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**Gary Lamar Polite v. State of Florida**

**SC06-1401**

ALL RISE.

HEAR YE HEAR YE HEAR YE THE  
SUPREME COURT OF FLORIDA IS NOW  
IN SESSION.

ALL THOSE HAVING BUSINESS  
BEFORE THIS COURT DRAW NIGH,  
GIVE ATTENTION AND YOU SHALL BE  
HEARD.

GOD SAVE THESE UNITED STATES.  
GREAT STATE OF FLORIDA AND THIS  
HONORABLE COURT.

>> GOOD MORNING.

GOOD MORNING.

>> LADIES AND GENTLEMEN, THE  
FLORIDA SUPREME COURT.  
PLEASE BE SEATED.

>> GOOD MORNING, FRIENDS,  
WELCOME TO THE FLORIDA SUPREME  
COURT.

AND THE ORAL ARGUMENT SCHEDULED  
FOR WEDNESDAY, MAY 9th.  
2007.

FIRST CASE ON THE DOCKET THIS  
MORNING IS POLITE VERSUS STATE.  
MR. GONZALEZ, AM I SAYING YOUR  
CLIENT'S NAME CORRECTLY, I  
HOPE.

>> YOU DID, YOUR HONOR.

>> THANK YOU, MR. CHIEF JUSTICE  
AND MAY IT PLEASE THE COURT.

FLORIDA HAS ENACT AID  
COMPREHENSIVE STATUTORY SCHEME  
DESIGNED --

>> COULD YOU PULL UP TO THE  
MICROPHONE?

WE ARE HAVING -- AN ANNOUNCE  
YOUR APPEARANCE.

>> CARLOS GONZALEZ ON BEHALF OF  
MR. POLITE.

THANK YOU, YOUR HONOR.

>> FLORIDA HAS ENACTED A  
COMPREHENSIVE STATUTORY SCHEME  
DESIGNED TO PROTECT LAW  
ENFORCEMENT OFFICERS IN THE

PERFORMANCE OF THEIR DUTIES ON THE STREET.

AS A RESULT OF THE PLAIN MEANING OF THOSE STATUTES, OR BY COURT RULING, IT HAS BEEN ESTABLISHED THAT THE STATE IN SEEKING TO CONVICT A DEFENDANT UNDER ANY ONE OF THESE STATUTES MUST AMOK OTHER THINGS, ESTABLISH OR PROVE THAT THE DEFENDANT KNEW OF THE OFFICER'S OFFICIAL STATUS IN ORDER TO SUSTAIN A CONVICTION.

>> SHOULD HAVE KNOWN INCLUDED -- IS "SHOULD HAVE KNOWN" INCLUDED IN "KNOWN" AS TO YOUR BELIEF WITH THE INTENT REQUIREMENT.

>> THAT IS CORRECT, YES. AND FOR EXAMPLE THERE ARE SEVERAL EXAMPLES THAT HIGHLIGHT THIS, CHIEF AMONG THEM WOULD BE SECTION 776.051 WHICH PROVIDES SIMPLY, THAT IN THE COURSE OF AN ARREST NO INDIVIDUAL WILL RESIST WITH VIOLENCE WHEN THE OFFICER IS KNOWN OR REASONABLY APPEARS TO BE A LAW ENFORCEMENT OFFICER.

THAT KNOWLEDGE COMPONENT IS WITH IN THE ACTUAL PLAIN MEANING OF THE STATUTE.

IN ADDITION, THE RECLASSIFICATION STATUTE THAT FOCUSES ON ENHANCING BATTERIES AND ASSAULTS ON POLICE OFFICERS HAS ALSO BEEN FOUND BY THIS COURT IN THOMSON -- THOMPSON TO INCLUDE A SPECIFIC KNOWLEDGE REQUIREMENT.

THAT THE STATE MUST PROVE THAT THE DEFENDANT ACTUALLY KNEW HE WAS ASSAULTING OR BATTERING A LAW ENFORCEMENT OFFICER IN ORDER TO SUSTAIN A CONVICTION.

>> EVEN UNDER THE STATE'S POSITION, KNOWLEDGE ONE BE IRRELEVANT AS IT WOULD BE AN AFFIRMATIVE DEFENSE, RIGHT? WE ARE TALKING ABOUT WHOSE BURDEN IS IT HERE, FOR KNOWLEDGE OR LACK THEREOF.

>> JUSTICE CANTERO, I WOULD DISAGREE WITH THE STATE'S

ARGUMENT THAT IT IS AN AFFIRMATIVE DEFENSE.

>> I KNOW YOU DISAGREE WITH IT, BUT THAT IS WHERE WE ARE, IN OTHER WORDS, EVEN UNDER THE STATE'S POSITION, IF YOU PROVE LACK OF KNOWLEDGE THEN STILL YOU WOULD BE ACQUITTED OF THE CRIME.

>> THAT IS CORRECT.

GENERALLY SPEAKING YES, AND I SAY GENERALLY, JUSTICE CANTERO BECAUSE IN THIS PARTICULAR CASE WE COULD NOT EVEN EXERCISE THAT SPECIFIC DEFENSE BECAUSE THE STATE'S CLOSING ARGUMENTS WERE SPECIFIC TO THE JURORS, YOU DO NOT REACH THE QUESTION OF KNOWLEDGE AT ANY POINT.

IN THE TRIAL COURT, THERE WAS NO DISPUTE AS TO WHETHER OR NOT KNOWLEDGE WAS AN AFFIRMATIVE DEFENSE OR AN ELEMENT AS A RESULT OF THE STATE'S CLOSING ARGUMENTS, BOTH THE OPENING AND THE CLOSING, CLOSING ARGUMENTS, THERE WAS AN INSTRUCTION OR RATHER AN ARGUMENT MADE TO THE JURORS THAT WAS AFFIRMED BY THE TRIAL COURT THAT YOU WOULD NEVER CONSIDER THE ACTUAL KNOWLEDGE OF THE LAW ENFORCEMENT OFFICER AT ANY STAGE OF THE DELIBERATIONS.

>> THE DEFENDANT DIDN'T TESTIFY -- I DIDN'T KNOW HE WAS AN OFFICER.

>> THAT IS CORRECT.

THE DEFENDANT, MR. POLITE NEVER TOOK THE STAND AT TRIAL AND NOW A SECOND POLICE OFFICER WHO THE EVIDENCE ESTABLISHED WAS THE FULLY UNIFORMED POLICE OFFICER, DID TESTIFY THAT MR. POLITE SURRENDERED TO HIM SHORTLY AFTER THIS INITIAL ALTERCATION WITH OFFICER MUNOZ, THE VICTIM IN THIS CASE.

>> IF THE BURDEN IS ON THE STATE TO PROVE KNOWLEDGE, HOW IS IT THE STATE IS GOING TO PROVE SOMETHING THAT IS PECULIARLY WITH IN THE KNOWLEDGE OF THE DEFENDANT?

THE DEFENDANT WILL KNOW MORE HE  
KNEW HE WAS AN OFFICER THAN THE  
STATE WILL KNOW.

>> IN RESPONSE TO THAT QUESTION  
I WOULD ACTUALLY -- AT -- ONE  
POINT OF THE THIRD DISTRICT  
COURT OF APPEALS, POLITE-2  
DECISION WHERE JUDGE GERSTON  
DISSENTED AND POINTED OUT THERE  
ARE TWO WAYS OF PROVING THIS,  
EITHER ACT BY DIRECT KNOWLEDGE  
OR WHAT HAS BEEN ARGUED AS A  
REASONABLY APPEAR, IN OTHER  
WORDS, THE STATE CAN ESTABLISH  
THE DEFENDANT SHOULD HAVE KNOWN,  
KNOWLEDGE CAN BE IMPUTED  
BECAUSE THE DEFENDANT SHOULD  
REASONABLY HAVE KNOWN IT WAS A  
LAW ENFORCEMENT OFFICER IT  
WOULD BE A WAY BY WHICH IT  
COULD BE PROVEN.

