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State of Florida v. Fernando Castillo

NEXT CASE ON THE COURT'S DOCKET IS STATE VERSUS CASTILLO.

GOOD MORNING. MAY IT PLEASE THE COURT. ASSISTANT ATTORNEY GENERAL CONSUELLA DOMINGO ON BEHALF THE STATE. THERE ARE TWO GROUNDS, BUT I WOULD LIKE TO READ FROM THE FINDING, THE DETERMINATION, THE OPINION OF THE THIRD DISTRICT COURT. THE STATE WAS THUS UNABLE TO SHOW ANY MEETING OF THE MINDS. AT BEST, THE PROSECUTION ONLY SHOWED THAT, IN THE MIND OF AS, THE VICTIM, SHE THOUGHT THAT KAS 'TIL YO, THE RESPONDENT -- THAT CASTILLO, THE RESPONDENT, WOULD ARREST OR TICKET HER, IF SHE DID NOT HAVE INTERCOURSE WITH HIM, BUT IN THE ABSENCE OF ANY SPOKEN UNDERSTANDING, CASTILLO COULD SIMPLY HAVE THOUGHT THAT AS FOLLOWED HIM VOLUNTARILY. THEY MADE TWO MISTAKES. THE FIRST MISTAKES WAS TO COMPLETELY, WAS TO REQUIRE A SPOKEN UNDERSTANDING. THAT IS DIRECT EVIDENCE. ANY RELEVANT EVIDENCE MUST BE SUPPORTED BY FACT.

YOU HAVE SUPPORTED YOUR CLAIM, CORRECT?

YES, YOUR HONOR, STATE V GETTER I KNOW. -- STATE VGEURIN.

WHAT IS THE ISSUE OF LAW?

THE ISSUE OF LAW IS THE SECOND PART OF THAT ERROR, AND THE DISMISSAL OF EVIDENCE, AND STATE V GUR I KNOW HOLDS THAT, INORD -- STATE VGEURIN HOLDS THAT THE STATE MAY BRING CIRCUMSTANTIAL EVIDENCE. WE ARE SAYING THAT, IN THIS CASE, THAT THE THIRD DISTRICT COURT DENIED ACCESS TO CIRCUMSTANTIAL EVIDENCE AND SAID THAT, UNLESS THERE WAS A SPOKEN UNDERSTANDING, YOU COULD NOT PROVE UNLAWFUL COMPENSATION IN THIS CASE.

DO YOU AGREE THERE IS A QUID PRO QUO REQUIRED, JUST THAT IT DOESN'T HAVE TO BE EXPLICITLY STATED. IT CAN BE PROVEN THAT IT IMPLICITLY EXISTED THROUGH CIRCUMSTANTIAL EVIDENCE.

THAT'S CORRECT, YOUR HONOR. THAT IS PART OF THE STATUTE AND THE MISS CONSTRUCTION OF THE MEETING OF THE MINDS IDEA THAT THEY PICKED UP FROM GRADY V COLEMAN.

NOW, IS IT, DO WE NEED TO LOOK AT THE INTENT OF THE SUSPECT OR THE DEFENDANT, OR DO WE NEED TO LOOK AT THE INTENT OF THE PERSON GIVING THE DEFENDANT THE, WHATEVER IT IS, THE COMPENSATION?

IT IS THE INTENT OF THE RESPONDENT, THE DEFENDANT, THAT IS AT ISSUE. THE CHARGE IS, AND I MIGHT READ FROM THE STATUTE, THAT IT IS UNLAWFUL FOR ANY PUBLIC SERVANT CORRUPTLY TO REQUEST, SOLICIT, ACCEPT, OR AGREE TO ACCEPT. BY FINDING THAT THEY NEEDED A MEETING OF THE MINDS, THE COURT WAS INTERPRETING THAT PART OF THE STATUTE THAT SAID "DEGREED TO ACCEPT QEE ", BUT THE -- THAT SAID "AGREED TO ACCEPT", BUT THE STATE CHARGED IN THE ALTERNATIVE AND RESTED ITS CASE ON THE SOLICITATION AND CORRUPT SOLICITATION REQUEST. CORRUPTION IS FURTHER DEFINED AS DONE WITH WRONGFUL INTENT, SO YOU HAVE THE ELEMENT OF INTENT, WHICH AS LEGIONS OF CASES HAVE HELD, MAY BE PROVED BY CIRCUMSTANTIAL EVIDENCE. IN FACT, ANY ELEMENT OF ANY CRIME MAY BE PROVED BY CIRCUMSTANTIAL EVIDENCE, AND TO REQUIRE THAT THERE BE ONLY SPOKEN

UNDERSTANDING IS A REQUIREMENT THAT THERE BE AN ABSOLUTE, DIRECT, PIECE OF EVIDENCE.

HELP US WITH THAT PROPOSITION, AS FAR AS THIS ISSUE. ARE WE JUST REVIEWING TWO DIFFERENT CASES WHERE ONE COURT HELD THE EVIDENCE IS SUFFICIENT AND THE OTHER COURT HAS HELD THE EVIDENCE IS NOT, AND WE DO NOT REVIEW SIMPLY ON THAT BASIS, SO I AM LOOKING FOR THIS PRINCIPLE OF LAW IN ONE CASES IN THE FOURTH DISTRICT, FOR INSTANCE, THAT IS STATED IN SUCH A WAY THAT APPARENTLY THE THIRD DISTRICT, NOW, HAS STATED A CONFLICTING WAY, AND THAT WE CAN RESOLVE. WHAT IS THE PRINCIPLE OF LAW SET OUT IN THOSE TWO OPINIONS, THAT WE WOULD, THEN, CLARIFY OR STATE CORRECTLY? HELP ME WITH THAT. IN OTHER WORDS, WHAT IS IT THAT THE THIRD DISTRICT SAID HERE, THAT IS CONTRARY TO THE LAW THAT YOU WOULD HAVE THIS APPROVED?

THE THIRD DISTRICT HELD THAT SPOKEN UNDERSTANDING. SO IT BASED ITS CASE ON DIRECT EVIDENCE, SO THE PRINCIPLE OF LAW WOULD BE THAT, IN UNLAWFUL COMPENSATION CASES, A QUID PRO QUO OR THE ACT --

THEY HELD THERE MUST BE EXPLICIT DIRECT EVIDENCE OF THIS AGREEMENT.

YES.

AND THE FOURTH DISTRICT HELD THAT, NO, THE CIRCUMSTANCES OF THE SITUATION CAN BE UTILIZED BY THE STATE TO PROVE THAT ELEMENT.

IS --

AND THE PRINCIPLE OF LAW, THEN, WOULD BE THAT THIS COURT WOULD ADDRESS, WAS, IS IT, CAN THE COURT OR SHOULD THE COURT ENTERTAIN CIRCUMSTANTIAL EVIDENCE, IN ORDER TO SHOW A QUID PRO QUO AND IN A VIOLATION OF UNLAWFUL COMPENSATION?

IS THE SENTENCE THAT YOU ARE REFERRING TO, THE SENTENCE THAT SAYS "BUT IN THE ABSENCE OF ANY SPOKEN UNDERSTANDING, CASTILLO COULD SIMPLY HAVE THOUGHT THAT AS FOLLOWED HIM VOLUNTARILY? IS THAT WHAT YOU ARE REFERRING TO?

