASIS IS THERE IN THIS EVIDENCE TO, FROM WHICH THEY COULD INFER THAT THIS DEFENDANT KNEW THAT THAT BALL WAS IN THIS TRUCK?

HIS EXCLUSIVE POSSESSION OF THE VEHICLE. ALL OF THE CASES --

EXCLUSIVE POSSESSION.

OF HIS VEHICLE. HE WAS THE ONLY OCCUPANT OF THAT VEHICLE.

NOW IF THERE HAD BEEN -- IF HE HAD PICKED SOMEBODY UP FROM THE AIRPORT.

WE COULD NOT HAVE PROCEEDED UNDER EXCLUSIVE POSSESSION. THEY COULD NOT HAVE GOT THE MEDLIN PRESUMPTION.

IF HE HAD PICKED SOMEBODY UP FROM THE AIRPORT AND THEY HAD GOTTEN IN THE CAR.

IF THERE WERE TWO PEOPLE IN THE CAR --

WAIT A MINUTE, WAIT A MINUTE. AND SO, PICKED HIM UP FROM THE AIRPORT, THE GUY BRINGS HIS LUGGAGE, PUTS IT IN THE TRUCK AND HE LEAVES. AND MR. GARCIA IS DRIVING ALONG APALACHEE BOULEVARD AND HE IS STOPPED -- IS HE PRESUMED TO KNOW WHAT'S IN THAT LUGGAGE?

YES, HE IS BECAUSE THE CASE LAW IS CLEAR ON THAT. THAT BECOMES AN AFFIRMATIVE DEFENSE. I'D JUST LIKE TO POINT OUT SUBSEQUENT TO THE SCOTT OPINION, BECAUSE THE SCOTT OPINION DID ASK FOR AN AMENDMENT TO THE STANDARD INSTRUCTIONS. BY THE WAY, THIS TRIAL OCCURRED BEFORE THE SCOTT OPINION CAME OUT. SO THE TRIAL COURT DID NOT HAVE THE BENEFIT OF SCOTT. BUT SUBSEQUENT TO SCOTT, THE LEGISLATURE DID SUBMIT A CLARIFICATION, 893101. AND THAT --

BUT THAT DOESN'T REALLY APPLY HERE.

I WOULD SUBMIT IT DOES. I WOULD SUBMIT THERE IS NO EXPO FACTOR VIOLATION OF THIS. ALTHOUGH THE, I WOULD SUBMIT IT CAN APPLY RETROACTIVELY.

GIVE ME YOUR BEST CASE ON THE INFERENCE SOLELY FROM POSSESSION AND OWNERSHIP OF THE MOTOR VEHICLE THAT.

I BELIEVE ODOM IS OUR BEST CASE -- ODOM IS A SECOND DISTRICT CASE AND INVOLVED A BLACK FILM CANISTER.

NATURALLY YOU CAN'T TELL THE NATURE IF IT IS IN A FILM CANISTER.

LET ME ASK YOU A QUESTION ABOUT THE FUNDAMENTAL ERROR ASPECT OF THE CASE. ONE OF THE CONSIDERATIONS THAT WE UTILIZE IN CONSIDERING WHETHER IT IS FUNDAMENTAL ERROR IS THE POSSIBILITY OF A MISCARRIAGE OF JUSTICE. THE ORIGINAL CHARGE IN THIS CASE WAS TRAFFICKING, IS THAT CORRECT?

THAT IS CORRECT.

AND IT WAS TRAFFICKING BY THE AMOUNT, RIGHT? IN OTHER WORDS, IF YOU PROVED POSSESSION OF A PARTICULAR AMOUNT, TRAFFICKING IS AUTOMATIC.

CORRECT.

IT IS NOT TRAFFICKING WHERE YOU HAVE TO PROVE THAT THEY WERE CARRYING IT ON AN AIRPLANE TO SELL TO SO AND SO. OR AS SOME PEOPLE MIGHT. IT IS JUST IF THERE IS A CERTAIN AMOUNT, THAT COMES -- IS THAT CORRECT?