HOWEVER AS I SAID BEFORE, IN  
THIS PARTICULAR CASE, WHETHER  
YOU ARE TALKING ABOUT ACTUAL  
KNOWLEDGE AS OPPOSED TO THIS  
REASONABLE SHOULD HAVE KNOWN  
STANDARD AT THE END OF THE DAY  
IS A NONISSUE IN THE CASE  
BECAUSE OF THE SPECIFIC  
ARGUMENT MADE BY THE  
PROSECUTORS AND THE TRIAL COURT  
AND THEY CLEARLY TOLD THE  
JURORS YOU DO NOT REACH THE  
QUESTION OF KNOWLEDGE, BECAUSE  
KNOWINGLY IN THIS PARTICULAR  
CASE, AS THE PROSECUTOR HAS  
EXPLAINED, ONLY REFERS TO THE  
ACT OF RESISTING OPPOSING OR  
OBSTRUCTING.

>> HAVE YOU BEEN ABLE TO FIND  
ANY STATUTES THAT -- OR ANY  
CASES THAT TALK ABOUT WHAT IS  
MEANT WHEN BOTH KNOWINGLY AND  
WILL FULLY IS USED, AGAIN, AS  
YOU POINTED OUT IN THOMPSON, IT  
TOOK A CASE THAT DIDN'T HAVE  
ANYTHING ABOUT SPECIFIC  
KNOWLEDGE AND FOUND THAT  
KNOWLEDGE WAS THE ESSENTIAL  
ELEMENT BUT I -- AND REALLY  
WOULD BE FOR THE STATE, TOO, TO  
ME, LIKE A DOUBLE WHAMMY,  
SAYING KNOWINGLY AND WILL FULLY  
AND DID YOU FIND ANY CASES THAT

TALKED ABOUT THE DUAL USE OF THOSE WORDS AND WHETHER ONE MODIFIES ONE PART AND THE OTHER MODIFIES ANOTHER, YOU KNOW, KNOWINGLY AS TO THE OFFICER, WILL FULLY AS TO THE OBSTRUCT, RESIST AND GETTING IN, RATHER THAN TO THE POLICY ISSUES, TO THE STATUTORY CONSTRUCTION QUESTION.

>> YOUR HONOR I HAVE NOT FOUND ANY SPECIFIC CASES THAT DISCUSS THE INTERPLAY BETWEEN THE USE OF KNOWINGLY AND WILL FULLY. WHAT WE HAVE ARGUED IN OUR INITIAL BRIEF, HOWEVER, IS THAT UNDER THE BASIC RULES OF STATUTORY CONSTRUCTION, EVERY WORD IN THE STATUTE HAS TO BE GIVEN A SPECIFIC MEANING.

WE HAVE TAKEN THE POSITION IN OUR INITIAL BRIEF THAT IN THE PARTICULAR CASE, THE PHRASE -- OR THE STATUTE THE WORD "WILL FULLY" CONTAINS A KNOWLEDGE COMPONENT.

SO IF YOU ARE GOING TO GIVE EACH AND EVERY WORD IN THE STATUTE MEANING YOU HAVE TO ASSUME THAT KNOWINGLY MODIFIES SOMETHING BEYOND SIMPLY THE ACT OF RESISTING, OPPOSING OR OBSTRUCTING.

OTHERWISE, IT BECOMES SUPER FLEW US.

>> THAT IS A MATTER OF STATUTORY --

>> HOW ABOUT DISCUSSING WITH US JUDGE SCHWARTZ'S VIEW OF HOW THE STATUTE IS TO BE CONSTRUED AND WHY IS SCHWARTZ INCORRECT AS TO THE ADD VERB AND THE VERB AS HE HAS DESCRIBED IT IN HIS GRAMMATICAL PROCESS.

>> JUSTICE WELLS, TAKEN IN ISOLATION, I DO NOT SPECIFICALLY DISAGREE OR CAN DISAGREE WITH JUDGE SCHWARTZ'S ANALYSIS THAT AT THE END OF THE DAY, KNOWINGLY AND WILL FULLY IS AN ADD VERBIAL PHRASE THAT MODIFIES THOSE THREE SPECIFIC ADD VERBS, HOWEVER LOOKING BEYOND THAT OR, RATHER TO POINT

OUT TO THE COURT JUDGE SCHWARTZ  
NEF ACTUALLY REACHES THAT  
ASPECT OF STATUTORY  
CONSTRUCTION THAT SAYS THAT YOU  
HAVE TO GIVE EACH STATUTE OR  
EACH WORD IN A STATUTE ITS  
INDIVIDUAL MEANING AND SO IF  
YOU SIMPLY SAY THAT THIS IS AN  
ADD VERBIAL PHRASE, THAT IS ADD  
VERBIAL PHRASE, THAT IS FINE,  
HOWEVER IN THE CONTEXT OF  
STATUTORY CONSTRUCTION,  
KNOWINGLY AND WILL FULLY  
ACTUALLY HAVE MEANING AND A  
ROLE IN THE STATUTE AND "WILL  
FULLY" CONTAINS A KNOWLEDGE  
COMPONENT BUILT INTO IT AND BY  
SAYING, SIMPLY, WILL FULLY  
RESISD, ON STRUCKED OR OPPOSED  
YOU ARE ACOME PLRK THE SAME  
THING YOU WOULD SEEK TO  
ACCOMPLISH WHETHER OR NOT THE  
PHRASE OR WORD "KNOWINGLY" WERE  
INSERTED INTO THE INSTITUTE I  
WOULD SUSPECT THAT LT RESPONSE  
TO THAT -- THAT THE RESPONSE TO  
THAT IS THAT WHAT THERE COULD  
BE A CONSTRUCTION THAT WOULD  
SAY THE REASON THEY USE  
"KNOWINGLY" AND WILL FULLY  
BEFORE RESISTING IS THAT THERE  
WOULD BE AND IN ADVERTENT BASIS  
FOR THEIR -- AN INADVERTENT  
BASIS FOR RESISTING OR THE  
OTHER VERBS THAT ARE USED THERE  
AND THAT THAT IS THE TYPE OF  
LITERAL CONSTRUCTION THAT YOU  
WOULD GIVE TO THIS TYPE OF  
STATUTE.

WHY IS THAT NOT RIGHT?

>> JUSTICE WELLS I THINK THE  
PROBLEM STILL REMAINS THAT EVEN  
WITH A SPECIFIC JURY  
INSTRUCTION THAT GOES BACK AND  
EXPLAINS WHAT THE POTENTIAL  
MOTIVATION OF THE LEGISLATURE  
WAS, IN INSERTING THE WORD,  
KNOWINGLY AND WILL FULLY, YOU  
ARE STILL NOT HONORING THAT  
CANON OF STATUTORY CONSTRUCTION,  
YOU ARE STILL NOT PROVIDING OR  
GIVING MEANING TO THE WORD,  
KNOWINGLY "I AGREE WITH YOU,  
CERTAINLY, WILL FULLY APLACE TO

THE ACT OF RESISTING,  
OBSTRUCTING OR OPPOSING.

>> AS JUDGE SCHWARTZ POINT OUT  
WHEN THE LEGISLATURE HASSETT  
OUT IN PLAIN LANGUAGE THE  
KNOWING REQUIREMENT SFERP AS  
THE SCHOOL -- SUCH AS THE  
SCHOOL BOARD MEMBER OR -- THEY  
KNOW HOW TO DO IT, AND IN THIS  
INSTANCE THE LEGISLATURE DID  
NOT DO THAT.

WHY IS THAT NOT A FACTOR HERE?

>> WELL, JUSTICE WELLS, BECAUSE  
IN CONSIDERING -- IN  
CONSIDERING SUCH 843 -- SECTION  
843.01 WE NEED TO LOOK AT THE  
ENTIRE STATUTORY SCHEME THAT  
INVOLVES THE PROTECTION OF LAW  
ENFORCEMENT OFFICERS.

