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Zamir Garzon v. State of Florida
SC06-2235 | SC06-2290

COURT IS BACK IN SESSION PLEASE BE SEATED.
THE NEXT CASE ON THE
CALENDAR THIS MORNING GUYS
ARE ZON AND BALTHAZAR. -- GARZON, MR. HALPERN ARE
YOU GOING TO BEGIN.
 YES YOUR HONOR OH.
.
 GOOD MORNING, MAY IT
PLEASE THE COURT, MY NAME IS SAM HALPERN I REPRESENT
PETITIONERS GARZON JOHN PET
ELECTRON REPRESENTING PRAYER RAY BALTHAZAR BASED ON A
CERTIFIED CONFLICT BETWEEN
THE FOURTH DISTRICT DECISION AND GAR ZONEBLY THE FIRST
DCA DECISION IN DAVIS, AND
THE SECOND, DCA DECISION, IN XENO
XENO, AND CABRERA, THIS
ISSUE AS I SEE IT, FOR THE
COURT TO DECIDE, IS WHETHER
OR NOT, THE USE OF THE
AND/OR INSTRUCTION IN THE
CONTAEFKS A CO-DEFENDANT
TRIAL IS FUNDAMENTAL ERROR.
 THE -- ARGUMENTS, TO THE
JURY, IN THIS CASE, WERE NOT ON THE BASES OF ANY
SEPARATION OF THESE
DEFENDANTS AND THE ARGUMENT
AS I READ IT TO THE JURY WAS ON THE BASIS OF NONE OF
THESE THREE DEFENDANTS WERE
THERE. WHEN THIS CRIME COWARD CRIME OCCURRED, AN
IDENTITY --
 YOU ARE RIGHT WITH
RESPECT TO KOHLS AND
BALTHAZAR IT WERE A IDENTITY ISSUE WITH RESPECT TO GARZON HE HAD NOTHING TO DO WITH
A
THE CRIME.
 ARGUMENT WAS NONE OF THEM HAD ANYTHING TO DO WITH IT. -- THE GARZON,
CONTESTED THE PHONE RECORDS, BUT, THE
SPECIFIC ARGUMENT WAS WHAT
WE ARE SAYING IS THAT THEY
GOT THE WRONG GUY, THEY GOT
THE WRONG GUYS, PLURAL, THAT A IS WHAT WE ARE SAYING.
 PRECISELY -- THE PROBLEM,
ZWRIS WELLS THAT THE WAY
THAT I JUSTICE WELLS THAT I
SEE IT THE WAY THE JURY WRY
WAS INSTRUCTED IS THAT THEY
MAY HAVE WELL BEEN LED TO
BELIEVE THAT THEY MAY HAVE
THOUGHT FOR EXAMPLE, THAT
KOHLS AND/OR BALTHAZAR WERE
PERPETRATORS IN THIS EVENT,
YET BECAUSE EXTRAORDINARILY
THIN EVIDENCE AGAINST GARZON

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GARZON, MAY NOT HAVE BEEN
CONVINCED BEYOND A
REASONABLE DOUBT THAT HE HAD ANYTHING TO DO WITH IT. BUT THE JURY CHARGED --
CHARGE WAS IF YOU FIND KOHLS OR BALTHAZAR COMMITTED THE
ELEMENTS OF THEPHONES THEN
YOU MUST CONVICT -- GARZON.
 WHAT I'M CONCERNED ABOUT
IS I WILL LOOK AT THE TOTAL
RECORD HERE, READING THE
BEGINNING OF THE TRIAL, THE
OPENING STATEMENTS, THE WAY
THE TRIAL WAS PRESENTED,P
WAS THERE 60 WITNESSES, OR A LOT OF WITNESSES.
 A LOT.
 YES, SIR THEN CLOSING
STATEMENTS, AND THEN THE
INSTRUCTIONS THAT WERE GIVEN TO COUNSEL AND WHAT WAS SAID ABOUT THEM BEING NO
CONTENTION AT ANY POINT IN
THIS RECORD THAT THIS THE
USE OF THE PRINCIPAL
INSTRUCTION WAS NOT PROPER,
THE PLACEMENT OF IT WAS NOT
PROPER, THERE WAS NO
ARGUMENT AS TO ANY
CORRECTION THAT COULD BE OR
SHOULD BE, NO OBJECTION TO
THE AND/OR, OR ANY
SUBSTITUTE FOR THE AND/OR, I MEAN THAT SEEMS TO ME THIS
IS WHERE THE GOTCHA
SITUATION AS FAR AS AS THE
TRIAL JUDGE WAS CONCERNED.
 WELL I DON'T BELIEVE THAT THIS WAS INTENDED AT
WHATSOEVER TO BE A GOTCHA, I THINK ALL PARTIES HERE
INCLUDING THE PROSECUTOR AND THE TRIAL COURT SIMPLY
MISSED THE BOAT. IT WAS NOT A GOTCHA
SITUATION. THE WAY THAT I SEE IT, IT
WAS JUST THAT IT SLIPPED
EVERYBODY'S MIND, THAT THE
SLARND OR INSTRUCTION IS
FUNDAMENTAL FLAWED WAS
INSERTED.
THE ISSUE HERE IS
CONFLICT ISSUE IS --
FUNDAMENTALERO WHICH MEANS
OBVIOUSLY WASN'T OBJECTED
TO, COULD YOU STATE FOR ME
HOW YOU PHRASE THE CONFLICT
ISSUE, IS IT ALWAYS THAT IF
GIVING THIS IS ALSO A
FUNDAMENTAL ERROR, IS THE
FOURTH DISTRICT SAYING IT
NEVER IS, OR AND THAT IS WHY
WHY --
 AND/OR.
AND/OR.
AND/OR IS IT DEPEND ON
THE FACT OF THE CASE?
 SO I GUS THAT IS THE
CONFLICT -- THERE IS THREE
FEES

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FEES.
 WELL THE.
 CONFLICT ISSUE WHAT IS
YOU WOULD ESPOUSE AS THE
RULE OF LAW LAW.
 THE WAY THAT THE -- WELL, I WILL TAKE YOUR -- EARLIER
QUESTION THE WAY THE FOURTH
FRAMED IT THAT YOU MUST LOOK AT THESE MATTERS WITHIN THE
CONTEXT OF THE WAY THE CASE
WAS ARGUED IN ITS ENTIRETY.
 WHAT IS INTERESTING TO ME IS -- THE TIME SAYS I
BELIEVE SUCH INSTRUCTION IS
NEVER PROPER, I DON'T THINK
THE -- THAT THE MAJORITY
SAYING PROPER DEPENDING ON
THE FACTS CAN BE FUNDAMENTAL ERROR SO DOESN'T EVEN SEEM
LIKE THIS DISSENT AND THE
MAJORITY OR IN -- IN
DISAGREEMENT AND HE SAYS I
THINK THAT THE THIRD
DISTRICT CONSIDERS THE FACTS WHICH I THINK IS THE CORRECT APPROACH
APPROACH, SO I'M NOT SURE
WHERE I SEE A MINUTE IS THE
APPLICATION ALONG THE FACTS
BUT ALL OF THE COURTS SEEM
TO SAY IT DEPENDS ON THE
FACTS.
 WELL, ACTUALLY, THE
SECOND AND THE FIRST HAVE
DRAWN A PER SE RULE.
 SO YOU ARE ARGUING FOR A
PER SE RULE THAT IT IS ALSO
A FUNDAMENTAL ERROR? .
 I BELIEVE THAT THE UNITED STATES SUPREME COURT
SHAESHLS STATED IN GRIFFITH
VERSUS U.S. WHERE JUSTICE
SCALIA SAID THAT WHEN THERE
IS TWO THEORIES OF LAW ONE
OF WHICH IS -- FOUNDED AND
ONE OF WHICH IS UNFOUNDED,
THEN THAT IS AS A MATTER OF
LAW ALWAYS GOING REQUIRE --
 SAY THERE IS NO QUESTION
THE PERSON ADMITS TO BEING
THERE. HAS -- I MEAN.
THAT WOULD BE A DIFFERENT -- WOULD I -- LET ME JUST
SUMP IF I MAY I DON'T
MAINTAIN TO INTURPT BUT I
THINK TO --
 I APOLOGIZE, TO -- I
THINK I UNDERSTAND YOUR
QUESTION, AND MY POSITION IS -- IS BUT FOR A -- EXTREMELY LIMITED SCENARIO, WHEREIN
FOR EXAMPLE IN THE FOURTH
DISTRICT CASE OF DAVIS, THE
AND/OR INSTRUCTION SHOULD
ALWAYS BE HELD TO BE
FUNDAMENTAL ERROR, AND DAVIS YOU WILL REMEMBER THAT THERE WAS A HUSBAND AND
WIFE, THEY WERE BOTH CHARGED WITH DRUG
TRAFFICKING, AND THE AND/OR
INSTRUCTION WAS USED IN THE
PRIMARY CHARGE TO THE JURY,
IT WAS HELD TO BE THEIR HARM
HARMLESS ERROR, BECAUSE IN