THAT IS CORRECT.

MY CONCERN ABOUT THAT IS THAT THE -- KNOWLEDGE OF THE CONTRABAND NATURE OF THE DRUG OR WHATEVER IS PART OF THE TRAFFICKING CHARGE, RIGHT?

PART OF THE STATUTE TOO.

AND THERE WAS AN INSTRUCTION GIVEN.

THE CLERK GAVE THE STANDARD INSTRUCTION.

ON THE TRAFFICKING CHARGE THAT THEY NEEDED TO KNOW THE ILLICIT NATURE.

I WOULD DISPUTE OPPOSING COUNSEL'S THAT THE DEFENSE REQUESTED THE CHICONE. IT IS STANDARD INSTRUCTION.

LET ME WORK MY WAY THROUGH MY CONCERN WITH REFERENCE TO WHETHER THERE IS A POSSIBILITY OF MISCARRIAGE OF JUSTICE. THAT IS, THE ABSENT INSTRUCTION THAT WE HAVE BEEN DEBATING HERE WAS GIVEN IN THE TRAFFICKING CHARGE, RIGHT?

THAT'S CORRECT.

BUT THE JURY FOUND THE DEFENDANT NOT GUILTY ON THE TRAFFICKING CHARGE, IS THAT CORRECT?

WHAT HAPPENED, YES, WHAT HAPPENED IN THIS CASE IS THE JURY IS GIVEN THE STANDARD INSTRUCTION ON TRAFFICKING. AT THAT POINT THEY WERE GIVEN THE STANDARD INSTRUCTION ON POSSESSION. AT THE END OF THE STANDARD INSTRUCTIONS THEY WERE ALSO TOLD TO APPLY THE ELEMENTS OF THE PRIMARY CONVICTION, THE PRIMARY CHARGE TO ALL THE ELEMENTS.

I UNDERSTAND.

WHAT HAPPENED, WHAT COMPLICATES OUR CASE IS THAT THE JURY CAME BACK WITH A QUESTION. AND THE JURY QUESTION WAS, WHAT'S THE DIFFERENCE BETWEEN TRAFFICKING AND POSSESSION? COUNSEL HAD AN OPPORTUNITY AT THAT POINT TO ASK FOR HIS CHICONE

INSTRUCTION. DID HE NOT? INSTEAD DISCUSSION AT SIDE BAR WAS ABOUT, WELL, THE ONLY DIFFERENCE IS JUST AS CHIEF JUSTICE SAID, ONLY DIFFERENCE IS THE AMOUNT.

LET ME STOP YOU THERE. AND THAT CLEARLY IS A FACTOR THAT'S GOING TO GO INTO OUR DECISION HERE. THAT I APPRECIATE YOU POINTING OUT. BUT MY CONCERN IS THAT WE HAVE A JURY HERE, REALLY THE AMOUNT OF THIS SUBSTANCE WAS UNDISPUTED.

IT IS NOT DISPUTED.

AND IT WAS ABOVE, WELL ABOVE THE AMOUNT THAT WOULD JUSTIFY A CONVICTION FOR TRAFFICKING, RIGHT?

CORRECT.

SO WE HAVE A JURY NOW THAT HAS FOUND THE DEFENDANT IN POSSESSION OF THIS ILLICIT DRUG. OKAY. AND WE HAVE THE AMOUNT UNDISPUTED. AND YET WE HAVE A JURY THAT HAS FOUND THIS DEFENDANT INNOCENT OF TRAFFICKING IN THE FACE OF THAT. SO MY CONCERN, THE REASON I AM ASKING YOU IS THAT IF THE JURY MAY WELL NOT HAVE UNDERSTOOD THEN THAT, WITH REFERENCE TO THIS LESSER CHARGE, THAT HE NEEDED TO KNOW THE ILLICIT NATURE OF THE DRUG BECAUSE, OTHERWISE, IS THERE ANY EXPLANATION FOR WHY THE JURY FOUND HIM NOT GUILTY OF TRAFFICKING?