843.01 ONLY PROVIDES ONE ASPECT  
OF PROTECTION THAT LAW  
ENFORCEMENT OFFICERS ENJOY ON  
THE STREETS UNDER FLORIDA LAW.  
843 UPON 1, HOWEVER, SORT OF  
STANDING OUT BY THE SIDELINES,  
WHEN COMPARED TO HOW THIS COURT  
-- EVEN THE FLORIDA LEGISLATURE  
HAVE EVALUATED THE KNOWLEDGE  
COMPONENT BE IT ACTUALLY  
WRITTEN INTO THE STATUTE OR BE  
IT INTERPRETERED INTO THE  
STATUTE BY COURT DECISIONS, IN  
EXAMPLES SUCH AS 843.0 2:E --

>> LET'S GET BACK TO SOMETHING  
IN THE STATUTE, I WOULD LIKE  
YOU TO ADDRESS -- I THINK THAT  
THE VERY WORDS USED, I DON'T  
KNOW IF THIS IS IN YOUR BRIEF  
OR WHERE THIS WAS, BUT THE  
WORDS RESIST OR OBSTRUCT, ITS  
HARD TO KNOW HOW SOMEBODY COULD  
RESIST OR OBSTRUCT UNLESS THEY  
KNOW WHAT THEY ARE -- WHAT THEY  
ARE DOING IS RESISTING OR  
OBSTRUCTING LAW ENFORCEMENT  
OFFICER, BECAUSE OTHERWISE  
SOMEONE IS COMING ON THE STREET  
AND USING FORCE TO DO SOMETHING,  
YOU ARE NOT RESISTING OR  
OBSTRUCTING IF YOU ARE TRYING 0  
GET AWAY FROM THAT PERSON AND  
ISN'T IT REALLY IN THE USE OF  
THE WORDS, RESIST, OBSTRUCT,  
THAT YOU -- THAT THAT IS

ANOTHER WAY THAT THIS STATUTE HAS GOT TO HAVE SOME KNOWLEDGE COMPONENT OF THE PERSON DOING IT TO YOU IS A LAW ENFORCEMENT OFFICER?

>> I --

>> WE DON'T -- YOU SEE THAT IS WHY THE POLICY THING, YOU KNOW, AND WHAT DID THEY INTEND AND YOU DON'T KNOW THE PERSON IS A LAW ENFORCEMENT OFFICER. HOW DO YOU ACTUALLY RESIST OR OBSTRUCT WITHIN THE MEEK OF THE STATUTE?

>> I -- THE MEANING OF THE STATUTE.

>> I AGREE AND THAT IS THE REASONING THE COURT USES IN THOMPSON WHERE IT FINDS SUB SECTION 3 OF THE RECLASSIFICATION STATUTE NECESSARILY INCORPORATES A KNOWLEDGE COMPONENT -- COMPONENT AND GRANTED IN THOMPSON THE COURT WAS LOOKING AT TWO SUB SECTIONS WITHIN THE SAME STATUTE, SUB SECTION 2 WHICH TALKS ABOUT A BATTERY ON A POLICE OFFICER AND THE COURT FOUND IN THAT SPECIFIC CONTEXT YOU WOULD HAVE TO KNOW THAT YOU WERE BATTERING A LAW --

>> I'D LIKE TO GO BACK TO THE QUESTION JUSTICE CANTERO ASKED, I FOUND IT INTERESTING AFTER GOING THROUGH THE WHOLE THING KNOWLEDGE HAS NOTHING TO DO WITH THE CRIME AND ESSENTIALLY SAYING, BUT IT'S AN AFFIRMATIVE DEFENSE.

WE HAVE HAD SOME -- WE ARE DEALING RIGHT NOW, WITH HOW YOU INTERPRET THE POSSESSION OF DRUGS STATUTE AND SOME -- IT SEEMS UNLIKE AFFIRMATIVE DEFENSES IN THE CIVIL AREA, SOMETIMES AFFIRMATIVE DEFENSES IN THE CRIMINAL AREA, SIMPLY MEAN THAT IF THE -- IF THE DEFENDANT PUTS ON SOME EVIDENCE TO SHOW THAT THERE WAS A LACK OF KNOWLEDGE THEN THE BURDEN NEVER LEAVES THE STATE. THE STATE STILL HAS TO PROVE

KNOWLEDGE.

AND DID YOU DO ANY RESEARCH ON WHETHER THAT -- IN TERMS OF TRYING TO UNDERSTAND THE WHOLE STATUTE, IF IT IS AN AFFIRMATIVE DEFENSE, IF THE STATE SAYS IT IS -- IS IT A BURDEN SHIFTING AFFIRMATIVE DEFENSE OR JUST THAT THERE IS A PRESUMPTION OF COLLEGE THAT CAN BE REBUT AND ONCE IT IS REBUT, LIKE HERE BY THE SECOND OFFICER, THAT --

HE SAID, NO, HE DIDN'T RESIST ME, THEN THE BURDEN REMAINS ON THE STATE?

>> YOUR HONOR, IN ANALYZING THE QUESTION, I BEGAN WITH THIS COURT'S DECISION IN CHICKONE WHERE THE STATE RAISED THE ISSUE, KNOWLEDGE IS AN AFFIRMATIVE DEFENSE, IN THAT CASE THE COURT FOUND THERE IS ABSOLUTELY NO INDICATION THE LEGISLATURE CONTEMPLATED AN AFFIRMATIVE DEFENSE OF KNOWLEDGE IN THE CONTEXT OF THE DRUG POSSESSION AND PARAPHERNALIA POSSESSION STATUTES AND I BELIEVE --

>> NOW THEY HAVE ACTUALLY AMENDED THE STATUTE AND NOW THERE IS SOMETHING IN THE NATURE OF AFFIRMATIVE DEFENSE BUT DOESN'T APPEAR TO BE ONE THAT SHIFTS THE BURDEN. IT JUST SAYS THAT YOU HAVE TO AT LEAST -- DEFENDANT AT LEAST HAS TO SHOW SOMETHING THAT WOULD SHOW THERE SOMEBODY A LACK OF KNOWLEDGE BEFORE THEY HAVE TO ACTUALLY PROVE BEYOND A REASONABLE DOUBT THE OFFICER -- THE PERSON KNEW THE PERSON WAS AN OFFICER.

>> YOUR HONOR I WOULD SAY THAT I HAVE NOT ANALYZED THAT QUESTION FROM THIS PERSPECTIVE OF WHETHER IT IS A BURDEN SHIFTING ISSUE OR NOT BECAUSE I DON'T BELIEVE THAT IT ACTUALLY CREATES' BURDEN SHIFT. BUT THERE IS A BURDEN SHIFT INHERENT IN THE STATUTORY

SCHEME AND SPECIFICALLY,  
776.051.

UNDER THAT PARTICULAR STATUTE,  
IT IS CLEAR THAT IN ANY CONTEXT  
WHERE YOU HAVE AN ARREST  
SITUATION, YOU MUST KNOW THAT  
THE LAW ENFORCEMENT OFFICER WAS  
INDEED A LAW ENFORCEMENT  
OFFICER, THAT THAT MUST BE  
ESTABLISHED BY THE STATE.  
THAT IS HOW I HAVE READ THOSE  
TWO STATUTES AND --

>> LET ME ASK YOU ABOUT 843.02.  
ONE OF THE JUSTIFICATIONS IT  
SEEMS FOR THE KNOWLEDGE OF THE  
OFFICER IN 843.02 IS THAT  
OTHERWISE YOU END UP WITH IN  
SEND CONDUCT BEING  
CRIMINALIZED.  
DO WE HAVE THAT SAME KIND OF  
CONSIDERATION WHEN YOU LOOK AT  
843.01.

>> JUSTICE I THINK WE HAVE TO  
HAVE THAT CONSIDERATION FROM A  
MATTER OF PUBLIC POLICY.  
IT IS ESSENTIAL, BECAUSE THE  
DIVIDING LINE BETWEEN WHAT IS,  
FOR EXAMPLE, A BATTERY OR  
RESISTANCE IS SOMETIMES BLURRED  
AND NOT CLEAR, ONE NECESSARILY  
LENDS ITSELF TO THE OTHER AND  
SEVERAL DISTRICT COURT JUDGES  
HAVE EXPRESSED A SUBSTANTIAL  
CONCERN WITH THE POSSIBILITY  
THAT CITIZENS ON THE STREET  
HAVE TO MAKE THESE SNAP  
DECISIONS ABOUT WHETHER OR NOT  
IF SOMEONE IN PLAIN CLOTHES  
COMES IN BEHIND THEM AND GRABS  
THEM, AS HAPPENED IN THIS DAYS  
-- CASE, WHETHER THEY ARE  
GRABBED BY I THINK JUDGE FARMER  
INDICATED WHETHER YOU ARE BEING  
GRABBED BY A DRUG DEALER OR A  
LAW ENFORCEMENT OFFICER.