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AN ENTRAPMENT INSTRUCTION,
AND ENTRAPMENT DEFENSE, THE
ESSENTIALLY THE DEFENDANT
ADMITS ALL THE ELEMENTS OF
THE CHARGE --
 THE PROBLEM WITH USING
HARMLESS ERROR FUNDAMENTAL
ERROR HARMLESS ERROR WHEN IS THERE AN OBJECTION, SO
SOMETHING COULD NOT BE HARM
ALESS ERROR, BUT IT MIGHT
NOT BE FUNCTIONALITY ERROR
SO THE QUESTION ON THE
FUNDAMENTAL ERROR THAT IS TO REACH DOWN TO VALIDITY OF
THE SENTENCE HEING
PROCEEDING NOT JUST THAT IT
MIGHT BE A GOOD IDEA TO DO
IT THE OTHER WAY BUT THE
TRIAL COUNSEL WHO ARE THERE, ON THE GROUND, WHO HEAR THIS INSTRUCT
INSTRUCTION, BEING GIVEN
ABOUT FOUR OR FIVE DIFFERENT TIMES, THE JUDGE ASKS, ANY
OBJECTION, NO, NO, NO -- IT
COULDN'T YOU KNOW I THINK
THAT'S WHAT JUSTICE WELLS IS GETTING HOW IT COULD BE --
DIDN'T JUST MAYBE EVERYONE
DIDN'T NOTICE IT, BUT HOW
DID IT REACH DOWN TO WIPE
OUT THIS ENTIRE CASE UNDER
THE FACTS OF THIS CASE.
 WELL, CERTAINLY WITH
REGARD TO GARZON IT DID. AND I WILL -- I'LL TELL YOU
THAT IT DID, BECAUSE OF
EXACTLY WHAT JUSTICE CLINE
OR -- JUDGE CLINE INDICATED
BELOW, BECAUSE HE WAS
LOOKING AT IT IN A --
SCENARIO WHERE IF THERE IS SCANT
EVIDENCE AGAINST ONE
DEFENDANT OVERWHELMING
EVIDENCE AGAINST ANOTHER
THERE IS A VERY REAL FEES IN THAT SCENARIO -- POSSIBILITY IN THAT SCENARIO THE
DEFENDANT WITH SCANT
EVIDENCE AGAINST HIM MAY BE
CONVICTED SOLELY BASED ON $$ THEORY'S ACTIVITY.
 THAT IS NOT NECESSARILY
FUNDAMENTAL ERROR THAT MIGHT BE NOT HARMLESS ERROR IF
OBJECTED TO OVERRULED, IT
MIGHT HAVE -- YOU KNOW, CAN
YOU APPROVE BEYOND A
REASONABLE DOUBT IT DIDN'T
CONTRIBUTE?
 FUNDAMENTAL ERROR ASKS
THE OTHER QUESTION WE ARE
DEALING WITH THIS ALL THE
TIME DO WE TAKE AWAY AND
ENTIRE JURY DETERMINATION
BECAUSE OF JURY INSTRUCTION
THAT WHILE ERRONEOUS DO NOT
REACH DOWN TO AFFECT THE

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VALIDITY OF THE CASE AND IT
SEEMS TO ME THAT BOTH THE
THIRD AND THE FOURTH ARE
SAYING IT DEPENDS ON THE
FACTS, NOW YOU MAY HAVE A -- STRONGER CASE, THAN YOUR
CODEFENDANT, BECAUSE --
GARZON WASN'T THERE IF YOU
SAY IT DEPENDS ON THE FACTS
AND THE QUESTION OF
FUNDAMENTAL ERROR YOU JUST
CABINET SAY WELL IT MIGHT
HAVE, AFFECTED THE
CONVICTION BECAUSE THAT IS
NOT THE TEST FOR FUNDAMENTAL ERROR, SO IF MY POSITION IS, PRIMARILY
PRIMARILY, THAT IT IS
FUNDAMENTAL ERROR, THAT THE
FOURTH DISTRICT AND THIRD
DISTRICT DECIDED THOSE
MATTERS WRONGLY, THAT THE
FIRST AND THE SECOND DECIDED THEM CORRECTLY, AND THE
REASON WHY I THINK THAT A
GOOD POLICY FOR THE COURT TO ADOPT HERE IS TO HOLD THAT
THESE TYPES OF INSTRUCTIONS
WHICH ESSENTIALLY PULL OUT
THE CARPET FROM UNDERNEATH
THE DEFENDANT AS TO WHETHER
OR NOT HE GETS AN
INDIVIDUALIZED VERDICT
SHOULD ALWAYS --
 WAIT A MINUTE NOW HE GOT
AN INDIVIDUALIZED VERDICT,
FORM IS, MEAN, TO WHICH EACH ONE OF THESE DEFENDANTS ON
EACH OF THESE COUNTS GOT AN
INDIVIDUAL VERDICT FORM;
CORRECT?
THEY GOT A FORM, BUT THEY WERE TOLD --
 SIGNED BY THE FORMAN OF
THE JURY.
 PRECISELY BUT YET THEY
WERE GIVEN --
 LET ME ASK YOU THIS
MR. HALPERN, THE REMEDY,
THAT WOULD HAVE TO BE WOULD
BE TO READ THESE
INSTRUCTIONS
INSTRUCTIONS, SAME
INSTRUCTIONS
INSTRUCTIONS, THREE TIMES. CORRECT?
 THAT IS THE REMEDY I
DON'T BELIEVE THAT IS LA
BOROUGHS TASK, AS -- MY
OPPONENT HAS INDICATED, WHEN WE ARE DEALING WITH LIBERTY
I DON'T THINK THAT THAT IS
SUCH A -- A LA BOROUGHS TASK -- LABORIOUS TASK TO ASK THE TRIAL JUDGE TO DO THAT.
BUT THE PROBLEM THAT IS
NO ONE ASKED THIS TRIAL
JUDGE TO DO THAT IF THE
TRIAL JUDGE IS ASKED TO DO
IT, THAT IS AN ENTIRELY