YES. THE SPOKEN UNDERSTANDING.

WELL, CAN THAT NOT BE REASONABLY READ TO MEAN THAT, WITHOUT, UNDER THE CIRCUMSTANCES OF THIS CASE, THAT WITHOUT ANY SPOKEN UNDERSTANDING, THAT THE CIRCUMSTANTIAL EVIDENCE DOES NOT WEIGH, OUTWEIGH ALL OTHER REASONABLE INFERENCES, AND THAT ISN'T ACCEPTED.

THAT ISN'T -- AND THAT IS AN ACCEPTED.

THAT IS AN ACCEPTED PRINCIPLE OF LAW, BUT IN THIS CASE --

CANNOT TAKE BE READ TO MEAN THAT? -- CANNOT THAT BE READ TO MEAN THAT?

IF I UNDERSTAND YOU CORRECTLY, WHAT YOUR HONOR IS SAYING IS, IF THE COURT DID IN FACT CONSIDER THE CIRCSTACKS EVIDENCE AND DECIDED THAT -- THE CIRCUMSTANTIAL EVIDENCE AND DECIDED THAT THEY NEEDED AN EXPLICIT UNDERSTANDING, WAS DO WE HAVE JURISDICTION HERE, OR IS THERE, IS THERE CONFLICT, AND I WOULD SAY IF THEY DID CONSIDER THE CIRCUMSTANTIAL EVIDENCE, THERE IS NO CONFLICT. BUT THEY DID NOT. AND --

BUT FOLLOWING UP ON WHAT JUSTICE WELLS SAYS, THAT, YOU KNOW, IF YOU HAVE A SITUATION WHERE SOMEBODY ACCEPTS MONEY AND THEY ARE AN OFFICIAL, YOU HAVE KIND OF ALREADY HAVE THE CIRCUMSTANCES SET FOR AN IMPLICIT AGREEMENT, AND WHILE THE BEHAVIOR IN

THIS CASE IS CERTAINLY ABERRANT, THE QUESTION IS, IS, YOU KNOW, IS IT, COULD IT HAVE BEEN CONSENTUAL AND, REALLY, NOTHING TO DO WITH THE TICKET, AND ISN'T IT IN THAT CONTEXT THAT THE COURT IS MAKING THE STATEMENT THAT, IN THIS CASE, WITHOUT MORE BEING SAID, THIS DOESN'T ESTABLISH QUID PRO QUO.

THAT'S CORRECT, YOUR HONOR, BUT THAT IS --

AS OPPOSED TO SAYING THAT ALWAYS AN EXPLICIT AGREEMENT, YOU HAVE GOT TO HAVE A MEETING OF THE MINDS, LIKE I AM GIVING YOU THIS MONEY. NOW PLEASE WRITE IT DOWN THAT WHAT YOU ARE GOING TO DO IS, YOU KNOW, VOTE DIFFERENTLY ON THE NEXT, IN THE NEXT COUNTY COMMISSION MEETING.

IN THAT CASE, THIS CASE IS A VERY DIFFERENT CASE FROM ALL OF THE OTHER CASES THAT ARE, THAT HAVE COME IN ON UNLAWFUL COMPENSATION, AND THEY ARE ASSUMING THAT IT IS CONSENTUAL, AND THIS IS NOT A SEXUAL BATTERY CASE. THE VICTIM, AS, TESTIFIED THAT HE NEVER SPOKE WORDS THAT "I WON'T GIVE YOU A DUI." THAT THAT IS WHY IT IS SO IMPORTANT TO HAVE CIRCUMSTANTIAL EVIDENCE. OUR INTERPRETATION OF THE STATUTE AND OUR CHARGING MOTIVATION IS THAT, WHEN AN OFFICER REQUESTS OR LISS IS ITS, SUPPOSE A -- SORRY.

THAT IS WHAT YOU WERE BRINGING OUT BEFORE, BUT THAT PART OF THE STATUTE HAS NOTHING TO DO WITH THE QUID PRO QUO. YOU ARE SAYING THAT SIMPLY BY OFFERING TO DO SOMETHING, IT CAN BE A VIOLATION, BUT NOW, AGAIN, GOING BACK TO THIS ISSUE AS TO WHETHER THERE IS CONFLICT, THERE IS NO CONFLICT WITH THE FOURTH DISTRICT ON THAT ISSUE, IS THERE?

NOT ON THE QUID PRO QUO. ON THE FACT THAT YOU CAN USE CIRCUMSTANTIAL EVIDENCE. THE THIRD BASED ITS CASE O'GRADY, AND, GRADY V COLEMAN, AND IN THAT CASE, THE LAW WAS THAT IT, THEY HAD TO HAVE UNLAWFULLY, WILLFULLY AND KNOWINGLY AGREE, CONSPIRE, COMBINE AND CONFEDERATE BETWEEN THEMSELVES, SO YOU HAD TO HAVE A MEETING OF THE MINDS. GAG BACK TO YOUR QUESTION OF WHETHER -- GOING BACK TO YOUR QUESTION OF WHETHER THERE WAS CONSENT OR NOT CONSENT, AMAPPARENTLY THEY BASED PART OF THEIR REASONING ON THIS, IN STATE V GETTER I KNOW, THE -- IN STATE V GUERIN, THERE WAS A QUID PRO QUO, BECAUSE THERE WAS AN EXCHANGE OF MONEY FOR OFFICIAL DUTIES IN THIS CASE, WE HAD TO -- DUTIES. IN THIS CASE, WE HAD TO SHOW THE CORRUPT INTENT, AND THAT IS ALL IN THE MIND OF THE OFFICER.

THAT IS AN ISSUE, BECAUSE WHILE THE FOURTH DISTRICT HELEDZ THERE SHOULD BE A QUID PRO QUO, IT ESTABLISHES THE ELEMENT INCORRECTLY. THAT IS IN RELATION TO THE ELEMENT AS TO QUID PRO QUO, BUT NOW YOU ARE SAYING THAT THE STATE DIDN'T NEED TO RELY ON QUID PRO QUO BECAUSE IT WAS PROSECUTING UNDER ANOTHER THEORY, AND IT MAY BE A QUESTION THAT, IF THERE IS NO CONFLICT ON THE QUID PRO QUO ISSUE, THERE CERTAINLY, THERE CONFLICT ON THIS ALTERNATIVE THERE THAT I THERE SHALL ANOTHER THEORY OF PROSECUTION THAT DOESN'T REQUIRE A MEETING OF THE MINDS? WHAT IS THAT CONFLICT WITH?

PERHAPS I SHOULD GET BACK TO THE IDEA OF THE QUID PRO QUO. THERE IS A QUID PRO QUO HERE, BECAUSE THE, AS TESTIFIED --

CAN YOU ANSWER? LET'S STAY WITH THE OTHER THAT YOU ARE THROWING OUT HERE, WHICH IS THAT THE STATE DIDN'T NEED TO PROVE A MEETING OF THE MINDS. IS THERE ANY CASE THAT THE THIRD DISTRICT SEEMED TO SAY, YES, IT DOES REQUIRE A MEETING OF THE MINDS? IS THERE A CASE THAT THAT HOLDING OF THE THIRD DISTRICT CONFLICTS WITH

NOT DIRECTLY AND THE STATE WOULD ARGUE WITH THE QUID PRO QUO, BECAUSE THE EVIDENCE THAT WAS BEFORE THE JURY THAT THE STATE PROVIDED AND AFTER ALL, WE MUST CONSIDER

THAT WHAT HAPPENED HERE IS THAT THERE WAS A JUDGMENT OF ACQUITTAL, AND THAT WAS DENIED IN THE TRIAL COURT.

