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Herbert N. Price v. State of Florida

SC06-2045

ALL RISE.

HEAR YEA HEAR YEA, THE FLORIDA SUPREME COURT IS NOW IN SESSION.

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

GOD SAVE THE UNITED STATES, THE 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 CALENDAR FOR MONDAY, DECEMBER 3rd, THE FIRST CASE ON THE CALENDAR IS PRICE VERSUS STATE OF FLORIDA. MS. MELROSE, MS. ADKINS, READY TO PROCEED?

>> MR. CHIEF JUSTICE, MAY IT PLEASE THE COURT.

MY NAME IS MARY ADD -- ADKINS FROM MELROSE FLORIDA AND A REPRESENT THE PETITIONER, HERBERT PRICE, THE COURT SHOULD GRANT HIM A EVIDENTIARY HEARING ON HIS HEARING FOR HABEAS CORPUS FOR TWO REASONS.

FIRST, BECAUSE THE CHARGING INFORMATION WAS SO VAGUE, INDISTINCT AND INDEFINITE IT COMPLETELY FAILED TO CHARGE AN ESSENTIAL ELEMENT OF THE OFFENSE.

AND THUS VIOLATED HIS DUE PROCESS RIGHTS.

SERXD EVEN IF THIS COURT WERE TO FIND MR. PRICE SHOULD HAVE

RAISED THE ISSUE ON APPEAL,
THEY IMPROPERLY DISMISSED HIS
DIRECT APPEAL WITHOUT FIRST
CONDUCTING AN ANDERS REVIEW.

>> LET ME ASK YOU THIS.

THERE IS, UNDER THE RULES, YOU
CAN IN FACT FILE A MOTION, A --
CHALLENGING THE SUFFICIENCY OF
AN INFORMATION.

AND WHAT -- WAS THAT DONE IN
THIS PARTICULAR CASE.

>> A MOTION DURING THE TRIAL,
YOUR HONOR.

>> PRIOR TO TRIAL.

IF YOU SAY IT WAS SO FLAWED
THAT IT FAILED TO CHARGE AN
OFFENSE, SO IF IT WAS THAT
FLAWED, WHY WASN'T THERE A
MOTION TO DISMISS THE
INFORMATION FILED PRIOR TO
TRIAL?

>> YOUR HONOR, YOU ARE CORRECT,
THERE WAS -- IT WAS NEVER
RAISED BEFORE THE PETITION FOR
HABEAS CORPUS AND THIS COURT
SAID IN STATE VERSUS GREG, THAT
WHEN AN INFORMATION IS SO
FLAWED, THAT IT FAILS TO ALLEGE
AN ELEMENT OF DEFENSE IT CAN BE
RAISED AT ANY TIME, PRETRIAL,
POST-TRIAL, ON APPEAL OR HABEAS
CORPUS.

>> WELL, YOU --

>> GO ON.

>> YOUR CONTENTIOUS IS NOT THAT
THIS WHOLLY OMITTED TO ALLEGE A
CRIME.

AS IN GRAY, I MEAN, THAT WAS --
THIS IS NOT GRAY.

CORRECT?

>> CORRECT.

IN GRAY, IT WAS ABSENT.

IN MR. PRICE'S CASE, THE
ELEMENT WAS NOT ABSENT.

IT WAS COMPLETELY GARBLED.

AND IN A CIRCUMSTANCE LIKE THAT,
THE STANDARD -- IF IT IS SO
VAGUE, INDISTINCT AND
INDEFINITE THAT A DEFENDANT
CAN'T FIGURE OUT WHAT IS BEING
CHARGED --

>> BUT IT SEEMS TO ME THAT
THERE IS A MATERIAL DIFFERENCE
BETWEEN A SITUATION IN WHICH

THE INDICTMENT JUST DOESN'T ALLEGE A CRIME.

AND THAT IS PLENTY.

AND, A SITUATION IN WHICH THERE IS SOME VAGUENESS WOULD YOU ABOUT WHAT IS SET FORWARD THAT IT COULD BE CLEARED UP IF THERE IS A REAL UNCERTAINTY BY FILING A MOTION AND THAT IS WHERE THE LAW SHOULD BE.

>> YOUR HONOR, THERE IS A DISTINCTION AND THE DISTINCTION -- BLESS YOU.

>> THANK YOU.

>> THE DISTINCTION, YOUR HONOR, IS BETWEEN A CHARGING INSTRUMENT WHICH IS MERELY IMPRECISE OR FLAWED AND A CHARGING INSTRUMENT WHICH IS SO VAGUE AND INDISTINCT AND INDEFINITE THAT THE RESULT IS IT FAILS TO ALLEGE AN ELEMENT OF THE DEFENSE.

IN THIS CASE THE CHARGING INSTRUMENT READ IN THAT HERBERT PRICE ON OR ABOUT MAY 7th, 2001, IN THE COUNTY OF VOLUSIA, STATE OF FLORIDA, DID UNLAWFUL FULLY COMMIT SEXUAL BATTERY BY... ORAL AND/OR VAGINAL PENETRATION, NOT THE WORD "PENETRATION" BY OR IN UNIT WITH SEXUAL ORGAN OF A VICTIM, A PERSON 12 YEARS OF AGE OR OLDER WITHOUT CONSENTED AND WHEN THE VICTIM WAS PHYSICALLY INCAPACITATED.

>> DID THAT TRACK THE STATUTORY LANGUAGE?

>> IT DID AND -- IN A BACKWARD WAY.

I CAN READ YOUR HONOR THE STATUTE AND WE CAN POINT OUT HOW IT IS DIFFERENT.

>> AND YOU -- AND YOU LEFT OUT A PORTION OF THE INFORMATION, DID YOU NOT, IN THE END OF THE -- CONTRARY TO A VERY SPECIFIC SECTION OF THE FLORIDA STATUTES, IS THAT CORRECT.