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DIFFERENT SET OF FACTS. BUT WHERE YOU DON'T ASK THE
TRIAL JUDGE TO DO IT, AND
YOU ARE TALKING AND YOU GIVE THIS WHOLE YOU GIVE THE --
THE SEPARATE DEFENDANT
INSTRUCT
INSTRUCTION, YOU GIVE THE
PRINCIPAL INSTRUCTION, YOU
GIVE -- AND YOU GIVE
SEPARATE VERDICT FORMS, THE
ENTIRE -- AND THE ARGUMENT
EMPHASIZES ON THE PART OF
THE STATE PRINCIPAL INSTRUCT
INSTRUCTION, I HAVE A HARD
TIME SEEING THAT JUDGE GROSS IS NOT CORRECT.
 MY POSITION AND MY ANSWER TO YOU,$$
JUSTICE WELLS IS
THAT NOTWITHSTANDING THAT
THEY GOT INDIVIDUALIZED JURY FORMS AND WERE GIVEN
ADMITTEDLY A PRINCIPAL$$'S
INSTRUCT
INSTRUCTION, AND A MULTIPLE
DEFENDANT SEPARATE YOU
KNOW -- COUNTS INSTRUCTION
WHAT I'M SUGGESTING TO YOU
IS THEY WERE ALSO GIVEN
INTERNALLY INCONSISTENT LAW, AND AS JUSTICE SCALIA
POINTED OUT IN GRIFFITH
VERSUS UNITED STATES WHICH
WAS ADOPTED IN TRIKIHERE AND DEL GAD NO THIS COURT WHEN A JURY IS GIVEN INCONSISTENT
LAW THEY DON'T HAVE THE
ABILITY TO FERRET IT NOW AND FIGURE OUT WHAT LAW TO APPLY
APPLY.
 EXPLAIN, ON IN THE FACTS
OF THIS CASE WHAT WAS THE
INCONSISTENCY, BECAUSE THE
JURY HAS TO DETERMINE THE
FACTS
FACTS, AND THEIR INSTRUCTION ON THE LAW TO APPLY, THE LAW TO THE FACTS AS PRESENT TO
DO THEM, AND MY
UNDERSTANDING IS THE FIRST
-- THE FOURTH SUMMARIZED
THAT ISSUE BOILED DOWN TO
WHETHER THE PERSON TO WHOM
BALTHAZAR SPOKE TO OVER THE
CELL PHONE WAS YOUR CLIENT,
MR. GARZON.
THAT WAS THE THAT ISSUE
WAS ARGUED AT TRIAL THAT IS
A FACTUAL ISSUE, AND THERE
IS A DISTINCTION --
 BUT WHERE WERE THEY
CONFUSED ON THIS INSTRUCTION AS GIVEN IN THE CONTEXT OF
EVERYTHING JUSTICE WELLS
ITEMIZED OUT.
 WHER HERE WHAT IS THE
PROBLEM ISATION SEE IT. WHAT YOU HAVE IS A TRIAL
COURT TELLING THE -- THE
JURORS

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JURORS, IF THEY FIND THAT
COLES OR BALTHAZAR, OR
GARZON COMMITTED A, B, AND C$$ OF THE OFFENSE YOU FIND THEM ALL GUILTY IF ONE DID IT
THEN YOU FIND THEY NEXT ONE
DID IT.
 HOW IS THAT CONSISTENT
WITH MULTIPLE DEFENDANT --.
 IT IS TOTALLY
INCONSISTENT WITH IT. THAT IS MY PROBLEM, THEY ARE GIVING THE JURY O --.
 THE JURY
DIDN'T
UNDERSTAND IT THAT WAY
BECAUSE THEY FOUND -- GARZON NOT GUILTY OF EXTORTION.
 EXTORTION COUNT.
CODEFENDANTS GUILT OF
EXTORTION JURY DIDN'T
UNDERSTAND THE WAY YOU SAID
THEY UNDERSTOOD IT WILL.
 I'M QUITE CERTAIN HAD THE JURY DONE THAT WE WOULDN'T
BE HERE MOST LIKELY, HOWEVER
HOWEVER --
 THAT IS PRETTY COMPELLING REASON FOR BEING HERE.
WELL NOT THE WAY I SEE
IT. BECAUSE THERE ARE -- WE
DON'T AS AS LAWYERS, AND
CERTAINLY AS AN APPELLEE$$ANT
APPELLATE
COURT LOOK TO MIND IN JURORS TO SEE WHAT -- ERRORS -- IN
JURY VEERED THAT IS BASIC
JURIES PRUDENCE WE DON'T GO
BEYOND THE VARNED SPECULATE
WHAT IT WAS THAT A JURY DID, HOWEVER
HOWEVER -- BECAUSE, THIS IS
IMPORTANT, FOR US TO TALK
ABOUT WE COULD SPECULATE
THAT BECAUSE IT WAS
BALTHAZAR WHO MADE THE
THREAT THAT MAYBE THE JURY
PARDONED THE OTHER TWO
DEFENDANTS, AND IT IS
DIFFICULT TO UNDERSTAND IF
THEY SCRUPULOUSLY APPLIED
PRINCIPALS THAT THEY WERE
HAVE ACQUITTED KOHLS THANKS
BECAUSE YOU HAVE TO REMEMBER THE FACTS WAS THAT COLES WAS STANDING IN THE KITCHEN
WHEN BALTHAZAR MADE THAT THREAT
TO MRS. SMITH FWOURN THE
DAUGHTER HE IS STANDING
THERE WITH A GUN AMPLE THE
ELEMENTS OF PRINCIPAL WERE
ESTABLISHED IN MY VIEW, AS
TO COLES AND IT SEEMS THAT
BECAUSE OF THE EGREGIOUSNESS OF THAT PARTICULAR ACT THAT
WAS THE WORST ACT -- BY FAR, IN THIS CASE TWHAB THEY MAY
WELL HAVE THAT THEY MAY WELL HAVE JURY PARDONED THEM BUT
WE DON'T KNOW BASED ON THE
WAY THAT THE INDICATION WAS
PRESENTED TO
PRESENT THE WAY THE CASE WAS PRESENTED TO JURY WHETHER
THAT HAPPENED OR DIDN'T.
 BUT WE DO KNOW THIS ISN'T THE CASE WHERE DEFENDANTS

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WERE POINTING THE FINGER AT
EACH OTHER OR CONTRADICT
EACH OTHER THIS WAS A
HOLISTIC DEFENSE.
WELL, TO THE EXTENT THAT
-- THEY ALL HAD I DIDN'T DO
IT, YES,
YOU ARE RIGHT.
 AND NOT LIKE IT WAS HIM
IT WASN'T ME THEY WEREN'T
POINT FINGERS AT EACH OTHER.
 THIS WAS NOT THAT TYPE OF A CASE.
 WITH OUR
ASSISTANCE YOU
HAVE UTILIZED ALL YOUR TIME.
 I SEE THANK YOU.
.
 GOOD MORNING I'M JOHN --
COTRONE REPRESENT
MR. BALTHAZAR IF I MAY WANT
TO BEGIN WITH JUSTICE WELLS
INDICATING INITIALLY THE
IDEAS THE ISSUE AS WE'VE
BEEN TALKING THE WRONG GUY. WITH -- WHAT ALSO WAS A
HIGHLIGHT IN THE $$STATE'S
CASE WAS THE PRINCIPAL
INSTRUCT
INSTRUCTION, IN FACT THE
OPINION TALKING ABOUT HOW
THEY MADE THAT THE CENTER
PIECES OF THEIR PROSECUTION
TYPICAL IN CO-DEFENDANT
CASES WHERE, LIKE IN THIS
CASE YOU HAVE AN IDEA ISSUE, AND THE FALLBACK POSITION IS WELL IN CASE YOU HAVE
PROBLEMS WITH THE
IDENTIFICATION
IDENTIFICATION, AND THE
OTHER EVIDENCE IN THE CASE
DO I HAVE THIS INSTRUCTION
FOR YOU, THE JUDGE IS GOING
READ YOU THE PRINCIPAL
INSTRUCT
INSTRUCTION. WHAT IS IMPORTANT HERE IS
NOT ONLY DID THEY HIGHLIGHT
IT, WHAT IS TALKED ABOUT IN
THE XENOAND -- IS THAT THAT
DOES NOT CURE THE PROBLEM,
WITH THE AND/OR INSTRUCTION
IT EXACERBATES IT.
 THE DISTRICT COURTS DON'T EXPLAIN THAT STATEMENT,
YOU KNOW
KNOW -- KIND OF PUZZLING.
WELL, WHAT I THINK IS
BEING ARGUED, IS IN THE
PRINCIPAL INSTRUCTION,
ITSELF IT TALKED ABOUT THAT
EACH INDIVIDUAL WHEN THAT IN INSTRUCTION READ WHETHER
ONCE TWICE A HUNDRED TIMES
IT TALKS ABOUT EACH
DEFENDANTS THAT THE
CONSCIENCE INTENT, THAT A