>> SO YOUR ARGUMENT REALLY  
INCLUDES PUBLIC POLICY ISSUES  
CONCERNING WHETHER OR NOT THEY  
ARE GOING TO BASICALLY PROTECT  
THE PUBLIC OR PROTECT THE  
POLICE, UNDER THIS STULT.

>> MOST DEFINITELY, JUSTICE  
QUINCE, THERE HAS TO BE A  
BALANCING IN PLAY, WHERE WE ARE

LOOKING NOT ONLY TOWARDS THE RIGHTS OF LAW ENFORCEMENT OFFICERS WHO ARE ON THE STREETS, PROTECTING THE PUBLIC, BUT, ALSO THE INDIVIDUAL.

AND THAT IS WHY I THINK THE CASE RAISES SUCH UNIQUE FACTS. WE ARE NOT TALKING ABOUT A UNIFORMED OFFICER.

WE ARE TALKING ABOUT A PLAINCLOTHES OFFICER AND THE IMPLICATION OF PASSING A LAW OR INTERPRETING A PARTICULAR STATUTE THAT SAYS ESSENTIALLY YOU RUN THE RISK.

IF SOMEONE IN PLAIN CLOTHES WHO YOU DON'T THINK OR DO NOT HAVE REASON TO BELIEVE IS A LAW ENFORCEMENT OFFICER GRABS YOU, WHAT DO YOU DO?

AND I THINK THAT GIVEN HOW THIS COURT AND THE LEGISLATURE HAS WRITTEN OR INTERPRETED THE OTHER STATUTES THAT FALL INTO THE STATUTORY SCHEME OF PROTECTING LAW ENFORCEMENT OFFICERS KNOWLEDGE MUST BE SEEN AS AN ESSENTIAL ELEMENT OF SECTION 843.01.

>> NOT REALLY THE PLAIN MEANING OF THE STATUTE.

WE REALLY DO HAVE TO ENGAGE IN SOMETHING BEYOND THAT.

>> I WOULD THINK SO, JUSTICE QUINCE, YES.

>> YOU ARE WELL INTO YOUR REBUTTAL IF YOU WOULD TAKE TO TAKE --

>> I WOULD, THANK YOU.

>> MAY IT PLEASE THE COURT, I'M LA KREERB YEAH PITS, ASSISTANT ATTORNEY GENERAL AND I REPRESENT THE STATE OF FLORIDA.

>> YOUR FIRST VISIT TO THE COURT.

>> YES, IT IS.

>> LET -- LET ME WELCOME YOU TO THE COURT AND I BELIEVE MR. GONZALEZ ALSO, GLAD YOU ARE HERE.

DON'T USE YOUR TIME ON THAT.

>> THANK YOU.

>> THE STATE HAS TWO MAJOR ARGUMENTS BEFORE THIS COURT.

ONE, THE OPINION DOES NOT CONFLICT DIRECTLY WITH AF AS WELL AS THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION FOR A MISTRIAL AND DENYING THE OBJECTION TO THE PROSECUTOR'S STATEMENTS IN CLOSING ARGUMENT.

THE PROSECUTOR STATED THAT BASED UPON THE ELEMENTS OF RESISTING WITH VIOLENCE, THE STATE DOES NOT HAVE TO PROVE THAT THE DEFENDANT KNEW THAT THE OFFICER WAS AN OFFICER. THIS IS A CORRECT STATEMENT OF LAW, AND THE TRIAL COURT PROPERLY DENIED THAT OBJECTION AND MOTION FOR MISTRIAL.

FIRST, GETTING TO THE CONFLICT ISSUE WITH AF, THE STATE'S POSITION IS THE CASE DOES NOT CONFLICT WITH AF FROM OUT OF THE 5th DISTRICT --

>> WE DO HAVE A CERTIFICATION OF CONFLICT, CORRECT?

>> YES.

WE DO, A SERKT FICTION BASED UPON AF, ONE LINE AT THE END OF THE POLITE OPINION, THE THIRD ONE WE ARE HERE ON THAT SIMPLY SAID CERTIFIED WITH AF BUT IT'S THE STATE'S POSITION UPON REVIEWING AF, AF WAS A CASE THAT DECIDED BASED UPON THE SUFFICIENCY OF THE EVIDENCE WHETHER OR NOT THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE CONVICTION FOR RESISTING WITH VIOLENCE IN THAT CASE. AND IN THAT CASE, THE STATE PRESENTED ITS EVIDENCE, THE DEFENDANT PRESENTED ITS DEFENSE, THAT SHE DID NOT KNOW, MORE REASONABLY COULD HAVE KNOWN AND BASED UPON THAT EVIDENCE WE HAVE THE --

>> LET'S ASSUME THERE IS JURISDICTION BECAUSE JUSTICE CON TAROT POINTED OUT THERE IS CERTIFICATION OF CONFLICT AND ISN'T IT BETTER TO GET THIS RESOLVED AS TO WHETHER IT SEEMS THE OTHER DISTRICTS BELIEVE KNOWLEDGE IS PART OF THE

STATE'S BURDEN AND SO IT WOULD SEEM THAT THAT IS SOMETHING WE NEED TO RESOLVE.

>> THAT WOULD GO TO YOUR QUESTION, THE DEFENSE WAS UP HERE ADDRESSING THE ISSUE OF WHETHER OR NOT THERE IS A BURDEN SHIFTING SITUATION WHEN YOU ARE ALLEGE!!ING -- INAUDIBLE NAB IN THE CASE, THE RESEARCH I CONDUCTED STATED IT'S NOT A BURDEN SHIFTING AND THE STATE MUST PROVE THE ELEMENT OF THE OFFENSE ITSELF AND THE DEFENSE'S RESPONSIBILITY IS TO PRESENT EVIDENCE OF A PRIMA FACIE CASE THAT SUPPORTS HIS OR HER DEFENSE.

>> THAT IS WHERE I AM HAVING TROUBLE WITH THIS STATE'S POSITION HERE.

IF KNOWLEDGE OF THE OFFICER'S STATUS IS NOT RELEVANT TO THE OFFENSE, WHERE DOES IT BECOME THAT IT IS AN AFFIRMATIVE DEFENSE?

WHERE DOES THE STATE GET THAT FROM?

IN OTHER WORDS, AS YUFS CAN -- JUSTICE CAN TEAR YO POINTED OUT, IT IS SAYING THE -- WHERE DOES IT COME FROM, THAT KNOWLEDGE IS SOMETHING THEY CAN INSERT AS A DEFENSE, OR LACK OF KNOWLEDGE?

>> THE STATE IS SAYING THAT THE DEFENDANT MAY CHOOSE TO ELECT THAT HE DID NOT KNOW MORE REASONABLY SHOULD HAVE KNOWN.

>> HERE THE STATE SAID IT WASN'T PART OF THE CRIME AND KNOWLEDGE WAS NOT AN ISSUE. AGAIN WHAT I AM ASKING YOU IS WHERE IN THE LAW, THE STATUTES DOES IT SAY INSTEAD OF IT BEING AN ELEMENT, IT IS AN AFFIRMATIVE DEFENSE?

WHERE DOES THE STATE GET THAT FROM.

>> THE STATE VIEWS IN THE CASE IT IS UNDISPUTED THIS IS AN ARREST SITUATION. AND THIS COURT HAS STATED IN TIL LTMAN, AN ARREST SITUATION, 776.051 WILL APPLY PLY AND

776.051 THE LEGISLATURE WAS VERY CLEAR THAT THE KNOWLEDGE ELEMENT, WHETHER OR NOT HE APPEARED OR REASONABLY -- WHETHER OR NOT HE KNEW OR THE OFFICER APPEARED TO BE AN OFFICER IS WHAT IN THE COURT HAS INTERPRETED IS A DEFENSIVE STATUTE AND BASED --

>> ISN'T THAT BASED ON THE LANGUAGE OF THE -- BASED ON SPECIFIC LANGUAGE IN THE STATUTE, IN 776.051, ABOUT KNOWLEDGE?

>> YES, THE STATUTE ITSELF INCLUDES KNOWLEDGE WITH IN, IS THAT YOUR QUESTION?