>> YES, YOUR HONOR, IT DOES NOT TRACK BUT REFERS TO THE -- WHAT THIS CHARGING INFORMATION DOES IS IT OMITTS -- A PERPETRATOR AND DESCRIBES THE OFFENSE

BACKWARD IN SUCH A WAY IT IS IMPOSSIBLE TO TELL WHO DID WHAT TO WHOM WITH WHAT.

SO PERHAPS THE BEST WAY TO ILLUSTRATE THIS IS TO READ THE STATUTE AND THEN READ THE INFORMATION.

THE STATUTE MAKES SENSE.

THE STATUTE SAYS, SEXUAL BATTERY MEANS ORAL, AGE OR VAGINAL.

PENETRATION BY, OR UNION WITH THE SEXUAL ORGAN OF ANOTHER, OR, THE ANAL OR VAGINAL PENETRATION OF ANOTHER BY ANY OTHER OBJECTS.

AND HAS AN EXCEPTION WHICH IS THAT MEDICAL PURPOSES DON'T COUNT.

NOW, THE STATUTE MAKES SENSE BECAUSE IT IS TALKING ABOUT THE ACT IN GENERAL.

A CHARGING INFORMATION NEEDS TO TELL WHO PERFORMED THE FACT.

THIS CHARGING INFORMATION SAYS\\""\$

SAYS... COMMITTED SEXUAL BATTERY BY... ORAL AND/OR

VAGINAL PENETRATION BY... OR UNION WITH THE SEXUAL ORGAN OF THE VICTIM.

NOW, THERE IS AN "OR" THERE, CORRECT?

PENETRATION BY OR UNION WITH.

NOW, EITHER ONE OF THOSE, I'LL GET IN A MOMENT, WHY THERE SHOULDN'T BE AN "OR" THERE BUT

IF WE WERE TO CONSTRUCT THE SENTENCE SO WAY IT IS WRITTEN,

IF WE TOOK ONE OF THE WORDS FROM THE SIDE OF THE "OR" AND SAID, COMMITTED SEXUAL BATTERY BY... ORAL, AND/OR VAGINAL PENETRATION AND NOT TALKING ABOUT THAT "OR" PENETRATION BY THE SEXUAL ORGAN OF THE VICTIM?

>> LET ME SAY, SO ITS YOUR POSITION THAT WHEN YOU AS THE DEFENSE COUNSEL ARE -- OR THE DEFENDANT LOOK AT THE DOCUMENT HE WOULDN'T KNOW WHAT HE WAS CHARGED WITH?

>> YOUR HONOR, WE CAN'T KNOW THAT, BECAUSE HE WAS NEVER GIVEN AN EVIDENTIARY HEARING.

TO DETERMINE IT.

>> JUST ON THE FACE YOUR ARGUMENT TH IS THIS INFORMATION IS SO FACELY DEFECTIVE THE DEFENDANT HAD NO IDEA WHAT THE STATE WAS CHARGING HIM WITH? THERE WAS --

>> NO REASONABLE IDEA.

>> THERE WAS SOME SEXUAL THING CHARGED.

THE KEY WORDS ARE THERE. YOU KNOW, BODY PARTS ARE MENTIONED.

PENETRATION IS INARTFULLY MENTIONED.

IT IS ACTUALLY MISSPELLED.

>> LET ME TRY AND PUT IT IN -- IN COULD CONTEXT, WHEN HE WAS ARRESTED DID THE WARRANT HAVE THE INFORMATION THAT IT WAS BY THE PENIS?

THE PENETRATION.

>> THE WARRANT, YOUR HONOR, I'M NOT SURE BUT THE CHARGING INFORMATION DOESN'T SAY --

>> I GUESS WHAT I'M TRYING TO DO IS TRYING TO FIGURE OUT IF YOUR ARGUMENT IT IS SO VAGUE AND INDISTINCT THAT AT THIS POINT BEFORE US NOW WE DON'T KNOW WHAT IS CHARGED, THAT WOULDN'T THAT BE SIMPLY JUST AS OBVIOUS AT THE TIME OF THE ARRAIGNMENT, AT THE TIME OF THE TRIAL, AT THE TIME OF THE OPENING ARGUMENT, AT THE TIME THE EVIDENCE WAS PRESENTED, AT THE TIME OF CLOSING ARGUMENT, POST-TRIAL OR DIRECT APPEAL.

>> YOUR HONOR, AGAIN, WITHOUT THE EVIDENTIARY HEARING MR. PRICE WAS DENIED WE CAN'T KNOW WHETHER THERE WAS ACTUAL PREJUDICE.

WHAT IS --

>> SO YOUR POSITION IS ARGUE!!ING BASED ON GRAY.

I AGREE THE LANGUAGE IN GRAY IS BROAD IS ALL HAPPENS TO BE FILED IS A BLANKET HABEAS SAYING THE INFORMATION IS DEFECTIVE AND ONCE THAT IS DON'T YOU REQUIRE AN EVIDENTIARY HEARING NO MATTER

WHERE IT IS IN THE PROCESS.

>> YOUR HONOR, A PETITION CAN'T JUST SAY THE CHARGING INFORMATION IS DEFECTIVE. THE CHARGING INFORMATION HAS TO BE DEFECTIVE AND THIS CHARGING INFORMATION DOESN'T SAY HOW MR. PRICE ACCOMPLISHED HIS -- THE DEED THAT HE WAS CHARGED WITH.

WE DON'T KNOW WHAT EXACT DEED HE WAS CHARGED HITT.

IF HE WERE CONVICTED OF -- AND THE EVIDENCE TENDED TO SHOW THAT HE PENETRATED THE VICTIM'S VAGINA WITH HIS PENIS, THERE IS NOTHING TO KEEP -- BASED ON THIS CHARGING INFORMATION, THE STATE FROM COMING BACK AND SAYING, WELL, YOU KNOW, HE ALSO -- THERE ARE A LOT OF POSSIBILITIES HERE, YOUR HONOR.