SEE, THE DIFFICULTY THAT WE, AND I AM NOT SURE BECAUSE WE WERE JUST EXAMINING THIS. OBVIOUSLY.

YES.

WE ARE NOT HERE TO QUESTION THE THIRD DISTRICT'S DECISION. WE MAY ALL DISDIS AGREE WITH THE OUTCOME OF THE DECISION -- WE MAY ALL DISAGREE WITH THE OUTCOME OF THE DECISION, BUT THAT IS NOT OUR ROLE TO DO. THAT WE MAY BELIEVE THAT THEY GOT IT ALL WRONG AND THERE WAS ENOUGH EVIDENCE TO GO TO THE JURY AS IT D WE ARE HERE TO CLARIFY OR MAKE -- AS IT DID THE. WE ARE HERE TO CLARIFY OR MAKE UNIFORM THE LAW IN SITUATIONS LIKE THIS, BE SURE THAT THERE ARE NOT TWO OPINIONS OUT HERE THAT STATE PRINCIPLES OF LAW IN CONTRADICTION, AND THIS IS THE DIFFICULTY WE ARE HAVING, IS WHETHER THERE REALLY IS AN ARTICULATION OF PRINCIPLE OF LAW IN THE FOURTH DISTRICT OPINION AND THEN A CONTRARY ENUNCIATION OF THAT PRINCIPLE. CAN YOU HELP US WITH THAT AGAIN?

THE LEGAL ISSUE AT POINT, THEN, IS THAT THE JUDGMENT OF ACQUITTAL, AND WHAT KIND OF EVIDENCE CAN BE BROUGHT FOR THE JUDGMENT OF ACQUITTAL, AND PERHAPS I ANSWERED YOUR HONOR WRONG, THAT THERE WAS NO QUID PRO QUO TO BE PROVED, AND THIS WOULD FALL RIGHT WITHIN STATE V GUERIN. THERE WAS A QUID PRO QUO. THE VICTIM SAID, TESTIFIED THAT HE STOPPED HER AND MADE MANY STATEMENTS THAT SHOWED WHAT WAS IN HIS MIND. THE THIRD DISTRICT COURT DID NOT, DID NOT WEIGH THAT, BECAUSE WHAT IT WEIGHED WAS THE FACT THAT SHE SAID THAT HE DID NOT SAY DUI SPECIFICALLY. HE DID NOT SAY I WILL LET YOU OFF IF YOU DO THIS. SO THAT THIS COURT DID NOT WEIGH THE CIRCUMSTANTIAL EVIDENCE TO PROVE THE QUID PRO QUO, AND IN THAT SENSE, IT IS IN CONFLICT WITH GUERIN, BECAUSE GUERIN SAYS THAT YOU MUST HAVE THE QUID PRO QUO. SORRY.

WHAT PART OF THE STATUTE, SECTION 838.016, BASICALLY SAYS THAT -- SECTION 838.016, BASICALLY SAYS THAT THE PUBLIC OFFICIAL HAS TO CORRUPTLY REQUEST OR SOLICIT SOME KIND OF BENEFIT, IN EXCHANGE FOR NOT DOING AN OFFICIAL ACTOR DOING AN OFFICIAL ACT. WHAT PART OF THAT REQUIRES A QUID PRO QUO?

-- QUID PRO QUO? I MEAN, AS I LOOK AT THAT STATUTE, WE ARE LOOKING AT THIS FROM WHAT THE OFFICER DID AND NOT HOW THE A.S. REACTED TO WHAT THE OFFICER DID, SO WHY IS A QUID PRO QUO NECESSARY? WHAT ELEMENT IN THIS STATUTORY SCHEME REQUIRES THAT?

THE RECEIPT OF THE BENEFIT COMES TO MIND, AND THAT IS WHERE --

DO YOU HAVE TO HAVE A RECEIPT OF THE BENEFIT? I MEAN, IF THE OFFICER, IF THIS SAME OFFICER, OFFERS THIS, AND THE PERSON SAYS NO, HAS THE OFFICER VIOLATED THE STATUTE? ANOTHER STATE WOULD SAY YES.

SO IT SEEMS TO ME YOU DON'T NEED THE OTHER HALF OF IT. YOU DON'T NEED THE A.S. ACTUALLY GREG TO DO ANYTHING.

NO. YOU -- ACTUALLY AGREEING TO DO ANYTHING.

NO, YOU DON'T. BUT AS A MATTER OF FACT THAT BRINGS US BACK TO THE PRINCIPLE OF LAW, WHY IS IT IN CON APPLICANT WITH GUERIN, AND IN ORDER TO PROVE THIS CORRUPT INTENT, YOU HAVE TO LOOK AT THE CIRCUMSTANTIAL EVIDENCE, AND THE CIRCUMSTANTIAL EVIDENCE WOULD ESTABLISH THAT SHE THOUGHT THAT SHE HAD NO ALTERNATIVE, IF SHE WANTED TO GET OFF OR NOT GET A TICKET OR NOT BE ARRESTED. SHE THOUGHT THAT WAS IN HER MIND,

AND THE ACTIONS OF THE OFFICER WERE AN ABUSE OF THAT, OF HIS OFFICE, BY REQUIRING OR BICEPING THE BENEFIT BY EVEN CONTEMPLATING IT. I STRUGGLE WITH THE PRINCIPLE, BECAUSE WHEN WE COME RIGHT DOWN TO IT, IT IS A JUDGMENT OF ACQUITTAL, AND A JUDGMENT OF ACQUITTAL GOES TO A JURY, IF THERE IS SUBSTANTIAL COMPETENT EVIDENCE, AND WITH THE CIRCUMSTANTIAL EVIDENCE, OF THE TESTIMONY THAT SET UP THE SITUATION, THE EVIDENCE OF THE VIDEOTAPES WHICH CATAGORICALLY SHOWED HIM AT THE SPECIFIC TIMES, 46 MINUTES WITH A CIVILIAN --

WITH THIS ARGUMENT, AREN'T WE BACK, THEN, TO THE PREVIOUS QUESTION, WHICH WAS ARE WE HERE TO LOOK AT WHETHER OR NOT THE SECOND, THE THIRD DISTRICT GOT IT WRONG, BY SAYING THAT THERE WAS NOT EVIDENCE TO SUPPORT THIS. IS THAT OUR ROLE?

THE ROLE IS CONFLICT. AND THE ROLE IS NOT TO GO BACK AND ADDRESS THE FACTS, SO YOUR HONOR, I WOULD SAY THAT THE ROLE HERE IS TO SEE WHETHER OR NOT THERE WAS CIRCUMSTANTIAL, WHETHER THE COURT EVEN ADDRESSED THE CIRCUMSTANTIAL EVIDENCE AND CONSIDERED IT, AND WRONGLY DENIED JUDGMENT OF ACQUITTAL.

CHIEF JUSTICE: THANK YOU VERY MUCH. GOOD MORNING.