YOU KNOW, WE CAN'T SPECULATE ON THE JURY. WE CANNOT SPECULATE ON THAT. I WOULD ANSWER YOUR QUESTION WITH, THAT THIS HAS TO BE A FUNDAMENTAL ERROR ISSUE. IT WOULD CLEARLY BE REVERSIBLE ERROR IF THEY HAD ASKED FOR CHICONE INSTRUCTION. BUT REVERSIBLE ERROR IS DIFFERENT THAN FUNDAMENTAL ERROR. TO HAVE FUNDAMENTAL ERROR, THE ERROR HAD TO HAVE CONTRIBUTED TO THE CONVICTION. SINCE THE DEFENSE WAS KNOWLEDGE OF THE PRESENCE OF THE SUBSTANCE, IT IS IRRELEVANT THAT THAT FOURTH ELEMENT ILLICIT KNOWLEDGE WAS NOT.

I AM STILL GOING BACK TO WHAT I ASKED YOU EARLIER. IF THE DEFENDANT PUTS IT INTO DISPUTE BY ARGUING THROUGH CROSS-EXAMINATION AND THROUGH CLOSING ARGUMENT THAT THE STATE HAS TO BOTH PROVE THAT THERE WAS KNOWLEDGE OF THE ILLICIT -- OF THE PRESENCE AS WELL AS THE ILLICIT NATURE AND THAT, WHY ISN'T THAT -- I'M HAVING TROUBLE UNDERSTANDING WHY THAT ISN'T PUTTING THAT ISSUE INTO DISPUTE? THE DEFENSE IN THIS CASE HAS KNOWLEDGE OF THE PRESENCE OF THE -- NOT KNOWLEDGE OF THE ILLICIT NATURE.

YOU SAY THAT LIKE YOU AGREE IN ARGUMENT THAT THE --

IT COULD HAVE BEEN PLACED INTO DISPUTE.

I THOUGHT THE DEFENSE ATTORNEY ACTUALLY, IN CLOSING -- NO PLACE --

ARGUMENT IS --

NO PLACE DID THEY SAY THAT HE, THAT THEY HAD TO PROVE HE KNEW WHAT WAS IN IT.

THE WAY TO ARGUE THE DEFENSE OF KNOWLEDGE OF ILLICIT NATURE IS TO SAY I KNEW THAT THAT BALL WAS IN THE CAR. I DIDN'T KNOW WHAT IT WAS.

SO YOU HAVE TO, IN ORDER TO PUT GUILTY KNOWLEDGE IN ISSUE, YOU HAVE GOT TO ADMIT YOU KNEW THE --

IT IS AFFIRMATIVE DEFENSE.

IS THAT, YOU'RE PRE-, CHANGING THE STATUTE. YOU'RE SAYING THAT IN ORDER TO PUT GUILTY KNOWLEDGE OF THE ILLEGAL NATURE OF THE SUBSTANCE IN DISPUTE, YOU HAVE TO ADMIT THAT YOU KNEW IT WAS THERE?

THE STATE --

IS THAT WHAT YOU'RE SAYING?

NO, THE STATE IS FORCED TO PROVE EACH ELEMENT. TO RISE TO ELEMENT OF FUNDAMENTAL ERROR.

I KNEW IT WAS THERE. I JUST DIDN'T KNOW --

PURSUANT TO THIS COURT'S HOLDING IN DELVA.

THAT IS WHAT YOU THINK DELVA SAID?

DELVA SAID ILLICIT KNOWLEDGE WAS NOT DISPUTED.

I UNDERSTAND THAT. BUT YOU'RE SAYING THE WAY TO DO IT WOULD BE TO ADMIT THAT YOU KNEW.

THE BALL WAS THERE DELVA SAYS THAT.

THAT'S WHAT YOU HAVE TO DO?

CORRECT.

YOU CAN'T, YOU'RE PRECLUDED FROM ARGUING ALTERNATIVELY?