HE ALSO COMMITTED ORAL PENETRATION.

HE ALSO COMMITTED YOU KNOW --.

>> I THINK JUSTICE BELL'S QUESTION ACTUALLY GOES TO, WHEN YOU CAN ACTUALLY RATE THIS AND HE'S ASKING YOU AT ANY POINT, THE -- DESPITE THE FACT THAT YOUR ARGUMENT REALLY IS THAT THIS INFORMATION IS SO DEFECTIVE THAT IT FAILS TO CHARGE AN OFFENSE, THAT THAT SHOULD HAVE BEEN CLEAR AT THE BEGINNING OF THE CASE, AND YOU CAN WAIT UNTIL ANY POINT TO RAISE THAT.

THAT IS WHAT HIS QUESTION REALLY GETS TO.

EVEN THOUGH IT IS SO DEFECTIVE YOU CAN JUST WAIT AND -- UNTIL WHAT IS IT -- HOW MANY YEARS LATER NOW?

>> IT IS SIX YEARS LATER, YOUR HONOR.

>> SIX YEARS LATER AND RAISE THIS ISSUE, AT THAT POINT.

>> YOUR HONOR, THAT IS EXACTLY WHAT THIS COURT SAID IN 1983, IN STATE VERSUS GRAY.

>> A COUPLE OF THINGS, THE PROCEDURAL POSTURE OF THIS CASE PARTICULARLY CONCERNS ME

BECAUSE WE HAVE AN OBLIGATION NOT JUST TO LOOK AT THIS CASE BUT HOW IT FACTS THE ADMINISTRATION OF JUSTICE. THIS COURT GETS HUNDREDS OF PETITIONS, BY PRISONERS, TEN YEARS OUT, 20 YEARS OUT, AND THEY ALLEGE SOME DEFECT IN THE INFORMATION.

AND THIS COURT HAS BEEN ROUTINELY DISMISSING THOSE CASES AND WHAT WE'VE GOT TO DO HERE IS DISTINGUISH AND FIND OUT IF THERE ARE ANY CATEGORY OF CASES THAT GRAY FITS INTO WHERE THERE IS A TRUE DENIAL OF DUE PROCESS AND GRAY STARTS OUT BY SAYING THE ORDINARY TEST, IF THERE IS A DEFECT IN THE CHARGING DOCUMENT, ACTUAL PREJUDICE TO THE FAIR AND BALANCED OF THE TRIAL.

BUT I WANT TO FAIRNESS OF THE TRIAL BUT I WANT TO ASK YOU, IS THERE ANY ALLEGATION HERE THAT THERE WAS ANY PREJUDICE TO THE FAIRNESS OF THE TRIAL OR COULD THERE BE BASED ON WHAT WE KNOW ABOUT WHAT THE CRIME WAS AND WHAT HE WAS CONVICTED OF?

>> YOUR HONOR, AGAIN, THERE WERE, I BELIEVE YOUR QUESTION WAS, IS THERE ANY ALLEGATION OF PREJUDICE TO THE TRIAL.

>> CORRECT.

>> AGAIN THAT IS SOMETHING THAT THERE WAS NEVER BEEN -- THE PETITIONER NEVER HAD A CHANCE TO PROVE OR ARGUE.

>> ARE YOU SAYING THIS CATEGORY BASED ON GRAY, THAT YOU COULD RAISE IT TRULY AT ANY TIME IF THERE IS SOMETHING VAGUE IN THE INDICTMENT OR INFORMATION, A VAGUENESS IN ONE OF THE CHARGES -- ONE OF THE ELEMENTS, THAT THAT CAN BE RAISED 20 YEARS, 30 YEARS LATER?

>> YOUR HONOR, I BELIEVE THAT BASED ON GRAY AND OTHER CASES, YES, THAT IS TRUE.

>> THEN WE NEED TO PROCEED FROM RECEDE FROM GRAY.

>> YES, PROCEED FROM GRAY --

>>, RECEDE FROM GRAY, THAT IS NOT IN ACTUALITY HOW IT HAS BEEN INTERPRETED IN THE LAST 24 YEARS AND IT WOULD BE A DISASTER FOR THE ADMINISTRATION OF JUSTICE.

HERE, THIS PARTICULAR DEFENDANT HAD A 3.850 PENDING ON APPEAL WHEN HE FILED THIS SEPARATE HABEAS, CORRECT.

>> THAT'S CORRECT.

AND THE 3850 HAD NOT BEEN DECIDED AT THE TIME THE HABEAS WAS FILED.

HE ALSO HAD A DIRECT APPEAL WHICH WAS SO POORLY PROSECUTED THAT HIS APPELLATE ATTORNEY WAS SANCTIONED.

>> AND THAT MIGHT BE -- IF YOU WANT TO GO ON THIS CASE, THERE IS SOMETHING ELSE, BUT I WANT TO -- I'M TALKING ABOUT THE BIG PICTURE AND WHAT JUSTICE WELLS ASKED YOU, ISN'T IT TRUE THAT GRAY SAYS THAT IF THE CHARGING DOCUMENT COMPLETELY FAILS TO CHARGE A CRIME, A CONVICTION FOR THAT VIOLATES DUE PROCESS.

>> CORRECT.

>> WHY AN EVIDENTIARY HEARING? I DON'T UNDERSTAND THAT.

CAN'T YOU TELL FROM THE FACE OF THE INDICTMENT AS YOU HAVE BEEN ARGUING HERE WHETHER OR NOT IT IS ALLEGED ALL OF THE ELEMENTS OF THE CRIME AND IF IT DID NOT ACCORDING TO YOUR POSITION, HE'S -- THE CHARGES HAVE TO BE DISMISSED.