MAYBE I'M MISUNDERSTANDING.

>> YOU ARE SAYING THAT IN -- IN TILMAN, 776.051 PROVIDES AN AFFIRMATIVE DEFENSE OF LACK OF KNOWLEDGE.

1 IS THAT WHAT YOU ARE SAYING?

>> NO, IT WAS NOT ON LACK OF KNOWLEDGE, WE ARE NOT TRYING TO SAY IT WAS LACK OF KNOWLEDGE, WE ARE SAYING THE COURT CAME OUT AND PRECISELY STATED IT DOES NOT APPLY IN A NONARREST SITUATION AND THIS PARTICULAR CASE, IT IS NOT DISPUTED WE ARE WITHIN AN ARREST SITUATION BECAUSE THE CASE CAME BEFORE THE COURT BASED UPON THE PROSECUTOR'S STATEMENT --

>> BUT THE QUESTION IS, JUSTICE PARIENTE IS ASKING, IS IF IT IS NOT AN ELEMENT OF THE CRIME HOW IS LACK OF KNOWLEDGE AN AFFIRMATIVE DEFENSE UNDER THE READING OF THE STATUTE.

>> WELL, IF I CAN LIKEN IT TO THE CHICKONE SITUATION AND THE LEGISLATURE COMING OUT WITH A SUBSEQUENT STATUTE STATING THAT THE DEFENDANT MAY RAISE LACK OF KNOWLEDGE OF THE ILLICIT NATURE OF THE DRUG POSSESSED AS A DEFENSE, THE STATE WAS LIKE IN 776.05, SIMILAR TO THAT.

THE LEGISLATURE HAS COME OUT ON THAT ISSUE IN AN ARREST CONTEXT

--

>> BUT THAT STATUTE, YOU SEE,

DEALS WITH THE -- A  
MODIFICATION OF THE COMMON LAW  
BECAUSE THE COMMON LAW, IF --  
IF THE POLICE OFFICER'S ACTIONS  
WERE ILLEGAL, YOU COULD USE  
FORCE TO RESIST.

AND NOW, 776.0511 SAYS, NO, IF  
THIS ARREST IS ELIMINATED, THAT  
AS A -- AN ARGUMENT OR DEFENSE  
-- BUT HERE WE DON'T HAVE AN  
ISSUE OF LEGALITY OR ILLEGALITY  
-- THERE IS NO QUESTION THAT  
THEY HAVE RAISED THAT THIS IS A  
LAWFUL -- WOULD BE A LAWFUL  
ARREST AND I'M HAVING TROUBLE  
SEEING HOW THAT STATUTE HELPS  
YOU SAY THAT THIS MUST BE AN  
AFFIRMATIVE DEFENSE IN ARREST  
AND NONARREST SITUATIONS, TO  
RESISTING AN OFFICER BITE  
VIOLENCE.

>> ONE OF TWO THINGS, THAT IN  
THE PARTICULAR CASE, WE CAN  
RELY UPON 776.051, BECAUSE IT  
-- THERE IS NO DEPUTY THERE IS  
AN ARREST SITUATION.

AND THAT IN THE PARTICULAR CASE,  
SINCE 776.051 DOES APPLY, AND  
IF THE COURT IS IN AGREEMENT  
THAT IN THAT STATUTE THE  
LEGISLATURE HAS INCLUDED A  
KNOWLEDGE ELEMENT, WITHIN THE  
CONTEXT OF AN ARREST AND  
APPLYING THE STATUTE IN THIS  
CASE, AND WE'LL GET TO  
NONARREST SITUATION BASED UPON  
THE PLAIN LANGUAGE --

>> WHAT HAPPENS -- WHAT WOULD  
HAPPEN -- WE ARE INTERPRETING  
THE WHOLE STATUTE.

AND IF IT IS A NONARREST  
SITUATION, THEN WHAT IS YOUR  
INTERPRETATION OF THE STATUTE?

>> THE PLAIN LANGUAGE OF THE  
STATUTE IN ADDITION TO THE  
COURT THE KNOWLEDGE OF THE  
OFFICER'S STATUS IS NOT  
INCLUDED.

HOWEVER, THIS CASE WAS BROUGHT  
UP ON THE PROSECUTOR'S CLOSING

--  
>> FOLLOWING JUSTICE QUINCE'S  
ARGUMENT, A NONARREST SITUATION,  
IS LACK OF KNOWLEDGE AN

AFFIRMATIVE DEFENSE.

>> THE DEFENDANT MAY CHOOSE TO  
RAISE IT AS AN AFFIRM --

>> BUT UNDER WHAT -- WHERE IS  
IT THE LEGISLATURE SAID INSTEAD  
OF BEING AN ESSENTIAL ELEMENT  
IT'S AN AFFIRMATIVE DEFENSE IN  
ARREST AND NONARREST  
SITUATIONS.

>> I DO NOT HAVE A CASE FOR  
THAT, YOUR HONOR, THE  
INTERPRETER TAKES HAS BEEN THAT  
IT IS ALONG THE LINES OF WHAT  
YOU SAID BEFORE, IN THE  
CRIMINAL CONTEXT THE DEFENDANT  
MAY RAISE THE DEFENSE THAT HE  
FEELS HE HAS PROVEN AND IN THIS  
CASE, IF HIS DEFENSE WILL BE  
KNOWLEDGE HE MUST PROVE BY HIS  
EVIDENCE THAT HE DID NOT KNOW  
MORE REASONABLY COULD HAVE  
KNOWN THAT THAT WAS AN OFFICER.  
THAT CAN BE RAISED IN ANY  
CONTEXT, WITH THE STATE'S  
POSITION, AND WE ARE NOT  
PRECLUDING THE DEFENDANT FROM  
RAISING IT AS AN AFFIRMATIVE  
DEFENSE.

>> WHAT BOTHERS ME IS IT SEEMS  
WE ARE GOING TO HAVE TWO WAYS  
TO INTERPRET THE STATUTE,  
DEPENDING ON WHETHER OR NOT WE  
ARE TALKING ABOUT AN ARREST  
SITUATION, OR NONARREST  
SITUATION.

NOW --

>> THE STATE --

>> WHY SHOULD WE HAVE TO GO  
THROUGH THOSE KINDS OF  
GYMNASTICS.

>> IN PARTICULAR, BASED UPON  
THE JURISDICTION OF THIS CASE,  
AND BEING ON THE AFFIRMATIVE --  
I'M SORRY.

ON CLOSING ARGUMENTS BASED UPON  
A RESISTING ARREST WITH VIOLENT  
SITUATION, HOWEVER, THE STATE'S  
POSITION IS STILL THAT YOU WILL  
NOT BE MAKING TWO DIFFERENT  
SITUATIONS ON THE KNOWLEDGE  
ELEMENT.

IF AN ARREST OR NONARREST  
SITUATION THE STATE ARGUES THAT  
KNOWLEDGE OF THE OFFICER'S

STATUS WILL BE A DEFENSE AND THE DEFENDANT MAY OR MAY NOT CHOOSE TO RAISE.

AND THAT IT WILL BE A DEFENSE IN ANY SITUATION, SO THE STATE IS NOT PRECLUDING THE PERSON FROM MAKING IT A DISSENT, AS I AM ANSWERING YOUR QUESTION AND WE ARE IN THE ASKING FOR THERE TO BE TWO INTERPRETATIONS OF THE LAW, WE ARE STATING THAT BASED UPON THE FACTS OF THIS CASE AND THE ISSUE BEFORE THE COURT IN THE CASE, THERE IS NO DISPUTE IT IS AN ARREST SITUATION.

AND SO, AS THE COURT LIMITS ITS ANALYSIS BECAUSE THE CASE IS LIMITED, THEN THERE IS NO ISSUE HERE IN THIS CASE AND CAN'T RESOLVE THE CASE WITHOUT GETTING TO THE LARGER ISSUE.