IF DEFENDANT PUT ON NO CASE, I THINK IT WAS CLEAR FROM SCOTT AND MACMILLAN, IF THE DEFENSE PUTS ON NO CASE, BUT ASKS FOR THE CHICONE INSTRUCTION, HE IS ENTITLED TO IT. SO THE STATE --

NO CASE BUT CROSS-EXAMINES BUT ARGUING THAT WE DISPUTE BOTH THAT HE KNEW THE BALL WAS THERE AS WELL AS WHAT WAS IN THERE?

I BELIEVE MACMILLAN IS CLEAR IF HE, REGARDLESS OF THE DEFENSE PRESENTED, IF HE ASKS FOR IT, IT IS REVERSIBLE ERROR NOT TO GIVE IT. MACMILLAN, SCOTT DO NOT ADDRESS FUNDAMENTAL ERROR.

WHAT IS MEANT BY DISPUTED.

LET ME ASK YOU THIS. THE DCA FOUND THAT THE INSTRUCTIONS IN THIS CASE WEREN'T JUST ERRONEOUS, THEY WERE AFFIRMATIVELY MISLEADING.

I WOULD DISPUTE THAT.

CAN YOU ADDRESS THAT ISSUE?

BASED UPON THIS COURT'S HOLDING IN CHICONE AND AT THE TIME SCOTT HAD NOT COME OUT YET. CHICONE SAID THAT ILLICIT KNOWLEDGE IS AN ELEMENT WHEN SPECIFICALLY REQUESTED.

LET ME START FROM THE BEGINNING. THEY SAID IT WAS MISLEADING -- CORRECT ME IF I'M WRONG -- MY UNDERSTANDING IS THEY SAID IT WAS MISLEADING BECAUSE THE ILLICIT NATURE OF THE SUBSTANCE INSTRUCTION WAS INCLUDED IN THE TRAFFICKING BUT NOT THE POSSESSION,

IS THAT RIGHT?

THAT'S CORRECT. AND AGAIN WHAT THIS TRIAL JUDGE DID, HE GAVE THE STANDARD TRAFFICKING INSTRUCTION. HE GAVE THE STANDARD POSSESSION INSTRUCTION. WE HAVE TO TALK ABOUT FUNDAMENTAL ERROR HERE. FUNDAMENTAL ERROR MEANS THE STATE COULD NOT HAVE CONVICTED WITHOUT THE ERROR. IN THIS CASE, ILLICIT KNOWLEDGE WAS NOT DISPUTED. ILLICIT KNOWLEDGE WAS NOT DISPUTED BY THE DEFENSE.

IF THAT WAS NOT DISPUTED THEN HOW DO YOU RECONCILE THE JURY'S ACQUITTAL OF HIM ON THE TRAFFIC CHARGE?

WE CAN NEVER UNDERSTAND WHAT A JURY -- I MEAN MAYBE THE JURY WAS IMPRESSED --

WHY ISN'T THERE A POSSIBILITY THAT THE JURY ON THE TRAFFICKING CHARGE, HAVING BEEN GIVEN THAT SPECIFIC INSTRUCTION, THAT HE NEEDED TO KNOW THE ILLICIT NATURE, COULD HAVE FOUND YES, HE KNEW ABOUT THE BALL? AND IN THE TRUCK AND WE ACCEPT THAT. BUT WE DON'T THINK THE STATE'S PROVEN THAT HE KNEW WHAT WAS IN IT. AND THEREFORE WE ARE FINDING HIM INNOCENT OF THE TRAFFICKING CHARGE.

EXCEPT MR. GARCIA DID NOT PUT THAT DEFENSE ON. MR. GARCIA'S DEFENSE -- DIDN'T KNOW THAT BALL WAS EVEN IN THERE.

THAT COMES BACK OF COURSE TO WHAT'S INCLUDED BY THE DEFENSE.

AS THE SECOND DISTRICT DID POINT OUT IN ITS OPINION, THAT IT IS LOGICAL THAT SOMEONE WHO WOULD LEAVE SOMETHING VERY VALUABLE IN THEIR CAR, THAT'S WHY WE ARE ENTITLED TO THE MEDLIN PRESUMPTION.