WHAT PURPOSE WOULD AN EVIDENTIARY HEARING SERVE?

>> YOUR HONOR, AN EVIDENTIARY HEARING IS... WOULD SHOW IF THIS COURT -- DEMANDS THAT HE NEEDS TO SHOW PREJUDICE, AN EVIDENTIARY HEARING WOULD --

>> I DON'T SEE IN GRAY WHERE IT SAYS ANYTHING -- GRAY SAID ORDINARILY YOU WOULD HAVE TO SHOW THERE WAS PREJUDICE AT TRIAL BUT THEN SEEMED TO CREATE AN EXCEPTION WHERE THE INDICTMENT WHOLLY FAILS TO ALLEGE AN ESSENTIAL ELEMENT OF

THE CRIME.

IT WOULD BE A DENIAL OF DUE
PROCESS TO PROSECUTE ON THAT
INFORMATION.

SO IT SEEMS LIKE UNDER GRAY,
THERE IS NO PREJUDICE PROBLEM.

>> HE WAS SIMPLY -- HE WAS
SIMPLY NOT CHARGED WITH A
CRIME.

>> WHERE IS IT THAT YOU FEEL
THIS INFORMATION FAILS AS FAR
AS WHOLLY FAILING TO CHARGE --
THIS INFORMATION PRETTY CLEARLY
CHARGE A SEXUAL BATTERY AGAINST
AN UNEXAS STATED PERSON, AND
CITES THE SPECIFIC STATUTE?

IN OTHER WORDS, THERE IS MORE
THAN ONE PHYSICAL WAY TO COMMIT
A SEXUAL BATTERY, RIGHT?
IT CAN BE THESE ALTERNATIVE
WAYS THAT ARE IN THE
INFORMATION BUT DOESN'T IT
CLEARLY CHARGE A SEXUAL BATTERY
AGAINST AND IN EXAS STATED
PERSON?

DOES IT OR DOESN'T IT?

>> YOUR HONOR IT DOESN'T.

>> IT DOESN'T?

IT USES THE WORD SEXUAL
BATTERY.

>> IT USES THE WORDS --

>> AND CITES A SPECIFIC STATUTE,
YOU KNOW AND USES THE WORD,
INCAPACITATED PERSON.

WHAT IS LACKING IN THE
INFORMATION THAT YOUR CLIENT
WOULD LIKE TO KNOW AS FAR AS
THIS WHOLLY FAILING TO CHARGE A
CRIME?

IN OTHER WORDS, THERE IS A
DIFFERENCE BETWEEN AN ARGUMENT
THAT, WELL, YOU DIDN'T TELL ME
SPECIFICALLY ENOUGH WHETHER I
COMMITTED THE SEXUAL BATTERY IN
AALLY OR WHETHER I -- ANALLY OR
IN A DIFFERENT ORGAN OF THE
BODY OR SOMETHING LIKE THAT.
BUT YOU ARE SAYING THIS WHOLLY
FAILS TO CHARGE A CRIME.

WHAT IS LACKING AS FAR AS THE
INFORMATION.

YOU KNOW, I'M READING IT, IT
SAYS SEXUAL BATTERY.

IT SAYS INCAPACITATED PERSON.

WHAT -- IF YOU ARE GOING TO CHARGE SOMEBODY WITH SEXUAL BATTERY OF AND IN EXAS STATED PERSON AND THEN CITE THE SECTION OF THE STATUTE, WHAT MORE DOES THE STATE NEED TO DO? >> THE STATUTE AND THE CHARGING DOCUMENT ARE VERY INCLUSIVE. THEY GIVE CHOICES, EITHER/OR, BY OR UNION WITH.

WHAT WAS COMMITTED HERE WAS SOMETHING SPECIFIC.

IF THERE WAS MORE THAN ONE BATTERY IT SHOULD HAVE BEEN MORE THAN ONE COUNT --

>> NOW, AREN'T WE TALKING, THOUGH, ABOUT SOMETHING ELSE? THAT IS SOMETHING THAT COULD BE SUBJECT TO DISCOVERY OR A BILL OF PARTICULARS, OR PERHAPS EVEN A MOTION TO DISMISS THE INFORMATION.

IF YOU ARE CLAIMING THAT YOU CAN'T CREATE A DEFENSE TO IT, ALL -- IN OTHER WORDS WE HAVE ALL THOSE PROCEDURAL DEVICES, PRIOR TO THE TRIAL OF A CASE, THAT ARE IN PLACE SPECIFICALLY TO ADDRESS THOSE KINDS OF ISSUES.

BUT FT. WE ARE GOING TO HAVE SOMETHING THAT IS SO DEFECTIVE THAT YOU CAN RAISE IT 20 YEARS LATER, WHATEVER, DOESN'T IT HAVE TO OMIT MUCH MORE THAN YOU ARE PLANNING WITH THIS CHARGING DOCUMENT ON THAT?

DOESN'T IT HAVE TO BE MUCH MORE DEFECTIVE, I GUESS IS WHAT I'M SAYING, YOU KNOW, LIKE YOU DID SOMETHING WRONG ON OCTOBER THE 7th, 1975.

WELL, WAIT A MINUTE THE. THAT MIGHT BE A PROBLEM.

BUT THIS SAYS SEXUAL BATTERY, IT SAYS INCAPACITATED PERSON, HAS THE TIME, HAS THE SPECIFIC SECTION OF THE STATUTE.

ONE OF THE THINGS WE HAVE DONE CONSISTENTLY IN OUR CASE LAW IS SAY NO -- IF YOU CHARGE ALONG THE LINES OF THE STATUTE STATE, YOU ARE NOT GOING TO GET INTO TOO MUCH TROUBLE.

YOU WILL BE IN PRETTY GOOD
SHAPE IF YOU DO THAT.

TELL ME AGAIN HOW THIS IS
WHOLLY DEFECTIVE AND NOT
CHARGING A CRIME.