>> LET ME GET TO THE -- GET TO THE STATUTE ITSELF AND TALKING TO YOUR OPPOSING COUNSEL ABOUT HOW SCHWARTZ HAD REFERRED TO THE ADD VERBS -- ADVERBS AND GAVE US A GRAMMAR LESSON IN THE INTERPRETATION OF THE STATUTE. BUT HOW DOES THIS STATUTE, WHERE YOU HAVE KNOWINGLY AND WILL FULLY RESISTING, DIFFER IN THAT CONSTRUCTION FROM 775.072 WHICH IS WHENEVER ANY PERSON IS CHARGED WITH KNOWINGLY COMMITTING AN ASSAULT OR BATTERY, AND IT SEEMS TO ME AND THIS COURT HELD IN THOMPSON, NOT ONLY KNOWLEDGE WAS AN ELEMENT IN RESPECT TO THAT STATUTE, AND SO HOW CAN IT BE AN ELEMENT IN RESPECT TO THAT STATUTE AND NOT AN ELEMENT WITH RESPECT TO KNOWINGLY RESISTING?

>> YES.

LOOKING AT THE THOMPSON CASE AND SUBSECTION TWO OF THAT STATUTE IT INCLUDES THE KNOWINGLY COMMITTING AN ASSAULT AND THE NEXT SECTION IS KNOWINGLY COMMITTING A BATTERY. THE STATE'S POSITION IS THAT IN THOMPSON THE COURT WAS, ONE, REVIEWING THIS TYPE OF

ENHANCEMENT STATUTE THAT ENHANCED ALREADY WHAT WAS A SPECIFIC INTENT.

OFFENSES.

THEREFORE, SINCE THE COURT DETERMINED THAT RESISTING WITH VIOLENCE IS NOT A SPECIFIC INTENT BUT A GENERAL INTENT CASE, GENERAL INTENT OFFENSE WE DON'T HAVE THE SAME SITUATION GOING ON.

KNOWINGLY COMMITTING A SPECIFIC INTENT IS DIFFERENT THAN OUR CASE WHICH IS SIMPLY A GENERAL INTENT WHERE THE COURT ALREADY INTERPRETED THAT THE KNOWINGLY IS TO THE ACT PERFORMED ITSELF. SO WE WOULD DISTINGUISH THE TWO -- THE KNOWINGLY COMMITTING AND ASSAULT AND KNOWINGLY COMMITTING A BATTERY, UNDER THOMPSON WHICH WE DO NOT FEEL IS RELEVANT --

>> WE SAID, EVEN THOUGH WE USED THAT IT IS NOT A SPECIFIC INTENT, THE PLAIN LANGUAGE REVEALED THE DEFENDANT MUST HAVE A GENERAL INTENT TO KNOWINGLY AND WILL FULLY IMPEDE AN OFFICER IN THE PERFORMANCE OF HIS OR HER DUTIES.

IT SEEMS, ALTHOUGH WE WEREN'T INTERPRETING THE PHRASE YOU CANNOT KNOWINGLY AND WILL FULLY IMPEDE AN OFFICER IN THE PERFORMANCE OF HIS OR HER DUTIES UNLESS YOU KNOW THE PERSON, INSTEAD OF BEING A DRUG DEALER IS A POLICE OFFICER. BUT I DON'T SEE ANYTHING WE ARE SAYING HERE IS IN CONSISTENT IF WE WERE TO REJECT THE STATE'S POSITION WITH THE COURT'S OPINION IN FREY, DO YOU?

>> --

>> THAT LANGUAGE THAT I JUST SAID, IS THAT THERE MUST HAVE A GENERAL INTENT TO KNOWINGLY AND WILL FULLY IMPEDE AN OFFICER IN THE PERFORMANCE OF HIS OR HER DUTIES.

HOW DO YOU KNOWINGLY AND WILL FULLY OBSTRUCT, RESIST OR IMPEDE UNLESS YOU KNOW THIS

PERSON ARE DOING THAT TO IS AN OFFICER?

>> WELL, YOU CAN KNOWINGLY OBSTRUCT OR KNOWINGLY OPPOSE. IN THIS PARTICULAR CASE THE OFFICER MUNOZ TESTIFIED THAT WHEN HE ATTEMPTED TO GRAB THE DEFENDANT'S WRIST TO HANDCUFF HIM THE DEFENDANT PULLED AWAY. THAT IS A KNOWING -- IT IS -- MEANING IT'S NOT A REFLECTIVE -- HE IS INTENTIONALLY KNOWINGLY RESISTING WHAT IS BEING DONE TO HIM AND WHETHER OR NOT THAT IS A POLICE OFFICER, EVEN TO HIM IS IRRELEVANT AT THAT POINT.

>> EXCUSE ME, IF YOU ACCEPT THAT ARGUMENT, THEN THE SO-CALLED AFFIRMATIVE DEFENSE IS IRRELEVANT YOU TALK WITH THE OTHER JUSTICES ABOUT USING VIABLE FORCE AS A DEFENSE AND IF KNOWING THE OFFICER IS IRRELEVANT AS YOU SAID, THEN IF A TRIAL JUDGE IS ASKED TO ALLOW THE DEFENSE, AND THE STATE ARGUES, JUDGE THAT IS IRRELEVANT.

BECAUSE THAT DEFENSE IS IRRELEVANT TO THE OFFENSE AS CHARGED.

>> EVEN IN THIS CASE THE STATE ALLOWED FOR THE REASONABLY SHOULD HAVE KNOWN AS A DEFENSE, I KNOW YOU ARE INTERPRETING WHAT MAY --

>> WHAT IS IT A DEFENSE TO IF NOT AN ELEMENT OF THE OFFENSE?

>> IF YOUR POSITION IS IT IS IRRELEVANT WHETHER THE PERSON KNEW OR SHOULD HAVE KNOWN THE PERSON WAS A LAW ENFORCEMENT OFFICER, WHAT DOES IT MATTER, THE SO-CALLED DEFENSE, IF IT IS IRRELEVANT.

>> I MAY HAVE MISSPOKEN, IN THE POSITION OF THE STATE TO THE DEFENDANT, IT WAS IRRELEVANT, WHETHER OR NOT THAT PERSON AS A LAW ENFORCEMENT OFFICER AND TO YOUR SPECIFIC QUESTION OF IT BEING AN --

>> I'M NOT SURE I UNDERSTAND

THAT RESPONSE.

IRRELEVANT TO THE PERSON, TO  
THE DEFENDANT AS TO WHAT THE  
PERSON --

>> THIS PERSON DECIDED TO USE  
VIOLENCE --

>> IT DOESN'T SAY VIOLENCE, IT  
COULD BE ANY KIND OF CASE, IT  
COULD BE ANY KIND OF  
OBSTRUCTION AND ANY KIND OF  
RESISTANCE, WHETHER VIOLENT OR  
NOT AND STANDING IN THE PATH OF  
ONE COULD BE RESISTANCE, IS  
THAT WHAT YOU MEANT TO SAY,  
IRRELEVANT TO THE DEFENDANT.

>> NO, I'M SAYING UNDER THE  
FACTS OF THIS PARTICULAR CASE,  
AND HIS RESISTANCE OF THE  
OFFICER, WHEN HE RAN UP TO OFF  
SANTIAGO HE SAID I'M NOT SURE  
THAT THAT WAS AN OFFICER.  
AND TO HIM, IT WAS NOT RELEVANT  
WHETHER OR NOT THAT PERSON HE  
USED VIOLENCE AGAINST WAS OR  
WAS NOT AN OFFICER.

THAT IS WHAT I MEANT.

>> PLEASE ANSWER THE QUESTION

--

>> AND NOW I SORT OF FORGOT  
WHERE I WAS GOING TO GO ON THAT  
QUESTION.

YOUR QUESTION WAS TO TRIALS  
THAT MAY COME AND THE STATE  
COMING BACK AND STATING IT  
DOESN'T RELATE TO THE OFFENSE  
ITSELF, FOR HIM TO SAY, I DID  
NOT KNOW OR KNEW.

THE CASE LAW AND I REMEMBER THE  
NAME BUT I CAN'T GIVE YOU A  
CITE AND CAN SOME PLMENT THE  
RECORD WITH IT, AND IN TERMS OF  
ALLEGING AN AFFIRMATIVE DEFENSE,  
THE DEFENDANT SAYS THEY ACCEPT  
THE STATE'S EVIDENCE AS PROVEN,  
IN THIS CASE, THE STATE MUST  
PROVE HE KNOWINGLY HE CYST AND  
THE STATE MUST PROVE HIS  
ACTIONS ROSE TO VIOLENCE.