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT. HARVEY SEPLER ON BEHALF OF MR. CASTILLO. MY CONCERN THROUGHOUT THE CASE, HAS BEEN DISCUSSED AT LENGTH HERE, WHICH IS I DON'T SEE A CONFLICT.

LET'S DISCUSS THE THIRD DCA OPINION AND SEE HOW IT RELATES TO THE, TO GUERIN. IN THE LAST PART OF THE OPINION, THE THIRD DCA QUOTES WHAT THE VICTIM TESTIFIED TO, AND THE CROSS-EXAMINATION. HE NEVER SUGGESTED HE WAS GOING TO ARREST YOU FOR DUI? NO. HE NEVER SAID ANYTHING ALONG THE LINES OF DUI THE ENTIRE ENCOUNTER, DID HE? NO. THERE WAS NEVER ANY QUID PRO QUO THAT HE WOULDN'T ARREST YOU IF YOU WOULD COME WITH ME, WAS THERE? NO. THE STATE WAS THUS UNABLE TO SHOW ANY MEETING OF THE MINDS. AT BEST, THE PROSECUTION ONLY SHOWED THAT, IN THE MIND OF A.S., SHE THOUGHT CASTILLO WOULD ARREST OR TICKET HER IF SHE DID NOT HAVE INTERCOURSE WITH HIM, BUT IN THE ABSENCE OF ANY SPOKEN UNDERSTANDING, CASTILLO COULD SIMPLY HAVE THOUGHT THAT A.S. FOLLOWED HIM VOLUNTARILY. NOW, READING FROM THAT, CAN WE INTERN FROM THAT THAT THE THIRD DCA IS REQUIRING, IN ORDER TO VIOLATE THIS STATUTE THAT, THERE IS A SPOKEN UNDERSTANDING THAT, IF YOU DO THIS, I WILL NOT TICKET YOU FOR DUI?

NO. I THINK ONE COULD ALWAYS TRY TO READ IN WARN ONE IS INCLINED -- TO READ IN WHATEVER ONE IS INCLINED TO INTERPRET IT AS. OUR POSITION WITH THE WAY THAT THE THIRD DISTRICT DECIDED THIS CASE, IS THEY LOOK BOTH TO THE CLEANEST WAY OF PROVING IT AND I THINK ABSOLUTELY CORRECT THAT, THE GRAPH A MEANT OF THE OFFENSE IS THE RESPONDENT'S INTENT. TWO-WAYS, OF COURSE, TO PROVE INTENT, DIRECT EVIDENCE AND IN DIRECT EVIDENCE. IT IS NOT UNREASONABLE FOR THE COURT TO HAVE LOOKED FIRST TO THE DIRECT EVIDENCE. IT IS THE CLEANEST WAY OF KNOWING WHAT THE RESPONDENT INTENDED. FINDING NONE, THE CLERK THEN TURNED TO THE CIRCUMSTANTIAL EVIDENCE. WHEN IT SAYS, IN, WHEN THE COURT SAYS, IN THE ABSENCE OF ANY SPOKEN UNDERSTANDING, WE THEN MOVE TO THE CIRCUMSTANTIAL EVIDENCE, AND WHAT WAS THE CIRCUMSTANTIAL EVIDENCE THAT THE COURT LOOKED AT? THE COURT QUOTED FROM THE VICTIM'S OWN TESTIMONY, AND OF COURSE THERE WERE ONLY TWO PEOPLE THERE AT THE TIME, SO WHERE DO YOU LOOK? YOU LOOK TO WHAT THE VICTIM SAYS OR THE ALLEGED VICTIM, THE MOTORIST. WHAT SHE SAYS IS VERY CLEARLY, SHE SAYS, THAT HE NEVER SAID OR DID ANYTHING, FIRST OF ALL, DUI NEVER CALM IN THE ENTIRE INTERACTION. I THOUGHT THAT THAT WAS -- DUI NEVER CAME UP IN THE ENTIRE INTERACTION. I THOUGHT THAT WAS VERY INTERESTING, IN THE SENSE OF THE STATE'S

ARGUMENT.

DID DIDN'T SHE TESTIFY THAT SHE HAD BEEN RING DRINKING AND SHE WAS SPEEDING, AND -- SHE HAD BEEN DRINKING AND SHE WAS SPEEDING AND HE STOPPED HER AND THERE WAS SOME COMMENT ABOUT THIS MUST HAVE BEEN A GREAT PARTY AND HE SMELLED SOME HAD ALCOHOL, AND WASN'T THERE SOME TESTIMONY THAT THERE WAS SOME ALCOHOL INVOLVED HERE. MAYBE THE WORD DUI WAS NOT SPOKEN.

YES. THERE WAS SOME TESTIMONY, WITH ALL RESPECT. AS I UNDERSTAND THE STATE'S POSITION, IT REALLY COMES DOWN TO THREE COMMENTS THAT THE RESPONDENT MADE, BUT I DON'T WANT TO LOSE SIGHT OF THE FACT THAT, WHEN THIS STOPPED APPARENTLY OCCURRED, THERE WAS NO QUESTION OF DUI. THERE WAS NO SMELL OF DUI. ALL THERE WAS, WAS WHEN THE MOTORIST GOT OUT OF HER CAR SHE STUMBLED A LITTLE BIT AND SHE LEANED AGAINST THE CAR.

WE HAVE TO TAKE THE FACTS IN THE LIGHT MOST FAVORABLE TO --

TO THE PREVAILING PARTY.

THAT'S RIGHT, AND HERE THE VICTIM SAID THAT SHE HAD HAD SEVERAL DRINKS AND SHE WAS ESSENTIALLY FALLING DOWN DRUNK.

WELL, CORRECT, BUT, AGAIN, IF WE PUT OURSELVES IN THE POSITION OF THE RESPONDENT, WE CAN ALWAYS LOOK IN HINDSIGHT AND WE CAN SAY WHAT OTHER EVIDENCE WAS THERE THAT THE RESPONDENT DIDN'T KNOW ABOUT?

WHY CAN'T WE READ THESE TWO OPINIONS, THOUGH, OF THE DISTRICT COURTS OF APPEAL AS ONE OF THEM SAYING THAT, IMPLICIT IN THESE CIRCUMSTANCES, IS THE IMPROPER ACT OF THE OFFICIAL. THAT IS PROOF OF IT AT LEAST. AND THAT IN THE ONE INSTANCE, WE HAVE GOT A DISTRICT COURT OF APPEAL. IN OTHER WORDS IN THE FOURTH DISTRICT THEY ARE SAYING IMPLICIT IN THESE CIRCUMSTANCES, IS ENOUGH TO GET THIS TO THE JURY, AND IN THE THIRD DISTRICT DECISION, THEY ARE SAYING, NO, THAT THE IMPLICITNESS IS NOT ENOUGH TO GET IT TO THE JURY. THAT YOU REALLY DO NEED THIS ACTUAL EXPLICIT STATEMENT, AND ISN'T THERE A CONFLICT, THEN, IN THE DECISIONS IN THAT REGARD?