BECAUSE I'M AFRAID I DON'T SEE
THIS WHOLLY DEFECTIVE IN NOT
CHARGING A CRIME.

I SEE A CRIME CHARGE THERE.

I WOULD BE SCARED TO DEATH IF I
WAS CHARGED WITH SEXUAL
BATTERY.

OF ANY INCAPACITATED PERSON ON
A CERTAIN DATE AND CITED THE
STATUTE.

>> YOUR HONOR, WHEN THE STATE
WISHES TO TAKE AWAY THE LIBERTY
OF A PERSON, THE BURDEN IS ON
THE STATE TO MAKE THE CHARGING
INSTRUMENT SPECIFIC AND TO
STATE THE SPECIFIC CRIME THAT
WAS COMMITTED.

HERE, WE HAVE THE WHOLE STATUTE
SET OUT AND THE WHOLE THING
BLANKETED ON MR. PRICE.

HE MIGHT HAVE DONE THIS OR
MIGHT HAVE DONE THIS.

WE'RE NOT SURE WHAT HE DID AND
WE WILL NOT BOTHER TO BE
SPECIFIC ABOUT WHAT HE DID.

>> BUT WAS THERE ANY MOTION FOR
BILL OF PARTICULARS OR ANYTHING
LIKE THAT?

THAT IS A DIFFERENT THING, YOU
SEE THAN SAYING NO CRIME AT
ALL.

THAT IS WHAT I'M HAVING
DIFFICULTY WITH.

MAYBE WE'RE NOT -- YOU'RE
SAYING NO KROIM AT ALL IS IN --
CRIME AT ALL IS CONTAINED IN
THOSE ALLEGATIONS.

>> IS THE STANDARD IS EITHER
COMPLETE OMISSION OF AN LIMIT
OR THAT THE ELEMENT IS SO VAGUE,
INK DISTINCT AN INDEFINITE IT
COMPLETELY FAILS TO SET AN
ELEMENT OF AN OFFENSE, THE
POSITION CANNOT BE IT WAS
COMPLETELY OMITTED.

IT IS TALKED ABOUT.

BUZZWORDS ARE THROWN OUT.

IT LOOKS -- NO ONE IS TRYING TO
SAY THE WORDS "SEXUAL BATTERY"

AND PENETRATION --

>> YOU ARE RUNNING OUT OF YOUR TIME, MAYBE YOU WANT TO SAVE SOME TIME FOR REBUTTAL HERE.

>> THANK YOU, YOUR HONOR.

>> MAY IT PLEASE THE COURT, I'M CHRIS DAVENPORT AND I REPRESENT THE STATE OF FLORIDA.

OUR POSITION IS THAT THE DISTRICT COURT WAS CORRECT AND THE TRIAL COURT WAS CORRECT IN FINDING THAT THIS TYPE OF A CLAIM CAN'T BE RAISED IN A HABEAS PROCEEDING.

>> THERE IS A PROBLEM AND PROBABLY WHY WE ENDED UP TAKING THIS CASE, REALLY THIS CASE IS NOT ALLEGING A -- OMITTING AN ESSENTIAL ELEMENT.

IT IS SAYING THAT ONE OF THE ELEMENTS WERE VAGUE AND INDEFINITE.

YET THE DISTRICT COURT USES THE TERM FATALLY DEFECTIVE AS IT FAILED TO ALLEGE AN ESSENTIAL ELEMENT OF THE OFFENSE.

LET'S GO BACK TO THIS.

IS THAT STATEMENT WHERE THEY SAY THAT IT WAS DEFECTIVE BECAUSE IT FAILED TO ALLEGE AN ESSENTIAL ELEMENT BUT HAS TO BE RAISED ON DIRECT APPEAL, DO YOU SEE THAT AS -- THAT STATEMENT AS BEING IN CONFLICT WITH GRAY?

>> IT IS IN CONFLICT WITH THE PLACE IN GRAY THAT SAYS THAT KIND OF A CLAIM CAN BE RAISED AT ANY TIME INCLUDING A HABEAS BUT SINCE GRAY, IT HAS BEEN 20 YEARS SINCE THEN AND THE COURT MADE IT ABUNDANTLY CLEAR HABEAS ISN'T USED FOR JUST ANYTHING ANYMORE.

>> THIS CASE CAN BE DISTINGUISHED IN THE -- THAT THE 5th DISTRICT DIDN'T USE PRECISE ENOUGH LANGUAGE THAT IT DIDN'T EVEN COME INTO CONFLICT WITH GRAY, CORRECT.

>> YES.

>> AND THE SECOND THING I WANT TO KNOW, IS THE STATE'S POSITION AND I KNOW YOU'D LIKE GRAY COMPLETELY GONE AND I'M --

I UNDERSTAND THAT.
BUT I THINK THE PROBLEM I HAVE
FOR THIS CASE IS, YOU CAN SAY,
WELL, CERTAIN CLAIMS CAN BE
RAISED ON POST-QIBZ.
BUT THERE IS A WHOLE OTHER
ISSUE -- POSTCONVICTION BUT
THERE IS A WHOLE OTHER ISSUE AS
TO CLAIMS THAT CAN BE RAISED AT
ANY TIME AND SO THE QUESTION I
HAVE IS, AT LEAST WE'D NARROW
THIS TO SAY CLAIMS ABOUT AN
INFORMATION OR INDICTMENT HAVE
TO AT LEAST BE RAISED FOR 3.850,
NOT ON HABEAS.

WOULD YOU AGREE WITH THAT.

>> I WOULD AGREE WITH THAT.
YES.

>> IS THERE ANY CLASS OF CASES,
BECAUSE I HAVE BEEN TRYING TO
THING OF IT LAST FEW DAYS, THAT
REALLY WOULD BE A DENIAL OF DUE
PROCESS BECAUSE OF A DEFECT IN
THE CHARGING DOCUMENT?