BUT DON'T YOU AGREE THAT THE FINDING OF POSSESSION HERE IS TANTAMOUNT TO A FINDING OF TRAFFICKING, SINCE THE AMOUNT OF THE SUBSTANCE THAT WAS FOUND THERE WAS NOT DISPUTED? IT WAS EITHER THAT AMOUNT OR NOT.

IT WAS NOT DISPUTED.

FINDING GUILT OF POSSESSION HERE REALLY FLIES IN THE FACE OF THE ACQUITTAL ON THE TRAFFICKING CHARGE.

DEFENSE DID PUT ON A CHAIN OF CUSTODY CHALLENGE. THAT WAS IN THE SECOND DISTRICT, THAT WAS A CHALLENGED ELEMENT OF THE CONVICTION. THERE WAS A CHAIN OF CUSTODY ARGUMENT, SO THEY DID DISPUTE THE ELEMENT TO THAT EXTENT. BUT --

YOU'RE -- IF YOU'RE IN POSSESSION AS THE JURY FOUND HERE AND WITH THE AMOUNT BEING ABOVE THE AMOUNT IN THE TRAFFICKING STATUTE, YOU ARE GUILTY OF TRAFFICKING, ARE YOU NOT?

YOU ARE NOT GUILTY OF IT. IT IS ENOUGH FOR THE CASE TO GO TO A JURY. AND IT IS A JURY DETERMINATION. THE CASE LAW IS CLEAR, EXCLUSIVE POSSESSION OF A VEHICLE, SOLE OCCUPANT OWNER OF THE VEHICLE, THE STATE'S ENTITLED TO THOSE PRESUMPTIONS. PARTS THREE AND FOUR OF THE POSSESSION INSTRUCTION, STATE IS ENTITLED TO THOSE PRESUMPTION.

THE JURY COULD NOT HAVE FOUND HE WAS JUST IN POSSESSION OF A LITTLE BIT OF IT?

WE CANNOT SPECULATE ON WHAT THE JURY DID IN THIS CASE. IN ANY CASE, WE CANNOT SPECULATE. I WOULD JUST LIKE TO BRIEFLY ADDRESS THE SECOND DISTRICT AND I BELIEVE, IN GARCIA AND IN LEIGH, THE FOURTH DISTRICT TALKED ABOUT A POSSIBLE CONFLICT BETWEEN

THE HOLDING OF DELVA AND THE HOLDING OF SCOTT. I WOULD SUBMIT THERE IS NO CONFLICT. THESE CASES ARE TOTALLY COMPATIBLE WITH EACH OTHER BECAUSE SCOTT WAS A REVERSIBLE ERROR, PRESERVED ERROR CASE. DELVA WAS A FUNDAMENTAL ERROR CASE.

DOESN'T THERE APPEAR TO BE SOME CONFLICT IF NOT IN THE HOLDINGS, AT LEAST IN THE LANGUAGE OF THE TWO CASES, EXPLAINING ABOUT WHETHER WHEN A DEFENDANT DISPUTES THAT HE KNEW THE SUBSTANCE WAS THERE, WHETHER OR NOT HE'S ALSO DISPUTING THE ILLICIT NATURE OF THE SUBSTANCE?

WELL, I BELIEVE THAT LANGUAGE IN SCOTT IS DICTA BECAUSE AGAIN SCOTT IS PRESERVED ERROR. TO LOOK TO FUNDAMENTAL ERROR, THIS COURT HAS TO LOOK TO DELVA.

YOU WOULD AGREE THERE IS A CONFLICT IN, AT LEAST WITH THE DICTUM?

I THINK THAT IS WHY THE DCA'S HAVE GONE SPLITTING ON THAT BECAUSE OF THE DICTA IN SCOTT.