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CRIMINAL ACT IS GOING TO
OCCUR. THAT BEING SAID, ALONG WITH
THE SLARND OR INSTRUCTION IS COMPLETELY CONFUSING TO A
JURY INITIALLY IN THE --
FIRST INSTRUCTION THEY HEAR
THIS AND/OR INSTRUCTION THEN THEY HEAR WAIT A MINUTE,
EACH DEFENDANT HAS TO HAVE A CONSCIOUS INTENT THAT A
CRIME O OCCURS, THEY ARE
JUST NOT THEY CANNOT BE PUT
TOGETHER. IT --.Â Â YOU DON'T AGREE WITH THE
APPROACH OF THE THIRD
DISTRICT AND EVEN JUDGE
CLINE, DISSENT THAT IT
DEPENDS ON THE FACTS OF THE
CASE? YOU -- ESPOUSE$$ING THE
PRINCIPAL OF LAW THAT IT IS
EELS FUNDAMENTAL ERROR?
 I DON'T WANT TO INTURPT
BUT ABSOLUTELY NOT, I OPPOSE THAT I BELIEVE IT IS PER SE, I THINK WHENEVER.
 A PER SE
RULE.
 YES.
AND I THINK.
 YOU DISAGREE WITH JUDGE
KLINE
KLINE.
 AND THINK.
 YOUR CLIENT, BECAUSE HE
-- SPECIFICALLY THAT IS --
FUNDAMENTAL ERROR AS TO YOUR CLIENT
CLIENT?
 BUT -- CANDIDLY I DON'T
CARE WHO THE DEFENDANT IS,
WHEN YOU HAVE THIS INSTRUCT
INSTRUCTION READ WITH THE
AND/OR READ WITH THE
PRINCIPAL AND THE MULTIPLE
DEFENSE
DEFENSE INSTRUCTION YOU ARE
GOING TO HAVE THIS PROBLEM
AND THERE IS NO WAY OF US
KNOWING BEYOND AND TO
EXCLUSION OF EVERY
REASONABLE DOUBT THAT IS
WHAT THE BURDEN IS, WHETHER
THE JURY VERDICT IS VALID OR NOT.
 BUT THAT IS NOT THE
FUNDAMENTAL ERROR, ANALYSIS, THAT IS WHERE I'M HAVING A
PROBLEM, IF IT WAS OBJECTED, TO I WOULD AGREE WITH YOU
THAT I COULD ARGUE AND I
WOULD ACCEPT YOUR ARGUMENT
THAT IT IS NOT HARMLESS
BEYOND A A REASONABLE DOUBT. AND I WAS THERE I THINK THE
STATE WOULD LOSE ON IT BUT
THE QUESTION IS DOES IT
TRIES A LEVEL OF FUNDAMENTAL ERROR, WHICH IS THAT BREACH
BREACHEES -- FOR THE
VALIDITY OF THE VERDICT, ALL THE TIME?
 LET ME SAY TWO
INDISTINCTS IN RESPONSE,
ONE, I THINK EVERY DEFENDANT HAS A FUNDAMENTAL RIGHT, TO
HAVE JURY PROPER JURY
INSTRUCTIONS READ.
 YOU ARE SAYING UNDER THAT THERE WOULD NEVER BE THERE

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WOULD ALWAYS BE FUNDAMENTAL
ERROR IN JURY INSTRUCTIONS.
 WE HAVE HELD IN DEL
VIRGINIA, AND READ THAT IS
-- DELVA AND READ THAT IS
NEAT LAW --.
 MY SECOND PART OF THE
ARGUMENT THANK YOU I WASN'T
FINISHED THIS IS THE GOOD
PART. -- IN TRIKO A CASE TALKS
ABOUT A FIRST-DEGREE MURDER
CASE WHERE THE GOVERNMENT
WENT UNDER TWO THEORIES, ONE FIRST-DEGREE MURDER AND
FELONY MURDER, IT TURNED OUT THE FELONY MURDER INSTRUCT
INSTRUCTION WAS ERRONEOUS
BECAUSE THE UNDERLYING
FELONY WAS NOT PROPER, AND
WHAT THAT CAUSED WAS
REVERSAL BUT WHAT THEY
TALKED ABOUT IS THE EVIDENCE IN THAT CASE AND THE FACTS
AS YOUR -- BRINGING JUSTICE
PARIENTE
PARIENTE, THEY FOUND THE
EVIDENCE IN THAT CASE WAS
OVERWHELMING -- ON THE JUST
THEORY OF FIRST DEGREE
MURDER THEY STILL RES VERSED BECAUSE OF THE PROBLEM WITH
THE INVUKKION.
 SO MAYBE AGAIN I HAVE TO
LOOK AT THAT CASE, THERE IS
ALSO A THEORY THAT WHEN YOU
HAVE TWO POSSIBLE DRIENLTZ
KNOW WHICH WAS -- ONE
LEGALLY -- INSIST YOU HAVE
-- INSUFFICIENT YOU HAVE GOT IT REVERSED DIFFERENT THAN
JUST THE INSTRUCTION HERE
THIS ALL GOING TO ONE CRIME
I HAVE TO LOOK BACK AT THOSE CAUSE CASES BUT THAT IS DAY
WILL GADO ONE LEGALLY
INADEQUATE ONE WAS LEGALLY
SUFFICIENT.
 THE BOTTOM LINE IS WE
WILL NEVER KNOW WHY THE JURY REACHED THE VERDICT THAT IT
READ -- GIVEN THE THREE
INSTRUCTIONS IN FACT,
DORSETT TALKS ABOUT THAT THE MULTIPLE DEFENDANT INSTRUCT
INSTRUCTION ACTUALLY NEGATES NEGATES THE $$DEFENDANT'S ONLY DEFENSE IN THIS CASE
WOULD
IT BE ID, BECAUSE IF YOU ARE SAYING, I DIDN'T DO IT, AND
THEN YOU ARE THE JURY IS
BEING TOLD WELL AND/OR IT
COULD BE THE OTHER PERSON,
AND THEN THEY HEAR THE
MULTIPLE DEFENSE THEN THEY
HEAR THE PRINCIPAL, WHICH AS OBVIOUSLY DIFFERENT THAN THE AND/OR INVUKKION WE JUST
DON'T HAVE WAY OF KNOWING,
OTHER THAN CONJECTURE
TALKING ABOUT THE EXTORTION

COUNT WHICH INTERESTINGLY,
MR. COLES WHO WAS JUST
THERE, WAS CONVICTED, SO --
IN SUMMARY WOULD I SAY IT IS A PER SE RULE, WE DON'T
KNOW, COULD I SAY, JUSTICE
KLINE TALKS ABOUT READING
THE PRINCIPAL INSTRUCTION
MORE THAN ONE TIME I THINK
WHAT OH, THAT DOES IS CREATE MORE A PROBLEM YOU KEEP
HEARING OVER AND OVER AGAIN
THE COAST HAS TO HAVE A
CONSCIOUS -- INTENT THE
CRIME HAS TO OCCUR MEANTIME
WITH ALL THESE COUNTS YOU
ARE HEARING AND/OR MULTIPLE
TIMES IT CRAZE A PROBLEM --.
 IT IS -- KRZ A PROP.
 IT IS MORE THAN CONSCIOUS
INTENTS IT COINCIDENCIONS
INTENTS AND DID SOME ACT
THERE IS THAT SECOND
ELEMENT.
 ABSOLUTELY THE AND A/OR
INSTRUCTION SAYINGS DON'T
YOU HAVE TO DO ANYTHING THAT IS WHY IT COINCIDENCE
COINCIDENCETRADICTION OF THE PRINCIPAL INSTRUCTION.
 COULDN'TDICTION.
 WITH
THAT ANSWER YOU HAVE EXHAUSTED ALL THE
 I AM THANK YOU VERY MUCH.
 THANK
YOU.
 $$STATE'S VIEW.
 -- MORNING MAY IT PLEASE
THE COURT -- EGBER WITH THE
STATE OF FLORIDA.
 WOULD YOU START WITH THE
ONE INSTRUCTION THAT I HAVE
SOMETHINGOE SOME CONCERN
WITH IS CONSPIRACIES
INSTRUCT
INSTRUCTION -- AND WOULD YOU AGREE, THAT A CONSPIRACY
REQUIRES THAT THERE BE TWO
OR MORE PEOPLE, WHO COME TO
SOME AGREEMENT, TOGETHER;
CORRECT?
 THAT IS CORRECT, YOUR
HONOR
HONOR.
 OKAY, AND SO WHEN WE READ THE CONSPIRACY INSTRUCTION
WITH THE ANDS AND THE ORS IN IT. IT -- IT SEEMS TO ME THAT
YOU COULD FIND MR. GARZON OR ANY OF THE OF THE OTHERS
GUILTY OF THE CONSPIRACY IF
THE OTHER TWO PEOPLE WERE
THE ONES WHO TWAELT HAD SOME KIND OF AGREEMENT, SO WHY
ISN'T IT, AT LEAST IN
REGARDS TO THE CONSPIRACY
INSTRUCTION A FUNDAMENTAL
ERROR HERE.
 WELL, I RESPECTFULLY
DISAGREE WITH THE COURT IN
TERMS OF INTERPRETATION OF
CONSPIRACY INSTRUCTION IN
THIS CASE IS, THINK THAT
WHAT IS CLEAR FROM THE FACTS IN THE CASE, IS THAT
MR. BALTHAZAR --
 I WANT YOU TO FOCUS
ACTUALLY ON THE INSTRUCTION