CAN THE STATE THINK OF A
SITUATION WHERE IT WOULD REALLY
AMOUNT TO THAT -- WHAT IS THE
DICTA IN GRAY, THAT IS, IT
COMPLETELY FAILS TO ALLEGE A
CRIME, DENIAL OF DUE PROCESS.

IS THERE ANY SCENARIO WHERE WE
CLOSE THE DOOR COMPLETELY, THAT
YOU CAN THINK OF, WHERE IT
WOULD BE IN FACT A DENIAL OF
DUE PROCESS, SUCH THAT IT WOULD
CRY OUT FOR RELIEF AT ANY TIME.

>> IT IS HARD TO IMAGINE ANY
INFORMATION GETTING THROUGH
TRIAL COURT AND THROUGH DIRECT
APPEAL AND THROUGH 3850 WHEN IT
IS THAT SCREAMINGLY HORRIBLE
THAT IT DOESN'T EVEN CHARGE --
[INAUDIBLE] I MEAN, LET ME ADD,
JUST BECAUSE THERE IS AN
ALLEGATION THAT HE --
[INAUDIBLE] THE VIOLATION
DOESN'T MEAN IT SHOULD BE ABLE
TO BE RAISED AT ANY TIME.

>> YOU WOULD HAVE TO LOOK AT IT
AND SAY WHAT HAPPENED AT TRIAL?
IF THE INFORMATION, THE TRIAL
TRACKED THE INFORMATION AND IN
FACT THE PERSON WAS CONVICTED
OF A NONEXISTING CRIME, WOULD

THAT BE DIFFERENT AS OPPOSED TO THE INFORMATION BEING DEFECTIVE IN SOME WAY.

>> THE -- [INAUDIBLE] CRIME WOULD BE DIFFERENT THAN -- A DEFECT IN THE INFORMATION, THAT HAS TO BE RAISED AT TRIAL, SOMETHING SIMPLE LIKE THIS. IF IT IS SOMETHING BIG OR MISSING AND ESSENTIALLY ELEMENT IT CAN BE RAISED IN THE 3850 IF ITS FUNDAMENTAL ERROR, BUTTS THERE ARE NO LIMITS ON HABEAS AND YOU CAN FILE IT 15, 20 YEARS AFTER YOUR CONVICTION AND THE COURT MADE CLEAR A COLLATERAL ATTACK ON A CONVICTION SENTENCE HAS TO BE RAISED IN A 3850 NOW.

THAT'S THE PROCEDURE FOR THAT AND THE DICTA IN GRAY THAT SAYS THIS PARTICULAR PROBLEM CAN BE RAISED IN THE STATE HABEAS SHOULD BE RECEDED FROM BY THE COURT BECAUSE IT CAUSED THIS DEFENDANT A LITTLE BIT OF CONFUSION, INSTEAD OF LOOKING AT CURRENT CASE LAW HE LOOKED AT THIS OLD CASE LAW AND SAID, I CAN RAY IT WHENEVER I WANT AND I'M SIT ON IT AND NOT INCLUDE IT IN MY -- [INAUDIBLE] THAT IS WRONG AND THIS COURT MADE IT CLEAR 3850 IS THE WAY TO RAISE THESE CLAIMS AND THAT SHOULD INCLUDE AN ATTACK ON THE INFORMATION.

>> WHAT -- HOW DO YOU RESPOND TO THE ARGUMENT, LET'S SAY, THIS WAS CHARGED WITH PENETRATION. AND THE DEFENDANT WAS FOUND NOT GUILTY? AND TIME PERIOD HAS PASSED AND THE STATE COMES BACK AND CHARGES ORAL. TOUCHING OR CONTACT. THE SAME OFFENSE, SAME DATE, BUT IN A DIFFERENT WAY. HOW WOULD THAT IMPACT A DEFENDANT HERE FROM BEING CHARGED AS HE ARGUES?

>> WELL -- I THINK HE WOULD RAISE A DOUBLE

JEOPARDY VIOLATION AND THEY'D
LOOK AT THE TRANSCRIPT AND THE
INFORMATION AND WOULD SAY,
YOU'VE ALREADY BEEN IN JEOPARDY
FOR THAT OFFENSE AND IF THEY
DENY --

>> BUT THEY ARE SEPARATE,
AREN'T THEY, WE ALLOW SEPARATE
OFF FENCES TO BE CHARGED.

>> RIGHT.

THIS PARTICULAR INFORMATION
SAYS AND/OR.

AND ACTUALLY THE VICTIM
TESTIFIED TO BOTH.

BUT IT WAS ONLY CHARGED IN ONE
COUNT.

HE IS NOT FACING A DOUBLE
JEOPARDY PROBLEM HERE.

ONE THING, SEXUAL --

[INAUDIBLE].

>> NO, HE'S NOT HERE BUT THAT
IS MY CONCERN IS SOMEBODY ELSE,
AND IF THE STATE FAILS AND THEN,
SO WE OPEN THE DOOR FOR THE
STATE, IN ARTFULLY DRAFTING THE
INFORMATION, TO GIVE THEM
LEEWAY IF THEY FAILED TO PROVE
IT THE FIRST TIME TRY AND GET
IT FOR ANOTHER JURY FOR AN
OFFENSE THAT MAY HAVE OCCURRED
IN THE SAME DATE BUT A
DIFFERENT MANNER.

>> THAT'S RIGHT.

THAT IS WHY HE SHOULD ASK FOR A
STATEMENT OF THE PARTICULARS OR
MOVE TO DISMISS.

I MEAN, HE NEEDS TO PROTECT HIS
RIGHTS, TOO.

HE CAN'T JUST HOPE EVERYTHING
GOES WELL.

SO IF HE MOVES TO DISMISS AND
IT'S AMENDED IT WOULD CLEAR UP
THE PROBLEM.