AND AT THAT POINT, WE HAVE ALL  
CITIZENS ARE -- KNOW VIOLENT  
BEHAVIOR IS IN AND OF ITSELF  
UNLAWFUL AND AT THIS POINT WE  
HAVE AN OFFENSE.

>> WHAT WOULD IT BE IF HE WAS A

-- NOT AN OFFICER, AND COMES UP TO YOU, YOU HAVE JUST TRIED -- A HOMELESS MAN AND SOMEONE ELSE COMES UP AND GRABS HIM FROM BEHIND.

ALL RIGHT?

DOES HE SUBMIT TO THAT AUTHORITY.

>> EVER -- THERE ARE DIFFERENT CHOICES OF WHAT TO MAKE IN THAT SITUATION BUT I WILL TRY TO DISTINGUISH THAT THIS IS NOT A CASE WHERE THE DEFENDANT IS ALLEGING FORCE WAS USED AGAINST HIM.

THAT IS A DIFFERENT SCENARIO.

WE ARE -- RESISTING WITH VIOLENCE, WE ARE WITHIN THE CONTEXT OF -- AS THE U.S. SUPREME COURT SAID, THIS IS NOT A SITUATION WHERE THIS DEFENDANT IS SAYING FORCE IS BEING USED AGAINST ME, THERE FOR I USE LIKE FORCE.

THE DEFENDANT SAID, I DIDN'T FACT USE VIOLENCE AGAINST THE PERSON, NO MATTER WHO THE PERSON WAS OR WAS NOT.

>> LITTLE EXCHANGE -- STRANGE WHAT HAPPENED, HERE HE IS PATROLLING, THE MAN, A HOMELESS MAN, SHAKING A PARKING METER AND HE GOES AND HE GETS HIS HANDCUFFS OUT AND HE IS -- GRABS HIS WRIST AND I MEAN, WE'RE NOT -- I MEAN, THE FACTS OF THIS CASE ARE NOT EXACTLY COMPELLING FOR THE STATE.

>> AS THE OFFICER, WHO WAS UNDERCOVER, WHAT HE WAS DOING TRYING TO HANDCUFF A HOMELESS MAN JUST -- HAD JUST SHAKEN A PARKING METER.

>> IF I MAY RESPECTFULLY ADD TO THE FACTS PRESENTED AT THE TRIAL --

>> FACTS FROM THE TRIAL, YOU MEAN.

>> YES, NOT ADD -- NO, NO, I WOULD NOT ADD.

FACTS ON THE RECORD HERE, OFFICER MUNOZ TESTIFIED THAT HE WATCHED THE DEFENDANT GO TO SEVERAL MARKING -- PARKING

METER AND THE LAST ONE HE PUT SOMETHING IN IN ORDER TO RETRIEVE COINS FROM MEET AND THE DEFENDANT CONCEDED AT TRIAL THAT THAT DEFENDANT WAS COMMITTING THE OFFENSE OF TAMP EER --

>> WHAT LEVEL CRIME THAT IS.  
>> THAT IS A MISDEMEANOR, YOUR HONOR.

>> OKAY.

SO THAT IS -- I'M SAYING THE CRIME THAT WAS -- IT WANT LIKE HE HAD BROKEN INTO, YOU KNOW, 7-ELEVEN AT NIGHT.

AND I'M NOT MINIMIZING TAKING MONEY FROM THE PARK -- PARKING MOOTER.

YOU WERE SAYING THAT IT IS NOT JUST -- HE DIDN'T -- YOU SAID THE OFFICER DIDN'T USE FORCE AND I'M SAYING IT SEEMED STRANGE TO GRAB HIS HANDCUFFS AND GRABBED HIS WRIST AND THEN THERE WAS A REACTIVE -- OF THE DEFENDANT.

>> THERE WAS ADDITIONAL EVIDENCE IN THAT IN ADDITION TO COMMITTING THE OFFENSE WHICH HE KNEW HE WAS COMMITTING AND THE OFFICER SAID STOP, POLICE, IDENTIFIED HIMSELF, YOU ARE UNDER ARREST AND ALL DONE BEFORE THE ATTEMPT TO -- AND WHAT I AM SAYING IS NO USE OF FORCE, THE OFFICER IS ONLY ATTEMPTING TO HANDCUFF THIS DEFENDANT AND I WANTED TO MAKE THE SCENARIO -- DIDN'T WANTED TO MAKE A SCENARIO OF SOMEONE BEING ATTACKED AND CHOOSING WHETHER OR NOT TO USE FORCE.

>> IN THE CASE DIDN'T THE OFFICER REMOVE HIS -- THE SIGNS OF HIS AUTHORITY AS A POLICE OFFICER, HIS BADGE.

>> THE BADGE --

>> AND [INAUDIBLE].

>> A POLICE OFFICER AT THAT POINT.

--

>> LET ME ASK YOU THIS.

>> HE TAKES IT OFF.

>> NO, NO, NO.

HE HAD A T-SHIRT ON THAT HAD A POCKET AND HAD A SHIRT OVER HIS POCKET AND WHEN HE WAS UNDERCOVER THE BADGE WAS IN THE POCKET. HE STATED AND DEMONSTRATED FOR THE JURY HOW HE REMOVED THE BADGE AND THAT IS WHAT HE SAID HE IMMEDIATELY -- IMMEDIATELY DID AND SAID STOP --.

>> EVIDENCE SAID HE REMOVED HIS BAG.

>> OUT OF THE POCKET AND DEMONSTRATED HOW -- THAT IS NOT THE OPINION BY JUDGE SCHWARTZ, FOOTNOTE ONE, HE SAYS HE REMOVED HIS BADGE.

>> THE OPINION -- THE OPINION DESCRIBES THE SHIRT, AND I CAN'T RECALL FURTHER, IF HE WAS WEARING A T-SHIRT --

>> ANYWAY.

>> AND DISPLAYED IT FOR THE DEFENDANT --

>> YES.

THE EVIDENCE AT THE TRIAL, DEMONSTRATED THAT IT WAS DISPLAYED.

>> THAT IS TOTALLY -- TOTALLY CONTRARY TO JUDGE SCHWARTZ'S INITIAL OPINION AND HE INTENTIONALLY -- DID HE INTENTIONALLY LEAVE IT OUT, HE MAKES THE STATEMENT IN FOOTNOTE ONE THAT HE OBSERVED AND REMOVED HIS BADGE AND APPROACHED THE DEFENDANT, STATING PLEERBS, YOU ARE UNDER ARREST AND WOULDN'T YOU THINK THE JUDGE WOULD BE HONEST ENOUGH TO SAY HE DEMONSTRATED HIS BADGE IN RENDERING HIS OPINION.

>> IT WAS NEVER A DISPUTED ISSUE ON APPEAL.

I CAN'T SAY IN -- JUDGE SCHWARTZ TYPING THAT BUT IT WAS NEVER A DISPUTED ISSUE AND AS I STATED THE PROSECUTOR --

>> IT IS PART OF THE DISPUTED EVIDENCE WITH REGARD TO WHETHER YOU HAVE TO KNOW WHETHER IT IS A POLICE OFFICER AND THAT WOULD BE ANOTHER INCIDENCE OF AUTHORITY.

>> THAT HAS NOTHING TO DO WITH IT, THE OFFICER REMOVES ALL EVIDENCE OF AUTHORITY, AND SHOULD HAVE NO PART IN WHAT IS GOING ON WITH THAT ANALYSIS BE THE.

>> -- ANALYSIS THEN.

>> I'M NOT SURE IF YOU ARE RELATING TO AF.

>> I'M RELATING TO WHETHER YOU KNOW IT IS A POLICE OFFICER OR SENATE WE ARE SAYING, THE DEFENDANT STATES THAT HE DID NOT KNOW MORE REASONABLY SHOULD HAVE KNOWN IT WAS A POLICE OFFICER THE STATE HAS TO REBUT THE ARGUMENT.

>> LET ME ASK YOU BEFORE YOU SIT DOWN, SEEMS TO ME THE WORDS, RESIST OR OPPOSES IMPLY AN ELEMENT OF INCIDENT JUST BY THE PURE WORD ITSELF.