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END OF IT.
OKAY.
 WHAT INSTRUCTION SAYS
ABOUT CONSPIRACY, IT SAYS
NUMBER ONE THE INTENT OF
DIS-- OF MR. GREEN, AND --
OR COULD IT BE THE INTENT OF MR. GARZON OR MR. COLES, OR
ADMINISTRATOR BALTHAZAR, SO
-- YOU DON'T EVEN HAVE TO
HAVE ONE OF THEM IN THERE,
YET THEY ARE GOING TO BE
GUILTY OF A CONSPIRACY IF
YOU FIND THAT THE OTHER TWO
HAD THE INTENT, AND THE
OTHER PORTION OF THAT -- SO
I'M REALLY I'M REALLY
STRUGGLING HERE WITH THE
CONSPIRACY INSTRUCTION THAT
WAS GIVEN. YOU HAVE TO HAVE AT LEAST
TWO PEOPLE TO HAVE A
CONSPIRACY.
 AND I THINK THE INSTRUCT
INSTRUCTION SAYS, THAT
PARTICULARLY WHEN IT SAYS
AND ONE OF THE OTHER
DEFENDANTS.
SHE IS SAYING SHE
DISCUSSION EXCEPTE ACCEPT
PREDICATE IF YOU WOULD
ANSWER IN RESPONSE TO
JUSTICE KWIPS SHE USE$$IS THE
WORD "OR" THAT HAS BEEN THE
WHAT THE --
 IS THAT HAS BEEN WHAT THE COURTS SUGGESTED FROM OTHER
DCA
DCA'S IN TERMS OF THAT
INSTRUCTION BUT AGAIN I
DON'T SEE WHERE THERE IS A
PROBLEM WITH THAT IN THIS
PARTICULAR CASE.
 IF YOU TAKE OUT THE "AND" IN THE CONSPIRACY CONSTRUCT
CONSTRUCTION HAVE JUST A
SERIES OF -- ORS, IF YOU
HAVE ALL THREE DEFENDANTS
AND ASK THE OR ASK THES
SEEMS TO ME -- SAYS IF ANY
TWO OF THESE PEOPLE -- HAVE
THE INTENT AND CONSPIRED
TOGETHER THEN YOU CAN
CONVICT, EVEN THE OTHER ONE, WHO DOES NOT HAVE IT. THE INTENT, I'M -- I REALLY
THINK THAT THIS -- WELL --
 WELL.
-- BEST ARGUMENT WHY THIS CONSPIRACY INSTRUCTION IS
NOT A ACCUSING CONFUSING INSTRUCTION.
 IN ORDER TO HAVE
CONSPIRACY WOULD HAVE TO BE
IN$$ IN AGREEMENT WITH ANOTHER
INDIVIDUAL, IN THIS INSTRUCT
INSTRUCTION, IT CLEARLY
STATES THAT THERE WOULD BE

x

AN AGREEMENT WITH THE OTHER
INDIVIDUAL, I ALSO THINK ONE HAS TO LOOK AT THE FACTS OF
THE CASE IN TERMS OF THE
INSTRUCT
INSTRUCTION, EVEN IF -- GOOD AND INTO THE ISSUE BEFORE
THIS COURT.
PLEASE, JUST GO AHEAD,
AND WHATEVER THE FACTS ARE
IN RESPONSE TO HER QUESTION
QUESTION --
 MY RESPONSE THAT IS I
DON'T BELIEVE THAT THE
INSTRUCTION --
 THAT IS NOT ANSWER THAT
IS I DON'T BELIEVE COULD YOU EXPLAIN WHY.
 THE REASON WOULD BE IS
THAT -- TWO -- ONE
INDIVIDUAL, IN CONSPIRACY
WITH ANOTHER IS A
CONSPIRACY, IF FOUND THAT
WAY. I DON'T BELIEVE THAT THE
INSTRUCTION IS INCORRECT
REGARDING THE "OR" AS TO
ANOTHER INDIVIDUAL AS WELL.
 BECAUSE?
 BECAUSE YOU HAVE FIRST OF ALL YOU
HAVE THREE PEOPLE
HERE. AND YOU HAVE AT LEAST TWO TO CONSPIRE, IN TERMS OF THIS
CASE.
 BUT IF YOU HAVE THE YOU
KNOW I GUESS WE ARE GOING TO GO AROUND INCYCLES
SICK CIRCLES
HERE BUT IT SEEMS TO ME IF
YOU HAVE, CO, AND GARZON --
COLES AND GARZON CONSPIRING
THIS INSTRUCTION SAYS THAT
THE THIRD PERSON COULD ALSO
BE CONVICTED OF THE
CONSPIRACY, EVEN IF YOU FIND THAT ONLY THE OTHER TWO
PEOPLE WERE IN AGREEMENT.
AND IF ASSUMING FOR A
MOMENT THAT THAT IS
INCORRECT
INCORRECT, IT THEN GOES TO
WHAT THE ISSUE IS BEFORE THE COURT HOWEVER. WHICH IS, WHETHER THIS
FUNDAMENTAL ERROR, IN TERMS
OF THE INSTRUCTION REACHES
THE -- OF THE VERDICT.
 DO YOU BELIEVE THE
INSTRUCTIONS GO BACK TO THE
--
 PARDON.
 THE JURY INSTRUCTIONS GO
BACK TO THE JURY.
 YES THEY DID, YOUR HONOR.
 AND JUDGE -- DO YOU
ARGUED ACATE$$ING FOR A PER SE
RULE -- ADVOCATING FOR PER
SE RULE IT IS NEVER
FUNDAMENTAL ERROR OR WHAT IS YOUR POSITION?
 OUR POSITION I GUESS WE
ARE NOT ARGUING AT ALL THIS
SHOULD BE PER SE REVERSIBLE
ERROR, OUR POSITION I GUESS.
 --
 OUR POSITION -- OUR --
 OUR POSITION IS --
REVERSE OF THAT.
 FUNDAMENTAL --
 IN THERE --
 CORRECT, BUT, WHAT I'M
SAYING IS THAT FUNDAMENTAL