IF HE DOESN'T --

>> BUT SHOULDN'T THIS BURDEN BE
ON THE STATE TO ADEQUATELY
INFORM AND CHARGE SO WE KNOW IN
THE FUTURE WHAT WAS BEING
CHARGED AND NOT HAVE TO GO
THROUGH ALL OF THESE
MACHINATIONS OR PLACE IT ON THE
DEFENDANTS.

>> OF COURSE IT IS THE BURDEN
OF THE STATE AND IF THE

DEFENDANT, THIS THE STATE HAS NOT MET THE BURDEN HE NEEDS DO SOMETHING ABOUT THAT.

HE'D FILE A MOTION TO DISMISS IN THAT SCENARIO OR, YOU KNOW, IF HE COMES BACK AND IS CHARGED LATER, FILE A MOTION TO DISMISS ON DOUBLE JEOPARDY GROUNDS FOR THE LATER CHARGE.

IT'S NOT LIKE HE IS WITHOUT A REMEDY OR WITHOUT HIS RIGHTS OR NEEDS TO HAVE IT LEFT OPEN FOREVER IN A HABEAS PROCEEDING.

THAT IS WHAT I THINK THE ISSUE IS, IS WHETHER YOU CAN CHALLENGE THE INFORMATIONS IN A HABEAS PROCEEDING, AND ITS OUR POSITION THAT YOU CAN'T, IT LIKES ANY OTHER DUE PROCESS PROBLEM THAT COMES UP IN TRIAL. YOU NEED TO FILE IT UNDER A 3850.

IF ITS FUNDAMENTAL ERROR AND IF IT IS SOMETHING LIKE THIS, WHERE YOU ARE CONFUSED AS TO WHAT HE PENETRATED HER WITH, NEEDS TO BE FILED ON DIRECT APPEAL OR MORE APPROPRIATELY, BEFORE TRIAL SO IT CAN BE FIXED AND IF THERE IS CONFUSION WE CAN FIX IT.

>> I WONDER IF SOMETHING LIKE THIS COULD BE RAISED ON DIRECT APPEAL WITH OUT IT HAVING BEEN RAISED BELOW.

I MEAN, THIS PARTICULAR SITUATION.

>> THIS PARTICULAR SITUATION, THE INFORMATION IS FINE, IT CITES THE STATUTE AND HE WAS ON NOTICE WHAT THE ELEMENTS WERE. IF IT WAS FUNDAMENTAL ERROR AND REALLY MISSING AN ESSENTIAL ELEMENT THAT CAN BE RAISED FOR THE FIRST TIME ON APPEAL AND IF IT IS A TECHNICAL DEFICIENCY IT NEEDS TO BE RAISED AT TRIAL. AND HE COULD ARGUE TRIAL COUNSEL WAS INEFFECTIVE AND FILE A 3850 AND WOULD HAVE TO SHOW PREJUDICE.

>> WHAT DO YOU CONTEND THAT MR. PRICE WAS REALLY CHARGED WITH IN THIS CASE?

BECAUSE WHEN YOU READ THE INFORMATION, WITH THE AND AND THE OR AND THE THIS AND THE THAT, IT IS, TO ME, CONFUSING AS TO WHAT THE STATE WAS ALLEGING MR. PRICE DID. WHAT DO YOU CONTEND THIS INFORMATION ACTUALLY CHARGES HIM WITH.

>> IT CHARGES HIM WITH SEXUAL BATTERY --

>> I MEAN, WHAT SPECIFIC SEXUAL BATTERY?

WE KNOW IT SAYS SEXUAL BATTERY AND CITES THAT STATUTE BUT WHAT SPECIFICALLY WAS HE ALLEGED TO HAVE DONE THAT CONSTITUTES THE ACT OF SEXUAL BATTERY.

>> HE WAS ALLEGED TO HAVE OR REALLY OR VAGINALLY PENETRATED HER.

OR MADE CONTACT WITH HER SEXUAL ORGANS.

NOW, IT DOESN'T GO INTO THE FACTS, DOESN'T SAY WHAT HE USED TO DO THAT.

HE COULD HAVE FILED A MOTION TO DISMISS OR A MOTION FOR STATEMENT OF PARTICULARS.

IF HE WAS REALLY CONFUSED ABOUT THAT.

I MEAN, THE ISSUE IN THIS CASE

--

>> SO THE INFORMATION CHARGES HIM WITH EITHER VAGINALLY OR ANALLY OR OR REALLY DOING WHAT?

>> PENETRATING THE SEXUAL ORGANS OF THE VICTIM.

>> WITH WHAT.

>> IT DOESN'T SAY WITH WHAT BUT CITES THE STATUTE THAT SETS OUT THE ELEMENT AND IT SAYS SEXUAL ORGAN ON ANOTHER.

AGAIN, IF HE WAS CONFUSED AT TRIAL, HE COULD HAVE EASILY FIXED THAT.

BY FILING A MOTION TO DISMISS AND THE STATE WOULD HAVE AMENDED THE INFORMATION TO CLARIFY THAT.

YOU KNOW, THEY DON'T GO INTO TRIAL TOTALLY BLIND ANYMORE.