THE PROBLEM THERE, JUSTICE ANSTEAD, IS I WOULD BE MORE INCLINED TO SAY YES, IF THE THIRD DISTRICT HAD SAID WE ARE NOT GOING TO LOOK AT ANYTHING ELSE, OTHER THAN THE SPOKEN WORD. THEN I THINK YOU HAVE CONFLICT, BECAUSE THEN IT IS ABSOLUTELY CLEAR THAT THE THIRD DISTRICT WAS NOT LOOKING AT ANYTHING ELSE. AND PERHAPS IF THE OPINION HAD BEEN WRITTEN A LITTLE BIT DIFFERENT TO HAVE SPELLED THAT OUT, WE WOULDN'T BE HERE TODAY. I DON'T THINK THAT THERE IS A CONFLICT HERE. I THINK THAT BOTH CASES SAY THAT PROOF OF THE RESPONDENT'S INTENT IS ABSOLUTELY ESSENTIAL. BOTH CASES LOOK TO THE EXISTENCE OR THE ABSENCE OF ANY DIRECT EVIDENCE. BOTH CASES, I BELIEVE, LOOK TO WHETHER THERE IS EVIDENCE OTHER THAN WHAT THE RESPONDENT HAD SAID TO THE MOTORIST OR TO ANYBODY ELSE. WHAT WE HAVE HERE IS WE HAVE THE MOTORIST WHO SAYS HE NEVER MENTIONED DUI. HE NEVER SUGGESTED THAT HE WAS GOING TO TICKET OR ARREST ME. HE NEVER, YET I WENT WITH HIM, THERE IS ALWAYS SOMETHING RATHER CURIOUS ABOUT THIS. IF AN OFFICER TRULY BELIEVES THAT THIS PERSON THAT HE HAS JUST STOPPED IS DRUNK AND ON THE NOT TO BE DRIVING, SINCE THAT IS, OF COURSE THE TEST, AND WE KNOW THAT THE DETERMINATION OF WHETHER ONE GETS TICKETED, ARRESTED OR FURTHER INVESTIGATION, LIES WITHIN THE OFFICER'S DISCRETION. IF THE OFFICER TRULY BELIEVES THAT THIS WOMAN IS DRUNK AND HE IS GOING TO TAKE HER SOMEWHERE, THEY ARE GOING TO GO SOMEWHERE TO HAVE OTHER ACTIVITIES, HE PUT HER IN HIS CAR. HE WOULDN'T PUT HER BACK INTO HER CAR TO FOLLOW ME.

YOU ARE NOW TALKING ABOUT AN OFFICER THAT DID THIS, AND THEN YOU ARE SAYING THAT HE

IS GOING TO BE SO RATIONAL ABOUT WHAT HE IS GOING TO DO. DON'T WE HAVE SORT OF THE SPECTACLE HERE OF, AGAIN, IMPLICIT IN THESE CIRCUMSTANCES, OF A POLICE OFFICER, AFTER MAKING A STOP OF A CITIZEN, AND THEN TAKING HER OVER, AND HAVING INTERCOURSE WITH HER, AND THEN EVERYBODY BELIEVE -- EVERYBODY LEAVING THE SCENE, AGAIN, DON'T WE HAVE ON THE FACE OF THAT AN APPARENT CONFLICT WITH WHAT THE FOURTH DISTRICT DECIDED, INsofar AS SAYING THAT IMPLICIT IN THOSE CIRCUMSTANCES, IS A VIOLATION OF THIS STATUTE?

WELL, AGAIN, YOUR HONOR, I WOULD RETURN TO THE POSITION. IF THE THIRD DISTRICT SAID WE ARE ONLY GOING TO LOOK AT THIS TYPE OF EVIDENCE AND WE ARE NOT GOING TO LOOK AT THAT TYPE, WE DO HAVE A CONFLICT ON A PRINCIPLE OF LAW. THAT ISN'T WHAT HAPPENED HERE. THE THIRD DISTRICT QUOTED FROM THE MOTORIST'S TESTIMONY BECAUSE SHE IS THE ONLY ONE THERE.

ISN'T IT, NOT ONLY GO BACK TO ASSUMEING THERE IS THE CONFLICT WITH THE FOURTH, BUT IN THE, DIDN'T THE THIRD DISTRICT IMPROPERLY, AS THE STATE IS POINTING OUT, RELY O'GRADY, IN SAYING THAT THERE HAS GOT TO BE A MEETING OF THE MINDS? BECAUSE, AND THEN THEY GO ON, A.S.'S OWN CANDID TESTIMONY BELIES IN THE -- LIES IN THE MEETING OF THE MINDS, BUT YOU HAVE AGREED THAT IT IS NOT THE MEETING OF THE MIND. IT IS THE INTENT OF THE DEFENDANT THAT CAN BE ESTABLISHED THROUGH EITHER DIRECTOR IN DIRECT EVIDENCE AS TO WHAT THE DEFENDANT INTENDED, WHEN INTERACTING WITH THE VICTIM. SO IT SEEMS THAT, I MEAN, IT IS NOT A LOT OF ANALYSIS HERE, BUT YOU HAVE GOT TO READ IT, YOU KNOW, YOU HAVE GOT TO START WITH GRADY, AND THEN SEE SANDWICHED IN IS THE DISCUSSION, AND THEN IT GOES, THE STATE WAS THUS UNABLE TO SHOW ANY MEETING OF THE MINDS, BASED ON THE TESTIMONY OF THE VICTIM, AND THEN AT THAT POINT, IT SAYS, IN THE ABSENCE OF ANY SPOKEN UNDERSTANDING. SO IT SEEMS THAT THE, DIDN'T THE THIRD GET THAT WRONG, IN RELYING ON NOT ONLY NEEDING A MEETING OF THE MINDS BUT ALSO SAYING THAT THE MEETING OF THE MINDS IN THIS CASE WOULD HAVE TO BE ESTABLISHED THROUGH A SPOKEN AGREEMENT.

AGAIN, THE WAY I READ THE DISTRICT COURT'S DECISION, IS THAT IT WAS GRAPPLING WITH HOW DO WE, AS A COURT, AS THE REVIEWING COURT, HOW DOES THE TRIAL COURT, HOW DO WE LOOK AT THIS EVIDENCE.

BUT DO YOU AGREE THAT NO MEETING OF THE MINDS IS REQUIRED FOR THIS CRIME TO BE COMMITTED?

I AGREE.

SO HOW, SO THAT IS,ION, MAYBE THEY ASSERTED CONFLICT WITH GRADY BUT I GUESS GRADY SAYS THAT, IN A DIFFERENT CONTEXT, BUT THEY ARE SAYING THE STATE WAS THUS UNABLE TO SHOW ANY MEETING OF THE MIND. IT SEEMS THAT THEY HAVE MISAPPLIED THE STATUTE AT THE VERY LEAST.