x

ERROR IN THIS CASE IS ALWAYS SUBJECT IN ALL CASES IS
SUBJECT TO ANALYSIS.
ALL RIGHT.
AND CONTEXT.
 WOULD YOU AGREE THAT
UNDER CERTAIN CIRCUMSTANCES
UNDER THE FACTS OF THE CASE, IT CAN BE FUNDAMENTAL ERROR?
 I -- UNDER FACTS OF THE CASE -- AS LONG AS ANALYZED.
 THAT'S WHAT JUDGE GROSS
WAS SAYING SO NOW WE GO BACK TO THIS ISSUE, THAT -- YOU
KIND OF THINK IT IS A -- NOT A BIG DEAL, YOU KNOW, THAT
AND/OR ISN'T A BIG DEAL. AND I GUS AND I THOUGHT THAT MR. COTRONE MADE A VERY GOOD ARGUMENT MADE MY PAUSE THAT
THEY ARE OVER AND OVER AGAIN AND/OR AND/OR THEN THEY HAVE THE PRINCIPAL INSTRUCTION
DOES APPEAR TO BE INTERNALLY YOU INCONSISTENT SINCE
DISPUTED ISSUE AT LEAST AS
TO MR. GARZON WHO WASN'T
THERE. MANY WHY AS TO HIM ISN'T IT
FUNDAMENTAL ERROR?
 WELL, FIRST LET ME JUST
SAY, FIRST, THAT I DON'T SAY THAT THE AND/OR INSTRUCTION
WENT TO LOOK AS BEING INART
INARTFUL AT BEST, SO I'M NOT
NOT --
 WOULD YOU SAY, THAT IF IT HAD AN OBJECT -- HAD BEEN
OBJECTED TO THE TRIAL JUDGE
WOULD NOT HAVE ERRED IF HE
OR SHE STILL GAVE IT?
.
 IT -- IT AT THAT POINT IT WOULD HAVE BEEN SUBJECT TO A HARMLESS ERROR ANALYSIS, AND HE -- AND HE WOULD HAVE
ERRED IF HE HAD GIVEN THE
INVUK
INVUKKION.
 OKAY SO IT IS NOT A GOOD
INSTRUCT
INSTRUCTION, IT IS A --
ERRONEOUS INSTRUCTION, WHEN
YOU HAVE MORE THAN ONE
DEFENDANT IN A CASE IS, MEAN WOULDN'T MATTER OBVIOUSLY IF THIS WAS A ONE DEFENDANT CASE, AND THEY SAID "MR. SO
AND SO AND/OR, NOBODY", YOU
KNOW IT HAD NO MEANING, SO
-- WHEN IT IS OBJECTED TO,
WOULD YOU AGREE, THAT THE
JUDGE SHOULD SAY OKAY. I SHOULD LEAVE THAT -- THAT
OR --
 AGREE WITH THAT WHOLE
HEART LOOED.
 LUT --
 LET ME ASK YOU, HE PART
OF YOUR ARGUMENT STATED I
BELIEVE THIS REALLY THE ONLY WAY TO FRAME THIS INSTRUCT
INSTRUCTION, OTHERWISE IT IS JUST TOO HE TOO LONG TOO
ONEROUS TO DO IT AS TO EACH
DLOOEST INSTRUCTIONS ALL THE TIME FOR EACH OF THESE
CHARGES
CHARGES? ; IS THAT CORRECT?
 I -- THAT IS -- I DON'T
NECESSARILY BELIEVE THAT
THAT IS ABSOLUTELY CORRECT I THINK THAT WHAT YOU HAVE
HERE IS A SITUATION WHERE
CERTAINLY THE INSTRUCTION

x

HAS BEEN GIVEN IT IS
ERRONEOUS THAT THE COURT
COULD AS IT DID IN PRINCE
PHENOMENA INSTRUCTION
MULTIPLE DEFENDANT INSTRUCT
INSTRUCTION AFTER GIVING ITS EACH TIME THEY SHOULD POINT
OUT TO THE JURY THAT AND/OR
WHEN --
 WHETHER YOU SAY OR, YOU
HAVE TO LOOK AT EVIDENCE AS
TO EACH DEFENDANT.
 WHY USE ASK THE AND/OR
ASK THES AT ALL IN EVERY
ENGLISH BIKE READ SAYS DON'T USE AND/OR IT IS AMBIGUOUS
THE LAST THING WE WANT
BEFORE A JURY IS AMBIGUOUS
INSTRUCTION WHY WOULDN'T
COULDN'T YOU JUST SAY AS TO
EACH OF THESE CHARGES I WILL JUST TAKE THE BURGLARY
CHARGE LET'S SAY AS EXAMPLE
INSTEAD OF SAYING, NUMBER
ONE,
ONE,A ZAMIR GARZON AND/OR
CHARLIE COLE, AND LAR RAY
BALTHAZAR WHY COULDN'T YOU
SAY AS TO EACH OF THE
DEFENDANTS IN THIS CASE, TO
PROOF THE CRIME ARMED
BURGLARY OF A DWELLING AS
CHARGED THE STATEMENTS
APPROVE THE FOLLOWING THREE
ELEMENTS NUMBER ONE THAT THE DEFENDANT, ENTERED -- REMAIN -- HONOR IN POSITION
NUMBER
TWO THE DEFENDANT -- DID NOT HAVE PERMISSION OR CONSENT
NUMBER THREE, THAT AT THE
TIME OF ENTERING REMAINING
STRUCTURE THE DEFENDANT HAD
A FULLY FORMED CONSCIOUS
INTENT TO COMMIT THE OFFENSE AND DON'T YOU HAVE TO HAVE
THREE INSTRUCTIONS FOR EACH
OF THE CRIME CHARGED YOU
HAVE ONE INSTRUCTION ABOUT
THE IT IS A LOT MORE CLEAR
THAN THIS AND/OR BUSINESS.
 I DON'T DISAGREE WITH THE COURT BUT GOING BACK TO THIS
PARTICULAR CASE THE
PRINCIPAL INSTRUCTION
MULTIPLE DEFENDANT INSTRUCT
INSTRUCTION SEPARATIST
VERDICT FORMS SEPARATE VEERED
TOMORROWS IN TERMS OF THE
INSTRUCTION GIVEN IN THIS
CASE OF AND/OR NOTE
NECESSARILY CURE THAT ITS
BAD WORD THE USE BUT WHEN
ONE LOOKS ATMOSPHERE CONTEXT OF THE CASE
AT THE CONTEXT AND FACTS

x

THEY FAIR THEORY CLAE LAD -- NEGATING WHATEVER ERRONEOUS
INSTRUCTION WAS GIVEN BY THE COURT REGARDING ARE AND/OR.
 THE QUESTION THAT
JUSTICE QUINCE ASKED YOU -- --
CONSPIRACY CHARGE -- AFTER
HER QUESTION, WHICH I DON'T
BELIEVE THAT YOU REALLY GAVE A RESPONSE TO IS CONCEDED
AND WE APPRECIATE THE CANDOR
CANDOR, THAT THE AND/OR
INSTRUCTION THERE IS,O STL I BELIEVE YOU CONAS HEEDED
THAT THERE IS A REASON THAT
IT IS ERROR, BECAUSE IT IS
NOT CORRECT THAT YOU COULD
SAY FOR SOMEBODY ELSE, DID
SOMETHING, OR SOMEBODY ELSE
DID SOMETHING OR SOMEBODY
ELSEDID SOMETHING, AND YOU
CAN FIND THIS PARTICULAR
DEFENDANT GUILTY ON THOSE
ALTERNATIVE BASES THAT IS
WHY THE OR INSTRUCT SHINNS
IMPROPER
IMPROPER; RIGHT?
.
 THAT IS CORRECT, YOUR
HONOR
HONOR.
NOW, HAVING CONCEDED,
THAT THAT IS WHY IT IS IN
ERROR, COULD YOU COME BACK,
TO THE QUESTION JUSTICE
QUINCE ASKED YOU SAY IN THE
CONSPIRACY SITUATION, THEN,
ISN'T THAT PARTICULARLY
EGREGIOUS
EGREGIOUS, BECAUSE
APPARENTLY LEAVES THE JURY
WITH THE OPTION OF EVEN
LEAVING THE PARTICULAR
DEFENDANT OUT, WHEN YOU KEEP SAYING, YOURSELF WITHOE
YOURS -- OR IN THIS CASE TWO OTHER PEOPLE ADDINGLY
INVOLVED, YOU MIND QUESTION.
 I -- I -- YES.
--
 THAT WE NOW YOU KNOW
THROUGH YOUR CANDOR, GOTTEN
TO THE EVIL, THAT HAPPENS
WHEN YOU KEEP SAYING OR --
NOW APPEARS, CONVICTED ON
THE BASIS OF OTHER PEOPLE,
CONSPIRING TOGETHER, AND NOT YOU, THAT SO WITH REFERENCE
TO THE CONSPIRACY ISN'T THAT A DIFFERENT SITUATION THAN
PERHAPS SOME OF THESE OTHER
OFFENSE
OFFENSES, THAT YOU KNOW THAT WE CAN LOOK AT THE
PRINCIPALS INSTRUCTION, AND
THE WAY THE CASE WAS
PREDICATE TO THE JURY --