SO WHY ISN'T IT THOUGH PROPER, IF A DEFENDANT SAYS I KNOW NOTHING ABOUT THIS BEING IN THE CAR, OR WHEREVER IT MAY BE LOCATED, THE DEFENDANT IS THEN PUTTING THE STATE TO THE TASK OF PROVING EACH AND EVERY ELEMENT OF THE OFFENSE. AND ONE OF THE ELEMENTS OF THE OFFENSE IS THAT THE DEFENDANT HAS TO KNOW THE ILLICIT NATURE OF THE DRUG. SO WHY ISN'T IT PROPER FOR THE STATE TO HAVE TO PROVE ALL OF THOSE ELEMENTS WHEN THE DEFENDANT SAYS I KNEW NOTHING ABOUT THE DRUGS BEING THERE?

BECAUSE THE KEY DISTINCTION IN THIS CASE AND DELVA IS THE EXCLUSIVE POSSESSION OF THE VEHICLE. WHICH INFERS EXCLUSIVE --

I'M NOT TALKING ABOUT WHAT KIND OF INFERENCES OR PRESUMPTIONS THE STATE CAN GET BASED ON THE POSSESSION. BUT THE STATE HAS TO PROVE SOMETHING, RIGHT?

THE STATE HAS TO PROVE ALL THE ELEMENTS. HOWEVER, IT DOES NOT MEAN THIS CASE IS A FUNDAMENTAL ERROR CASE. IT COULD BE A REVERSIBLE ERROR CASE AND PURSUANT TO SCOTT, IF IT HAD BEEN REQUESTED, IT WOULD BE REVERSIBLE ERROR.

THANK YOU VERY MUCH.

THANK YOU.

MR. MARSHAL, HOW MUCH TIME LEFT?

THANK YOU, SIR. FUNDAMENTAL ERROR IN THIS CASE IS ILLUSTRATED BY THE COURT, TRIAL COURT'S RESPONSE TO THE JURY QUESTION. IN THE MISCARRIAGE OF JUSTICE THAT CHIEF JUSTICE ANSTEAD IS REFERRING TO IS PATENTLY OBVIOUS FROM THIS RECORD. I URGE THE COURT TO LOOK AT THIS RECORD IN DECIDING THE ISSUES IN THIS CASE. BECAUSE THIS JURY ASKED FOR GUIDANCE FROM THE TRIAL COURT, WHAT IS THE DIFFERENCE BETWEEN THESE TWO CRIMES? AND WAS TOLD THE DIFFERENCE. THERE ARE FOUR ELEMENTS OF TRAFFICKING AND THREE ELEMENTS OF POSSESSION. THE ONLY DIFFERENCE ASIDE FROM THE UNDISPUTED FACT OF THE WEIGHT WAS IN THE GUILTY KNOWLEDGE INSTRUCTION GIVEN ON THE TRAFFICKING CHARGE. THE JURY THEN CAME BACK WITH A CONVICTION ON POSSESSION. THIS IS NOT A FACT THAT CAN BE GLEANED FROM DELVA. BUT THIS IS WHY THIS ERROR IS FUNDAMENTAL.

IS THE STATE CORRECT, HOWEVER, IN THAT SENTENCE -- SINCE THE DEFENDANT WAS IN EXCLUSIVE POSSESSION OF THE VEHICLE, THAT THEY WERE ENTITLED TO THE MEDLIN INSTRUCTION ON THE PRESUMPTION OF KNOWLEDGE?

NO. THE STATE IS NOT CORRECT. YOU CAN SEE IN THE PROSECUTOR'S ARGUMENT IN THIS CASE, THE PROSECUTOR SAID WELL, I CAN INFER, I CAN GET MEDLIN THAT HE KNEW ABOUT THE BLACK TAPED BALL. BUT THEN THE PROSECUTOR ARGUES TO THE JURY, WELL, YOU CAN INFER HE KNEW ABOUT THE BLACK TAPE BALL, SO WHAT ABOUT KNOWLEDGE ABOUT WHAT WAS IN THE BALL? THIS IS FROM THE PROSECUTOR'S CLOSING. DID HE KNOW THAT IT WAS METHAMPHETAMINE INSIDE THIS BALL? THESE ARE THE ISSUES. THIS IS THE ISSUE THAT IS BEING DECIDED BY THIS JURY. AND THIS JURY WANTS TO KNOW HOW TO DECIDE IT.