WELL, FIRST OF ALL, THERE IS ALWAYS THE PRINCIPLE OF RIGHT FOR THE WRONG REASONS, AND WE, NOBODY NECESSARILY WANTS TO LOOK THERE. I THINK AT THIS POINT, THE WAY THAT I INTERPRET THIS OPINION, RESPECTFULLY, IS WHAT I HAVE JUST SUGGESTED TO YOU, THAT THE COURT LOOKED, FIRST TO THE DIRECT EVIDENCE. I UNDERSTAND THAT YOUR QUESTION WAS ABOUT MEFTH MINDS, BUT THEES -- WAS ABOUT MEETING OF THE MINDS, BUT THE ESSENTIAL TEST HERE WAS WHAT WAS IN THE MIND OF THE DEFENDANT, WHEN HE DID OR DIDN'T DO WHAT WAS ALLEGED TO HAVE BEEN DONE. HOW DO WE KNOW THAT AND HOW DOES THE REVIEWING COURT AND HOW DOES THE TRIAL COURT LOOK AT THE EVIDENCE BEFORE, TO DETERMINE WHETHER THERE IS A SUFFICIENT, IF THERE IS NO DIRECT EVIDENCE, IS THERE A SUFFICIENT DEGREE OF CIRCUMSTANTIAL EVIDENCE THAT ALLOWED THIS TO GO TO THE JURY AND THE JURY TO MAKE A REASONED DECISION? SO THAT IS WHY I SUGGESTED TO THE COURT THAT, WHEN THE

COURT SAYS, IN THE ABSENCE OF THE SPOKEN WORDS, WHAT ELSE DO WE LOOK TO. THERE WAS NOTHING ELSE THAT THEY COULD LOOK TO.

DIDN'T THE THIRD DCA GET THAT LAST PHRASE WRONG, TOO? IT SAID CASTILLO COULD SIMPLY HAVE THOUGHT THAT A.S. FOLLOWED HIM VOLUNTARILY. NOW, ACCORDING TO A.S.'S TESTIMONY, SHE SAID THEN HE ASKED ME DO YOU WANT TO FOLLOW ME, AND I SAID WHAT, AND HE SAID YOU ARE GOING TO FOLLOW ME, SO AT THAT POINT, HOW IS ANY REASONABLE PERSON WHO IS CONFLICTED BY A POLICE OFFICER -- CONFRONTED BY A POLICE OFFICER, GOING TO THINK THAT IT IS VOLUNTARY WHETHER SHE FOLLOWS HIM OR NOT?

WELL, AGAIN, AS I STARTED IN THE BEGINNING, THE STATE'S CASE AS I UNDERSTAND IT, RESTS ON THREE COMMENTS THAT THE RESPONDENT MADE. THE FIRST IS MUST HAVE BEEN A GOOD PARTY. WELL, THAT DOESN'T TELL ME A WHOLE LOT. IF THE, AND I WILL ADDRESS YOUR QUESTION IN THE COURSE OF WHAT THE COMMENTS ARE, BECAUSE THIS IS WHAT, THIS IS AT LEAST WHAT THE IS PUT BEFORE YOU IN THE STATE'S BRIEF AND WHAT HAS BEEN ARGUED, IS THAT THERE WERE THESE COMMENTS, AND REASONABLE JURY COULD CONSTRUE THESE COMMENTS TO SHOW A PRIMA FACIE CASE, SO THE FIRST THING IS THAT THE PARTY MUST HAVE BEEN G AGAIN, THE IDEA THERE, AS -- MUST HAVE BEEN GOOD. AGAIN, THE IDEA THERE, AS I MUST HAVE SURMISED, IS THIS OFFICER KNEW THAT SHE WAS DRUNK, AND A REASONABLE POLICE OFFICER IN THAT POSITION WOULD HAVE TICKETED HER OR ARRESTED HER OR CONDUCTED FURTHER INVESTIGATION. THERE IS ABSOLUTELY NO EVIDENCE OF THAT AT ALL. AS A MATTER OF FACT, THERE WAS ANOTHER POLICE OFFICER TESTIFIED I SAW HER. SHE DIDN'T LOOK DRUNK TO ME. I DIDN'T SEE ANY SIGNS OF THAT.

BUT DIDN'T HE ALSO STOP HER ALLEGEDLY BECAUSE SHE WAS SPEEDING? IT WAS MORE THAN JUST STATEMENTS N ORDER TO DETERMINE, AND THE THIRD DCA DOES -- STATEMENTS? IN ORDER TO DETERMINE, AND THE THIRD DCA DOES NOT FOCUS ON THE RESPONDENT'S INTENT. WHERE DOES IT FOCUS ON THE RESPONDENT'S INTENT AS TO WHAT SOMEBODY MUST HAVE UNDERSTOOD. SHE WAS DRINKING AND SPEEDING 40 IN A 35. SHE SAYS SHE SLIPPED WHEN SHE GOT OUT OF THE CAR, WHAT APPEARANCE IN THE RESPONDENT'S --

I CAN TOLD YOU FIRST AS IT WAS ASKED BY THE STATE, IN THE ABSENCE OF RESPONSE, CASTILLO COULD HAVE SIMPLY THOUGHT THAT SHE FOLLOWED HIM VOLUNTARILY. IN ANSWER TO YOUR QUESTION, WHERE IS THE FOCUS ON THE RESPONDENT'S INTENT? RIGHT THERE. SUPPOSE THEY HAD GONE TO THIS WAREHOUSE AND THAT WAS DISPUTED BUT IT DID HAPPEN, BECAUSE THAT IS WHAT THE TRIAL COURT AND THE APPELLATE COURT FOUND, SO THEY GO TO THIS WAREHOUSE. THE RESPONDENT'S INTENT. DID HE INTEND TO REQUEST, SOLICIT, SEX IN LIEU OF PERFORM AGO OFFICIAL DUTY, OR DID HE GO THERE THINKING THAT THIS WAS AN ENTIRELY VOLUNTARY ACTIVITY BY THE BOTH OF THEM? SO WITHOUT EVEN LOOKING ANY FURTHER IN THE DISTRICT COURT'S OPINION, RIGHT THERE IT SAYS --

ISN'T THAT A QUESTION OF FACT, THEN, FOR THE JURY?

THAT'S CORRECT. THE INTENT IS TYPICALLY A QUESTION OF FACT FOR THE JURY.

BUT HERE THE COURT DETERMINED IT AS A MATTER OF LAW.

WELL, AGAIN, I THINK A PRELIMINARY QUESTION THAT WE ALL HAVE TO FACE, IS HOW MUCH CIRCUMSTANTIAL EVIDENCE IS NECESSARY TO BE SHOWN, IN ORDER TO ALLOW IT TO GO TO THE JURY TO MAKE A DECISION?

BUT IF THEY WERE GOING ON THE WRONG PREMISE, WHICH IS THAT THE STATE HAD TO PROVE A MEETING OF THE MINDS, THEN THEIR ANALYSIS OF WHAT NEEDED TO BE, WHAT THE ADEQUACY OF THE CIRCUMSTANTIAL EVIDENCE WAS, WOULD ALSO BE FLAWED. I MEAN, THAT IS, AGAIN, READING THIS OPINION AGAIN, AND AGAIN, RIGHT NOW, THERE IS NOT MUCH OF IT, IT JUST SEEMS

THAT IT FLOWS THERE HAS GOT TO BE A MEETING OF THE MINDS. THERE WASN'T, AND YOU KNOW, AND THERE WASN'T, BECAUSE THERE WASN'T A SPOKEN UNDERSTANDING, SO THEY HAVE GOT IT WRONG IN ABOUT THREE DIFFERENT WAYS.