IN OTHER WORDS, YOU CAN'T INADVERTENTLY RESIST AN OFFICER IN PERFORMANCE OF A LEGAL DUTY AND YOU CAN'T INADVERTENTLY OPPOSE AN OFFICER IN PERFORMANCE OF A LEGAL DUTY AND SEEMS LIKE UNDER YOUR INTERPRETATION OF THE STATUTE, THE WORDS, KNOWINGLY AND WILL FULLY WOULD BE SUE PURR FLUS -- SUPERFLUOUS, BECAUSE ALL YOU HAVE TO DO IS SAY THEY RESTRICTED OR OPPOSED AN OFFICER IN HIS --

>> A SITUATION OF A PERSON WHO HAS UNCONTROLLABLE MOVEMENTS AND THINGS --

>> THEN ARE NOT RESISTING IF IT IS UNCONTROLLABLE MOVEMENT YOU ARE NOT RESISTING, ARE DOING SOMETHING ELSE.

IF IT IS A AN UNCONTROLLABLE MOVEMENT YOU ARE NOT OPPOSING THE OFFICER, YOU ARE DOING SOMETHING ELSE.

SO I'M ASKING WHY ISN'T THE WORD RESIST OR OPPOSED, WHY DON'T THEY IMPLY IN THEMSELVES AN ELEMENT OF INTENT SO THAT THE QUALIFYING PHRASES, KNOWINGLY AND WILL FULLY HAVE TO ADD SOMETHING MORE THAN THE

FACT THAT YOU WERE RESISTING.

>> I HAVE DONE SIMPLE RESEARCH ON THE WORD RESIST MYSELF AND IT WAS NOT INTERPRETATION OF THE RESIST AND UNFORTUNATELY I CAN GET BACK TO THE COURT ON THAT PARTICULAR ISSUE.

>> WITH OUR ASSISTANCE YOU HAVE WELL GONE BEYOND, PLEASE MAKE YOUR CONCLUDING REMARK AND THEN

--

>> INCLUSION, THE STATE IS ARGUING THAT THE -- THIS DID NOT PRINT A CONFLICT WITH AF IN ADDITION, BASED UPON STATUTORY CONSTRUCTION THAT THE CASE IS UNDEPUTILY A -- AN ARREST SITUATION AS WELL AS DISCOURSE DETERMINATION THAT IT IS YOU A GENERAL INTENT OFFENSE THAT KNOWLEDGE OF THE OFFICER'S STATUS, WAS NOT A REQUIREMENT UNDER RESISTING WITH VIOLENCE AND EVEN IF IT HAD BEEN THE STATE ARGUED AND PROVED THAT HE REASONABLY SHOULD HAVE KNOWN FOR THE PROSECUTOR'S CLOSING ARGUMENT IT WAS NOT AN INCORRECT STATEMENT OF LAW, THERE ARE ALTERNATIVE KNOWLEDGE OR REASONABLY SHOULD HAVE KNOWN.

THANK YOU.

>>.

>> THE PRACTICAL EFFECT OF THE STATE'S ARGUMENT OR THE THEORY OF SECTION 843.01 IS SIMPLY FOR THOSE INDIVIDUALS WHO ARE CHARGED WITH A NONARREST-BASED VIOLATION OF SECTION 843.01, THERE IS NO DEFENSE OTHER THAN I HAD AND IN VOLUNTARY BODY MOVEMENT THAT STRUCK SOMEONE WHO HAPPENED TO BE A POLICE OFFICER.

THIS IS SIMPLY INCONGRUOUS WITH THE INTERPRETATION OF THAT STATUTORY SCHEME TARGETING AND PROTECTING LAW ENFORCEMENT OFFICERS THAT THE FLORIDA LEGISLATURE EN INCOMED AND THIS COURT HAS INTERPRETED, PARTICULARLY IN THE CASE OF THOMPSON.

IT IS CLEAR FROM THOSE -- FROM THOMPSON BUT ALSO -- AND I'LL ADDRESS THE ISSUE OF AFFIRMATIVE DEFENSE IN A SECOND BUT FROM THE THOMPSON PERSPECTIVE, IT IS CLEAR THAT THE QUESTION OF KNOWLEDGE, KNOWLEDGE OF THE LAW ENFORCEMENT OFFICER'S OFFICIAL STATUS IS AN INHERENT COMPONENT OF THE STATUTES, NOT ONLY WITH RESPECT TO RECLASSIFICATION STATUTE AS THOMPSON ADDRESSED BUT ALSO THE OTHER STATUTES AS -- 776.051 --

>> HAVE WE HELD THAT AFTER THE LEGISLATURE IN A CASE TO WHICH WHEN THE LEGISLATURE REENACTED THE THOMPSON STATUTE IN 784 .01, THAT THERE WAS A KNOWLEDGE COMPONENT IN THAT RECLASSIFICATION?

>> YOUR HONOR, THE THOMPSON DECISION FOCUSED ON SUB SECTION

--

>> BUT THE LEGISLATURE HAD REENACTED AFTER GREENWICH IN CARPIER AND THOMPSON DIDN'T DEAL WITH THE REENACTED, IT DEALT WITH THE STATUTE BEFORE IT WAS PLACED IN 770.

-- 782.-- I THINK IT WAS 782 -- 784.07.

>> THAT IS CORRECT, YOUR HONOR, YES.  
YES.

>> AND THAT MY QUESTION IS, HAS THERE BEEN A KNOWLEDGE COMPONENT THAT YOU KNEW THE PERSON WAS A LAW ENFORCEMENT FOR THAT RECLASSIFICATION.

>> IN -- POST THE REENACTMENT. I DON'T BELIEVE SO, JUSTICE WELLS BUT I DON'T BELIEVE THAT THAT CHANGES THE OUTCOME OR ANALYSIS WITH RESPECT TO SECTION 843.01 THE PRACTICAL EFFECT IS TO FORCE COURTS AND DEFENDANTS TO PARSE THROUGH COMPETING AND CERTAINLY IN OPPOSITE INTERPRETATIONS OF THE SAME STATUTE AND MAKES NO SENSE FROM A PUBLIC POLICY STANDPOINT ALSO TO SAY THAT ONE TYPE OF

VIOLATION OF SECTION 843.01  
WILL HAVE XYZ ELEMENTS WHILE  
ANOTHER TYPE OF VIOLATION WHICH  
MAY BE RELATED OR DISSIMILAR BY  
A HAIR WILL REQUIRE A DIFFERENT  
TYPE OF ANALYSIS OR DIFFERENT  
TYPE OF BURDEN OF PROOF FOR THE  
STATE AND WITH RESPECT TO THE  
QUESTION OF AN AFFIRMATIVE  
DEFENSE I WOULD AGAIN RELY ON  
THE COURT'S REASONING IN  
CHICKONE AS TO WHETHER OR NOT  
KNOWLEDGE IS AN AFFIRMATIVE  
DEFENSE AND I DON'T BELIEVE  
THAT 776.051 IS AN AFFIRMATIVE  
DEFENSE.

NUMBER ONE, THERE IS NO  
EVIDENCE, NO STATUTORY OR OTHER  
AUTHORITY THAT WOULD EVEN  
SUGGEST THAT THE LEGISLATURE OR  
THE COURTS HAVE CONTINUE  
STRAIGHT 776.051 AS AN  
AFFIRMATIVE DEFENSE, FOR THOSE  
REASONS I WOULD URGE THE COURT  
TO ADOPT THE INTERPRETATION  
843.01 CONTAINS A SPECIFIC  
KNOWLEDGE REQUIREMENT, EVIDENCE  
OF THE OFFICER'S OFFICIAL  
STATUS IS AN ESSENTIAL ELEMENT.  
THANK YOU.

>> THANK YOU VERY MUCH.  
AND LET ME SAY TO BOTH OF YOU  
ON BEHALF OF THE COURT I DON'T  
BELIEVE I EVER RECEIVED BETTER  
ARGUMENT FOR FIRST-TIME  
INDIVIDUALS COMING TO THE COURT  
THAN WE HAVE HAD ON WHAT COULD  
BE A DIFFICULT STATUTORY  
INTERPRETATION, ON BEHALF OF  
THE COURT, LET ME THANK YOU AND  
AS YOUNG LAWYERS COMING IN, I'M  
PROUD TO BE A LAWYER.