BUT WHAT DOES THE MEDLIN PRESUMPTION SAY? WHAT DOES THAT INSTRUCTION SAY? DOESN'T IT INCLUDE THE KNOWLEDGE --

IT SAYS YOU HAVE TO ACTUALLY POSSESS THE THING. THAT'S WHAT'S SO CONFUSING. BECAUSE IN ALL THESE CASES WHEN THEY'RE TALKING ABOUT YOU HAVE TO POSSESS THE THING. IN THIS CASE I KEPT THINKING, WELL, WHICH THING ARE THEY TALKING ABOUT? ARE THEY TALKING ABOUT THE TRUCK? ARE THEY TALKING ABOUT THE BALL? ARE THEY TALKING ABOUT THE CELLOPHANE OR THE POWDER OR KNOWING WHAT THE POWDER IS?

IF YOU POSSESS THE PLACE, AREN'T YOU IN CONSTRUCTIVE POSSESSION OF THE THING? ISN'T THAT HOW IT IS ACTUAL AND CONSTRUCTIVE EXCLUSIVE POSSESSION WORKS? IF YOU'RE IN EXCLUSIVE POSSESSION OF THE PLACE WHERE THE OBJECT IS FOUND, THEN YOU'RE IN CONSTRUCTIVE POSSESSION OF THE OBJECT ITSELF?

IF YOU KNEW -- IF YOU CONCEALED INSIDE THE THING, IF THIS IS A CONCEALED ITEM, THE INSTRUCTIONS, JURY INSTRUCTIONS SAY THE PERSON WOULD HAVE TO CONCEAL IT IN. THEY'D HAVE TO SHOW MR. GARCIA CONCEALED IT INSIDE THE BALL. THAT WASN'T SHOWN HERE.

WHAT DOES THE INSTRUCTION SAY?

CONSTRUCTIVE POSSESSION MEANS THE THING IS IN A PLACE OVER WHICH THE PERSON HAS CONTROL. OR IN WHICH THE PERSON HAS CONCEALED IT. AND THAT WAS READ TO THE JURY.

IN CONTROL OF THE PLACE WHERE THE THING WAS FOUND.

YES, HE WAS IN CONTROL OF THE TRUCK. BUT THERE WAS NO PROOF THAT HE CONCEALED ANYTHING INSIDE THE BALL. AND THAT WAS THE ISSUE IN THIS CASE. BRIEFLY, BECAUSE I KNOW I'M RUNNING OUT OF TIME. THE VALUE ISSUE THAT THE DISTRICT COURT OPINION SO STRONGLY RELIED UPON SHOULD NOT BE CONSIDERED IN DECIDING THIS CASE BECAUSE THERE IS NO EVIDENCE OF VALUE.

VALUE?

YES. WHEN THE DISTRICT COURT DECIDED THAT THIS WAS NOT FUNDAMENTAL ERROR -- THE SUFFICIENCY ISSUE, I'M SORRY. THAT YOU COULD LOGICALLY INFER THAT HE -- BECAUSE HE HAD THE TRUCK, THAT HE WOULDN'T BE CARRYING AROUND THIS BLACK TAPED BALL BECAUSE IT WAS VALUABLE. BUT THERE IS NO EVIDENCE OF ANY VALUE IN THIS CASE. AND THE DISTRICT COURT HAD NO BASIS FOR USING THAT AS A DECISION TO MAKE ITS DECISION IN THIS CASE. I THANK YOU VERY MUCH FOR YOUR CONSIDERATION OF MR. GARCIA'S CASE AND WE ASK YOU QUASH THE DISTRICT COURT'S OPINIONS.

THANK YOU VERY MUCH. COURT IS GOING TO TAKE ITS MORNING RECESS OF 15 MINUTES. THANK YOU.

PLEASE RISE.