WELL, AGAIN, HOW DO WE KNOW WHAT IS IN THE RESPONDENT, THE MIND OF THE RESPONDENT? HOW DO WE KNOW THAT? WE LOOK TO WHAT HE SAID OR WHAT HE SAID TO HER, DIRECT EVIDENCE. WE LOOK TO CIRCUMSTANTIAL, AND WHAT SHE DID IN RELATION TO WHAT HE SAID. FOR EXAMPLE, IF, IN LOOKING AT THE QUALITY OF THE CIRCUMSTANTIAL EVIDENCE THAT WAS PUT FORTH IN ORDER TO DETERMINE WHETHER A PRIMA FACIE CASE WAS MADE, SHE TESTIFIES NOT ONLY WAS EVERYTHING VOLUNTARY, NOT ONLY DID HE NEVER MENTION DUI OR ANY OTHER OFFENSE, NOT ONLY DID HE NEVER SAY I AM GOING TO FOREGO DOING WHAT I OUGHT TO DO IF YOU DO THIS.

THAT IS CONTRARY, YOU JUST HAD JUSTICE CANTERO READ YOU AN INTERPRET THERE, OF HER TESTIMONY, AND IT IS CONTRARY TO WHAT YOU ARE SAYING NOW, THAT IS THAT SHE SAID EVERYTHING WAS VOLUNTARY. HE JUST READ YOU AN EXPLICIT EXCERPT WHICH INDICATED THAT, IN ESSENCE, HE SAID YOU ARE COMING WITH ME.

AGAIN --.

DID I MISHEAR THAT?

YOU DIDN'T, AND I DON'T THINK I ADEQUATELY RESPONDED TO THE JUSTICE'S QUESTION. THERE WERE THREE COMMENTS THAT WERE MADE. ONE OF THEM IS "YOU ARE GOING TO FOLLOW ME." IF YOU TAKE THAT SENTENCE OUT OF CONTEXT, IT LOOKS LIKE AN ORDER. IN THE CONTEXT OF WHERE IT CAME UP IN THE TRANSCRIPT, AND I WILL POINT YOU TO PAGE 313 OF THE -- 331 OF THE TRANSCRIPT.

ISN'T THAT FOR A FACT FINDER, WHEN YOU TALK ABOUT CONTEXT, AND OBVIOUSLY YOU HEAR THAT AND OBVIOUSLY ONE OF THE WAY TO SAY READ THAT OR HEAR IT WAS THAT IT WASN'T VOLUNTARY, AND SO WHAT, WOULDN'T THAT LEAVE IT, THEN, AGAIN, TO THE FACT FINDER, ASSUMING THAT YOU HAVE THE RIGHT STANDARD TO BEGIN WITH, BEING APPLIED HERE?

AND DIDN'T SHE SPECIFICALLY TESTIFY SHE FOLLOWED HIM BECAUSE THAT IS WHAT HE TOLD ME TO DO. I WAS SCARED. I DIDN'T KNOW WHAT ELSE TO DO. SHE DIDN'T WANT TO KNOW WHAT WOULD HAPPEN IF SHE DIDN'T FOLLOW HIM.

YES.

SO WE DON'T NEED TO LOOK AT THE CONTEXT. WE CAN JUST LOOK AT HER TESTIMONY THIS. THAT IS THE DIRECT EVIDENCE OF HER TESTIMONY THAT SHE DIDN'T THINK IT WAS VOLUNTARY TO FOLLOW HIM.

I RETURN, THEN, TO WHAT I WAS SUGGESTING BEFORE, IS THAT THERE HAS TO BE A CERTAIN MOD CONSUME AMOUNT OF EVIDENCE THAT IS -- MODICUM AMOUNT OF EVIDENCE THAT IS PUT FORTH TO THE JURY IN THE CASE, SO AS TO LOOK AT THE ENTIRE EVIDENCE.

AFTER EVERYTHING WAS COMPLETED, DIDN'T HE SAY YOU ARE LUCKY I DON'T GIVE AWE TICKET?

THAT'S RIGHT.

ISN'T THAT A MODICUM OF EVIDENCE OF HIS INTENT OF THE QUID PRO QUO HERE?

THAT IS THE THIRD OF THE THREE STATEMENTS, AND THAT WAS MADE AFTER THE INTERACTION HAD OCCURRED THERE. IS NOTHING AT ALL TO SUGGEST THAT THAT WAS IN HIS MIND BEFORE OR

AFTER. I UNDERSTAND THAT THESE ARE FACTUAL QUESTIONS. BY AND LARGE.

THEN WHY ISN'T, FOR A JURY TO DECIDE, WHETHER HE HAD THE CORRUPT INTENT TO DO THIS AS A QUID PRO QUO?

THE PROBLEM, AGAIN, IS THAT, WHETHER THOSE COMMENTS WERE ENOUGH, BY THE APPELLATE COURT'S CONSIDERATION, TO HAVE ALLOWED THIS TO GO TO THE JURY, AND WE COME BACK AGAIN, TO THIS COURT'S JURISDICTION OF THE CASE. AS I UNDERSTAND IT, YOU ARE HERE TO DETERMINE WHETHER THERE CASE CONFLICTS WITH GUERIN, AND THEY DON'T CONFLICT.

WELL, AT THE VERY LEAST, BASED ON THE EXCHANGE HERE THAT WE HAVE HAD IN ORAL ARGUMENT, WOULDN'T YOU AGREE AND IT SEEMS LIKE YOU ALREADY HAVE, THAT THE THIRD DISTRICT MISAPPLIED THE LAW FROM GRADY?

NO. AND I SUGGEST THAT, THE THIRD DISTRICT THEN QUOTED GRADE BECAUSE GRADY WAS THE LAW THE PRONOUNCEMENT OUT OF THIS COURT WHICH RELIED ON A 1927 CASE.

WELL, I THOUGHT YOU AGREED THAT THAT STANDARD SET OUT IN GRADY WAS NOT APPROPRIATE FOR THIS STATUTE.

THAT'S CORRECT. I DID. I AM NOT WAFFLING HERE. WHAT I AM SUGGESTING TO THE COURT IS THAT, YES, THE THIRD DISTRICT DID CITE GRADY AND DID DISCUSS THE REQUIREMENT OF MEETING OF THE MINDS, AND SINCE THE TIME OF GRADY IN 1961, THE STATUTE CHANGED. WE DON'T KNOW WHY IT CHANGED BUT IT CHANGED.

GRADY WAS NOT THE APPROPRIATE CONTROLLING LAW, AS FAR AS SETTING OUT THE CONTROLLING PRINCIPLE THAT THEY SHOULD HAVE --

AS FAR AS THE MEETING OF THE MINDS. AS FAR AS THE QUID PRO QUO, IT WAS, AND IT STILL S GRADY IS UNASSAILED FOR THAT PROPOSITION. AND WHILE MEETING OF THE MINDS IS NOT NECESSARY, THERE IS A WAY OF READING AN ENTIRELY REASONABLE WAY OF READING THIS DECISION, WHICH IS ENTIRELY CONSISTENT WITH GUERIN, WHICH IS ENTIRELY CONSISTENT WITH GRADY, WHICH IS ENTIRELY CONSISTENT, EVEN WITH THE UNITED STATES SUPREME COURT CASE, IN McCORMACK, WHICH WE HAVEN'T DISCUSSED YET.

SO YOU WOULD JUST HAVE US ACCEPT THIS AS ONE DISTRICT COURT'S RULING THAT THERE WASN'T ENOUGH EVIDENCE. ANOTHER DISTRICT COURT'S RULING THAT THERE WAS.