x

PRESENTED TO IS THE JURY BY
PROSECUTION ET CETERA THE
THINGS YOU ARE ARGUEING.
 WOULD I GRANT THAT IN
TERMS OF THE OR THE COURT
JUST STATED BUT THE LAST
COMMENT --
 GRANT WHAT.
 WOULD I GRANT THAT, THAT
THAT WOULD --
 THAT THERE IS.
 THAT WOULD BE.
 EXTRA SFLOOB BUT THERE IS
EXTRA PROBLEM WOULD BE ERROR REGARDING THE CONSPIRACY
CHARGE REGARDING THE WORD
ASK THE OR" YOU THINK IT WAS CURED THE WAY THE CASE WAS
ARGUED.
 ADDRESSING MYSELF TO THE
COURT LAST COMMENT, IN
TERMED OF THIS PARTICULAR
CASE, I THINK THAT WHAT O
OCCURS IN TERMS OF THE FACTS OF THE CASE, AND THE OTHER
INSTRUCTIONS GIVEN, THAT
THAT WAS CURED, ANDP NEGATED IN THAT PARTICULAR ON THAT
PARTICULAR COUNT.
 HOW WAS IT -- WE TALKED
ABOUT THE FACTS AND
INSTRUCTIONS BUT AT CLOSING
ARGUMENT HOW DID THE
PROSECUTOR AND THE DEFENSE
THAT ARING?
 THAT IS IS GOING TO --
ARGUE THIS? .
 I WAS GOING TO MENTION
THAT PICKING UP ON WHAT
JUSTICE WELLS HAS STATED
PREVIOUSLY
PREVIOUSLY, IN MY MIND,
THERE IS NO QUESTION THAT
THIS WAS AN -- ALL FOR ONE
ONE FOR ALL STRATEGY IN THIS CASE, THE DEFENSE ATTORNEYS
WERE GIVEN, THE INSTRUCTIONS TO LOOK AT AND REVIEW, I
BELIEVE MAYBE EVEN
OVERNIGHT, AND THE COURT
SAID DID YOU ALL REVIEW
INSTRUCTIONS THREE DEFENSE
ATTORNEYS LOOKED AT THEM
THEY SAID THEY WERE FINE
THERE WAS NOTHING WRONG WITH THEM.
 ARE THESE STASHED NDARD,
INSTRUCTIONS
INSTRUCTIONS, LOOK IN THE
CRIMINAL STANDARD JURY
INSTRUCTIONS IS AND/OR IN
THERE FOR MULTIPLE DEFLTHS.
 I TOOK A LOOK AT THAT
YOUR LONER THE AND/OR IS NOT IN THERE
 THE AND/OR IS NOT IN
STANDARD INSTRUCTION SEEMS
TO BE WHAT THE COURT --
GIVES
GIVES, AND IT IS ERRONEOUS
IN TERMS OF THIS PARTICULAR
CASE DOES NOT IMPACT ON THIS CASE, IN TERMS OF FINDING
FUNDAMENTAL ERROR -- BUT I
WANT TO GO BACK TO WHAT
JUSTICE BELL HAD ASKED, THE

x

THERE WERE NO OBJECTION
OFFERED BY ANY DEFEPS
COUNSEL AFTER THE JURY WAS
CHARGED
CHARGED, MORE OVER, DEFENSE
COUNSEL MR. GARZON'S
ATTORNEY, ARGUED TO THE
JURY, THAT ALL THREE SHOULD
BE FOUND NOT GUILTY AS WELL
AS MR. BALTHAZAR$$'S ATTORNEY
INTERESTING IRONY IN THIS
CASE IN A CASE FULL OF IRON
IRONIES THAT AT THE TIME OF
TRIAL, ALL THE DEFENDANTS
WERE TOGETHER, AND THEY WANTED
THE JURY TO VIEW THEM
TOGETHER, AND I THINK ONE OF THE REASONS FOR THAT ISSUE
-- YOU HAD ACTUAL FOR LACK
OF BERTH WORD SCAPEGOATS IN
THIS CASE OR POSSIBLY
INDIVIDUALS INVOLVED NEVER
CHARGED FROM READING OF THE
RECORD THAT WOULD BE THE
CRUISE FAMILY, THERE WERE
THREE OR FOUR OF THOSE
INDIVIDUALS, THE DEFENSE,
ARGUMENT IN THIS CASE, WAS
THAT IT WAS NOT THEM, BUT
PROBABLY THE CRUISE FAMILY
THAT COMMITTED THIS CRIME,
AND OTHER INDIVIDUALS, THAT
WERE ADDUCEED IN THE
EVIDENCE, NOT ONLY THAT ALL
THREE CELL PHONES THAT WERE
USED WERE IN OTHER PEOPLE'S
NAMES
NAMES, NOW THOSE NAMES OF
THOSE INDIVIDUALS WERE ALL
RELATED TO THE DEFENDANTS,
BUT THIS CASE INVOLVED
PLAUSIBLE DENYABILITY AT THE TRIAL LEVEL IN ORDER TO
EFFECTUATE THAT ONE HAS TO
THEN GO WITH A DEFENSE THAT
ALL WERE IN THIS TOGETHER,
OR ALL WERE NOT IN IT
TOGETHER OBVIOUSLY THE
DEFENSE WAS THAT WHEN WE --
 IS ALTERNATIVE ARGUMENT,
LET'S SAY BY GARZONTOS
COUNSEL SAYING THIS OUR
DEFENSE HOWEVER IF YOU FOUND THAT THE TWO OTHER WENT THIS THE HOUSE AND YOU HAVE
TO
CONSIDER MY CLIENT
COMPLETELY DIFFERENT,
BECAUSE HE WASN'T THERE, AND YOU CAN'T LUMP HIM THERE WAS THERE ANY ALTERNATIVE

x

ARGUMENT MADE BY COUNSEL.
 MR. GARZON WAS THE MOST
EMPHATIC DEFENSE ATTORNEY IN TERMS OF ALL THREE SHOULD BE FOUND NOT GUILTY, HE DID
NOT MAKE -- I DON'T BELIEVE HE
MADE THE ARGUMENT THAT THE
DID SAY THE EVIDENCE WAS
LESS AGAINST HIS CLIENT BUT
THE IDEA HERE WAS THAT
BALTHAZAR AND COLES HAD NO
CONNECTION TO THE CRUISES,
MR. GARZON HAD A CONNECTION
TO THE CRUISES.
 BUT I THOUGHT MR. GARZON
MR. GARZON'S ARGUMENT REALLY WAS THAT -- THAT THIS WASN'T HIS CELL PHONE HE WAS NOT
A
PART OF -- OF THE
CONSPIRACY, THAT THEY COULD
NOT CONNECT HIM TO -- TO THE INITIALLY TIME WHEN THESE
PEOPLE CAME TO THEIR TO THE
HOUSE, AND ALL OF THAT,
BECAUSE IT WASN'T HIS CELL
PHONE, HE WASN'T THERE. SO IF NO BUT THAT WAS THIS
WAS PART OF HIS ARGUMENT
YOUR HONOR, BUT THAT THAT
HIS ARGUMENT WAS ALSO
ENSCONCEED IN ALL THREE
DEFENDANTS, NOT HAVING THEIR CELL PHONES, THAT THEY WERE
NOT THEIR CELL PHONES HE
STAYED I STATED THAT IN
TRANSCRIPT AT 2343 HE SAYS
BUT DOES THE EVIDENCE ALL GO TO SHOW THAT THESE THREE
GENTLEMEN COMMITTED THE
CRIME THE ISSUE HERE WAS
PLAUSIBLE DENIABILITY,
TRYING TO PUT THIS CRIME, ON THE CRUISE FAMILY, AS
OPPOSED TO TO THESE THREE
INDIVIDUALS THERE WAS SOME
TALK IN THE CASE WHETHER
ANYBODY COULD SPEAK SPANISH, AND THAT MR. --
 THAT IS ALL VERY
INTERESTING TO ME, BUT HOW
DOES IT REALLY RELATE IF
COULD YOU JUST OPINION POINT HOW IT RELATES O PINPOINT
HOW IT RELATES TO THESE
INSTRUCTIONS AND WHY IT
NEGATES THE OR -- DOESN'T
RENDER HARMFUL THE FACTS OF
THESE INSTRUCTIONS THE AND
AND THE OR?
 BECAUSE, MR. GARZON AND
MR. BALTHAZAR, AND MR. COLES ARE CLAIMING THAT
FUNDAMENTAL ERROR OCCURRED
IN THIS CASE, IN TERMS OF
THAT INSTRUCTION THE AND/OR
INSTRUCTION BUT AT NO TIME
AND IT BEGS THE QUESTION AT
THE TRIAL, AT NO TIME DID
THEY OBJECT JUSTICE WELLS