I MEAN, THERE IS DISCOVERY AND

--

>> WHAT WAS THE PROOF AT TRIAL.
>> THE VICTIM TESTIFIED THAT HE
RAPED HER.
PENETRATION --
>> DID WHAT.
>> THAT HE RAPED HER.
>> HOW.
>> HIS PENIS PENETRATED HER
VAGINA AND HE ALSO PERFORMED
ORAL SEX ON HER AND HE
TESTIFIED AND SAID, YEAH, THAT
ALL HAPPENED BUT IT WAS
CONSENSUAL AND THEY ATTACKED
THE CREDIBILITY OF THE VICTIM
AND THAT SAID SHE SUPPOSEDLY
MADE RAPE ALLEGATIONS BEFORE
AND REGRETTED HAVING SEX WITH
SOMEONE AND THE NOT LIKE HE WAS
PREJUDICED IN HIS DEFENSE.
THE INFORMATION CHARGES A
CRIME.
EVEN IF IT DIDN'T, HE CAN'T
RAISE IT IN HABEAS.
HE NEEDS TO RAISE IT --
>> BUT YOU CONCEDE THAT YOU CAN
RAISE OTHER THAN ON DIRECT
APPEAL.
THE 5th DISTRICT SAYS THAT YOU
CAN ONLY RAISE IT ON DIRECT
APPEAL.
>> IF THIS IS A TECHNICAL
DEFICIENCY IT SHOULD BE RAISED
AT TRIAL.
IF NOT RAISED AT TRIAL, NEEDS
TO BE RAISED ON DIRECT APPEAL,
IF ITS FUNDAMENTAL ERROR AND
YOU CAN RAISE IT IN THIS 3850,
FUNDAMENTAL ERROR AS WELL.
>> AND IN THE HABEAS WHAT
PREJUDICE DID HE ALLEGE.
>> HE DIDN'T ALLEGE ANY
PREJUDICE.
HE SAID I WAS CONVICTED OF A
CRIME, NOT CHARGED.
WHICH IS, HE TOOK THE LINE FROM
GRAY.
>> CONCLUSORY ALLEGATION.
>> YES.
>> I WANT TO MAKE SURE ABOUT
THIS.
BECAUSE LET'S BE CLEAR ABOUT
WHAT WE WOULD SAY ASSUMING WE
AGREE WITH YOU THAT GRAY NEEDS
CLARIFICATION.

WHAT IS IT THAT COULD BE RAISED ON POSTCONVICTION RELIEF REGARDING THE INFORMATION OR INDICTMENT.

>> FUNDAMENTAL ERROR WHICH YOU COULD RAISE ON DIRECT APPEAL WHICH IS THE INFORMATION WAS SO DEFICIENT THAT IT IS MISSING AN ESSENTIAL ELEMENT AND THE DEFENDANT WAS PREJUDICED AT TRIAL.

>> THEY HAVE TO -- BECAUSE 3850 REQUIRES PREJUDICE, WOULD IT REQUIRE PREJUDICE THEN.

>> THAT IS THE TEST FOR WHETHER IT'S FUNDAMENTALLY DEFICIENT.

>> HOW DO YOU GO BACK TO THE LANGUAGE IN GRAY WHICH SAYS, ORDINARILY PREJUDICE IS REQUIRED BUT IF IT WHOLLY OMITTS AN ESSENTIAL ELEMENT OR WHOLLY FAILS TO -- CHARGING COMPLETELY FAILED TO CHARGE A CRIME, A CONVICTION VIOLATES DUE PROCESS.

>> RIGHT.

SO IF THE INFORMATION SAYS ON MAY 7th HE COMMITTED A CRIME, THAT WOULD -- [INAUDIBLE] RAISE THAT ON DIRECT APPEAL FOR THE FIRST TIME.

>> OR ON POSTCONVICTION.

>> POSTCONVICTION --

>> BUT YOU SAY AFTER THE TWO YEAR TO THAT EXTENT, YOU SAY NO, WE DIDN'T MEAN AT ANY TIME.

>> AND I WOULD SAY, 3850 IS THE PLAN -- [INAUDIBLE] AND NEEDS TO USE THAT PROCEDURAL VEHICLE AND THERE ARE TIME LIMITS AND PLEADING REQUIREMENTS FOR THAT AND WE WOULD ASK TO RECEIVE FROM GRAY -- [INAUDIBLE].

>> THANK YOU.

>> THANK YOU.

>> UNFORTUNATELY YOU HAVE USED MOST OF YOUR REBUTTAL SO YOU NEED TO BE VERY DIRECT.

>> YOUR HONOR, MR. PRICE IS JUSTIFIABLY -- RELIED ON FRAY AS PRECEDENT.

IF THIS COURT WERE TO RECEDE FROM GRAY AND CREATE A NOVEL RULE, IT SHOULD NOT DO SO ON

MR. PRICE'S BACK.

THE NEW RULE SHOULD NOT APPLY
TO MR. PRICE.

THE SUPREME COURT STATED IN
FORD VERSUS GEORGIA, 495 US 411,
1991 OPINION, THE STATE
CONCEDES THAT MR. -- THIS
CHARGING INFORMATION DOES NOT
SAY WHAT MR. PRICE USED TO
PENETRATE.

THAT IS RELEVANT AS STATED IN
-- [INAUDIBLE] BRIEF.

BECAUSE IF IT IS THE ORGAN OF
THE PERPETRATOR PENETRATING THE
VICTIM THEN THERE NEED BE ONLY
CONSTATIC.

IF, HOWEVER, THE ALLEGATION IS
THAT THE PERPETRATOR USED
SOMETHING ELSE TO DO THE
PENETRATING --

EXCUSE ME, I THINK A GOT THAT
WRONG.

WITH ONE THERE NEEDS TO BE ONLY
CONTACT AND WITH THE OTHER
THERE NEEDS TO BE PENETRATION.

I BELIEVE IS AN OBJECT AND MUST
BE PENETRATION.

SO THAT IS EXTREMELY IMPORTANT,
WHAT KIND OF PENETRATION
OCCURRED AND WITH WHAT.

THIS CHARGING INFORMATION DID
NOT STATE -- DID NOT STATE AN
OFFENSE THAT COULD BE DEFINED
BY THE -- MR. PRICE.

>> AND WITH THAT --

>> I "WEST --

>> DO YOUR CONCLUSION.

>> I WOULD REQUEST THE COURT
REVERSE AND I THANK YOU ALL.

>> THANK YOU.

>>