YES. I BELIEVE SO.

OKAY.

NOW, IF I MAY, I DO HAVE TWO MINUTES LEFT, AND I WOULD LIKE TO AT LEAST GET AN OPPORTUNITY TO ADDRESS THE OFFICIAL MISCONDUCT. IT IS NOT AN ISSUE THAT WE WOULD HAVE NECESSARILY BROUGHT TO YOU BEFORE. UNDER THIS COURT IN THE SAVOY DECISION AND OTHER DISTRICT'S DECISIONS, THIS COURT DOES HAVE THE DECISION TO REVIEW IT.

IF YOU ONLY HAVE TWO MINUTES, LET'S GET DOWN TO THE ESSENCE HERE.

THE ESSENCE.

YOU SAID THAT HE HAD CONDUCT ADD TRAFFIC STOP FROM 3:42 TO 3:5 2:00 A.M.. HE SAID THAT HE CONDUCT ADD AREA CHECK OF A DESERTED WAREHOUSE FROM 4:00 A.M. TO 4:14 A.M. THOSE TWO STATEMENTS WERE NOT CORRECT, WERE THEY?

I DON'T HAVE THE NUMBERS IN FRONT OF ME, JUSTICE CANTERO, BUT I CAN TELL THAT YOU JUST AS EARLY AS THIS MORNING I WAS REVIEWING ALL OF THE DIFFERENT TIME FRAMES, AND IF YOU LOOK AT WHAT TIME THE STOPS OCCURRED AND WHERE THEY OCCURRED, THERE IS A WAY OF SEEING THAT THEY ALL DO FIT TOGETHER WITHIN THE SAME TIME FRAME, BUT LET ME SUGGEST BECAUSE I DON'T WANT TO RUN OUT OF TIME, THERE ARE TWO PERSPECTIVES THAT WE TOOK, AT LEAST WITH RESPECT TO THIS COUNT. FIRST IS THE McCORMACK CASE. McCORMACK CASE ESSENTIALLY HELD AND THERE IS NOT ENOUGH TIME TO REVIEW IT RIGHT NOW, THE UNITED STATES SUPREME COURT CASE, IT INVOLVED A VERY SIMILAR SITUATION, ALTHOUGH FACTS WERE A LITTLE BIT DIFFERENT. IT INVOLVED A SUBSTANTIVE CHARGE OF EXTORTION, WHICH THE FIRST DISTRICT IN SHIELDS SAYS IS VERY, IS ALMOST IDENTICAL WITH OUR, WITH THE STATE, WITH THE ENOUGH COMPENSATION CHARGE. IT ALSO INVOLVED THE FAILURE TO REPORT INCOME ON AN IRS. IT IS ALSO A REPORTING CHARGE. THE UNITED STATES SUPREME COURT SAID THAT THE WAY THAT THESE TWO COUNTS WERE PLED, AND THAT THE THEORY OF THE GOVERNMENT IN THE McCORMACK CASE, SHOW THAT THEY WERE SO IMPLICITLY INTERTWINED THAT, THE JURY COULDN'T MAKE A DECISION ON THE REPORTING VIOLATION, WITHOUT ALSO CONSIDERING THE EXTORTION COUNT. NOW, IT IS TRUE IN THAT CASE THERE WAS A JURY INSTRUCTION MATTER THAT WASN'T APPARENT IN OUR CASE, BUT NEVERTHELESS THE COURT DID ANALYZE TWO COUNTS CAN BE -- HOW TWO COUNTS CAN BE INTERTWINED FOR THE JURY'S CONSIDERATION. THE SECOND ONE, WE WON'T GET TO THE SECOND ONE.

CHIEF JUSTICE: YOU OBVIOUSLY HAVE WRITTEN EXTENSIVE BRIEFS ON THIS, SO WE WILL --

THANK YOU, YOUR HONORS, FOR THE TIME.

CHIEF JUSTICE: THANK YOU VERY MUCH. MR. MARSHAL, HOW MUCH TIME FOR REBUTTAL IS LEFT? YOU HAVE A COUPLE OF MINUTES.

YOUR HONOR, I WON'T TAKE THAT LONG. SIMPLY THIS IS VERY FACTUALLY ORIENTED CASE, AS WE KNOW BY THE QUESTIONING. AND TO REACH JUDGE ANSTEAD'S MOST IMPORTANT QUESTION, WHICH IS THE ONE OF CONFLICT, THE STATE WOULD SAY THAT THE TRIAL COURT CORRECTLY DENIED JUDGMENT OF ACQUITTAL, BECAUSE THERE WAS SUFFICIENT EVIDENCE TO GO TO JURY. THE THIRD DISTRICT COURT INCORRECTLY REVERSED ON JUDGMENT OF ACQUITTAL, BY SAYING THAT, IN ORDER TO HAVE A QUID PRO QUO, YOU HAD TO HAVE A MEETING OF THE MINDS, WHICH WAS A MISS CONSTRUCTION OF THE STATUTE, AND YOU -- WHICH WAS A MISS CONSTRUCTION OF THE STATUTE, AND YOU HAD TO HAVE SPOKEN THAT, IS DIRECT EVIDENCE.

NOW, THE THIRD DCA'S HOLD HAD GONE THAT YOU HAD TO HAVE A MEETING OF THE MINDS, DOES THAT CONFLICT WITH ANYTHING IN GUERIN THAT SAYS YOU DON'T HAVE TO HAVE A MEETING OF THE MINDS? DID GUERIN SAY ONE THING -- ANYTHING, ONE WAY OR THE OTHER, ABOUT MEETING OF THE MINDS?

GUERIN DID TALK ABOUT MEETING OF THE MINDS. IT WAS DIFFERENTLY CHARGED SO THAT THERE WAS AN EXCHANGE OF MONEY FOR SERVICES. THAT MAKES OUR SITUATION ENTIRELY DIFFERENT, BECAUSE THERE WAS AN EXCHANGE OF SEXUAL FAVORS, AND THE WHOLE BHAZ OF THE CASE -- BASIS OF THE CASE RESTS ON PROVING THE CORRUPT INTENT.

DID THE THIRD DCA CORRECTLY RELY O'GRADY?

NO, IT DID NOT, YOUR HONOR -- RELY ON GRADY?

NO, IT DID NOT, YOUR HONOR.

WAS GRADY CORRECTLY DEALING WITH THE LAW, JUST A DIFFERENT STATUTE?

DIFFERENT INTERPRETATION OF THE STATUTE. IT IS AN EARLIER VERSION, 1938.

SO WHY DIDN'T THE STATE JUST ARGUE THAT THERE WAS A MISAPPLICATION OF GRADEY?

THAT WAS PART OF THE ARGUMENT, I THINK, IN THE DISTRICT COURT OF APPEAL, AND WE ARGUED CONFLICT WITH GUERIN ON REHEARING AND REHEARING WAS DENIED.

CHIEF JUSTICE: OKAY. THANK YOU VERY MUCH. THANK YOU, BOTH, VERY MUCH. THE COURT IS GOING TO TAKE ITS MORNING RECESS OF 15 MINUTES. WE WILL RETURN TO THE BENCH TO HEAR THE LAST CASE AFTER THAT RECESS. THANK YOU.