x

POINTED OUT EARLIER TO THAT
INSTRUCT
INSTRUCTION.
THAT IS WHY WE ARE HERE
THIS LIKE -- FEEL LIKE GO
AROUND IN CIRCLES, WE ARE
HERE BECAUSE THEY DIDN'T
OBJECT, IF THEY HAD OBJECTED
OBJECTED, SOUNDS LIKE, I
MEAN I THINK EVEN THE LOWER
DISTRICT WOULD HAVE SAID IT
IS NOT HARMLESS ERROR YONNED BEYOND REASONABLE DOUBT SO
WE GO BACK TO -- YOU SEE THE CONCERN I NOW THINKING OF
THAT WHERE YOU GOT A VERDICT FORM INDIVIDUALIZED THAT IS
GENERAL VERDICT FORM, HOW DO WE KNOW THAT THE JURY DIDN'T FIND THE NOT JUST THE AND
PART BUT THE ASK THE OR"
PART ISN'T THAT WHAT THIRD
DISTRICT SAYS IN GASTON
WHETHER THEY TALK ABOUT THE
PROBLEM WITH AND/OR TYPE OF
INSTRUCTION ESPECIALLY NOW
THAT I HEAR IT IS NOT ONE
THE STANDARD JURY INSTRUCT
SHEN EVEN RECOMMENDS BE
GIVEN ISN'T THAT ALTERNATIVE A CONCERN WE SHOULD HAVE
WHERE THERE IS AN ISSUE
ABOUT WHETHER ALL THE
ELEMENTS WERE MET, AS TO
EACH DEFENDANT THAT THAT IS
FUNDAMENTAL ERROR, BECAUSE
IT WOULD CERTAINLY BE APPEAR DENIAL OF DUE PROCESS NOT -- THE STATE NOT TO HAVE TO
PROVECH AND EVERY ELEMENT OF THE CRIME AGAINST THAT
DEFENDANT BEYOND REASONABLE
DOUBT.
 WELL, ONE -- REASON THE
THEITY WHEFR HE
OVERWHELMINGLY PROVED THAT
TWO EMPIRICAL EVIDENCE IN
THIS CASE AS -- AS PROMINENT BY JUSTICE CANTERO REGARDING THE EXTORTION CHARGE
MR. GARZON THERE WAS NO
EVIDENCE IN THIS CASE
MR. GARZON, EVER TOLD
MR. BALTHAZAR, TO TERRORIZE
THE DAUGHTER OF MR. SMITH,
AND THREATEN HER, IN TERMED
OF TRYING TO OBTAIN MONEY
FROM MR. SMITH'S WIFE WE
HAVE EMPIRICAL EVIDENCE OF
THAT THEY DID NOT IF YOU
WERE TO TAKE THEOLOGICAL,
EXTREME OF THAT THEY WOULD
HAVE THEN JUST FOUND HIM
GUILTY OF THAT.
 WHAT ABOUT COLES WHO WAS
RIGHT THERE --
 I BELIEVE THERE MAY HAVE
BEEN MORE INVOLVED IN

x

MR. KOHL I'M NOT COLES I'M
NOT QUITE SURE I HAVE TO
TELL THE COURT REGARDING,
THAT HOWEVER IN TERMS OF MR. GARZON
GARZON, HE CLEARLY WAS NOT
THERE -- ONE OTHER THING
WOULD I LIKE TO MENTION
REGARDING THAT THE COURT
MENTIONEDS THIS IN THEIR
OPINION THE JURY SIMS
BEDROCK SYSTEM,ED BE ROM OF
JUSTICE SYSTEM THERE HAS TO
BE SOME -- STATE OF THIS,
SOME -- ON THE PART OF
JURORS IN TERMS OF YES THEY
FOLLOWED THE INSTRUCTIONS
BUT THE THEY LOOK AT
INSTRUCTIONS AS A WHOLE O,
AND THERE IS NO QUESTION,
THAT THIS COURT MIGHT BEYOND GIVING A PRINCIPAL INSTRUCT
INSTRUCTION MULTIPLE
DEFENDANT INSTRUCTION BEYOND THAT, THE $$STATE'S ATTORNEY,
CLEARLY MADE AN VERY
ARTICULATE ARGUMENT
PARTICULARLY AS TO
MR. GARZON, REGARDING THE
PRINCE PALLING INPRINCIPAL
INSTRUCTION THEY WERE TO
CONSIDER THE EVIDENCE
AGAINST EACH DEFENDANT
INDIVIDUALLY, LAND THE ACTS
OF MR. GARZON, AND OF
THEMSELVES CONJUNCTION WITH
THE OTHER DEFENDANTS, LED TO HIM BEING GUILTY. SO I -- THIS --
 YOU HAVE EXHAUSTED
ALL
YOUR TIME.
 OKAY.
THANK YOU VERY MUCH.
-- ASK THE COURT TO
AFFIRM --
 THANK YOU VERY MUCH I
WILL GIVE YOU A MINUTE, YOU
ACTUALLY HAVE GONE BEYOND
YOUR TIME, BUT, WE WILL GIVE YOU A MINUTE TO --
 VERY BRIEFLY THEN I THINK THAT
WITH RESPECT TO JUSTICE PARIENTE
PARIENTE'S CONCERN, WITH THE TRICKO CASE AND DELGADO TWO
LEGAL THERE'S SUBMITTED ONE
NOT PLAUSIBLE ONE
OVERWHELMING EVIDENCE THIS
COURT REVERSED, BECAUSE OF
THAT VERY DANGER THAT IN A
GENERAL VERDICT SCENARIO, AS WE HAVE HERE, JURY MAY HAVE
CONVICTED SOMEONE OF A
CRIME, THAT DIDN'T EXIST. HERE THE ANALOGY IS VERY
CLEAR. BECAUSE WHOA WE HAVE AT WE HAVE IS A
VERY REAL DANGER

x

PARTICULARLY WITH GARZON
THAT THE JURY MAY HAVE
CONVICTED WITHOUT
CONSIDERING THE PRINCIPALS
INSTRUCTION AND WE HAVE TO
ASK THIS COURT, REALLY, THE
STATE DOES, TO SPECULATE AS
TO WHETHER OR NOT THEY USED
THE "OR" THEORY SPELLED OUT
EIGHT DIFFERENT TIMES IN
INSTRUCTIONS OR THEY PARSED
IT OUT AND COLD THROUGH
UTILIZED THE PRINCIPAL$$'S
INSTRUCT
INSTRUCTION.
IN TERM WHETHERING THERE
WAS -- WENT TO VALIDITY OF
THE TRIAL SUCH THAT THE
VERDICT COULD NOT HAVE BEEN
OBTAINED
OBTAINED, WITHOUT THE
RONNOUS INSTRUCTION, DO WE
LOOK AT WHAT THE -- STATE
ATTORNEY CLOSING ARGUMENTS
SAID AND WHETHER THE STATE
ATTORNEY TRIED TOIES THE OH, OR INSTRUCTION -- OR, OR
INSTRUCTION TO $$STATE'S
BENEFIT.
 THAT IS NOT WHAT I THINK
THAT THE COURT DOES, AND
THINKED THAT THE UNITED
STATES SUPREME COURT IN THIS VERY COURT, HAS SAID
REMEMBER IN DELGADO THEY
ARGUED BOTH FELONY
ADMINISTERED AND
PREMEDITATED ADMINISTERED,
STRENGTHENOUSLY THE COURT
SAID IT DOESN'T MATTER WE
SIMPLY DON'T KNOW, WHAT THE
JURY DID AND WOULD IT BE A
MANIFEST INJUSTICE TO LET A
VERDICT STAND IN A CRIMINAL
CONTEXT WHEN WE ARE
UNCERTAIN AS TO WHAT THEORY
THE JURY UTILIZED.
 THANK YOU -- YOU HAVE
EXHAUSTED ADDITIONAL TIME
THANK YOU VERY MUCH WE'LL
TAKE THE CASE UNDER ADVISE
ADVISEMENTS