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State of Florida v. Gregory Carnell Weaver

SC06-258

THE NEXT CASE ON OUR
CALENDAR THIS MORNING THE
STATE OF FLORIDA VERSUS
WEAVER.....

MISS TAYLOR AS YOU'RE
GETTING READY I UNDERSTAND
YOU DID THE SCRIPT FOR THE
TRIAL OF SANTA CLAUS LAST
NIGHT DOWN IN TAMPA.
AND FOR YOUR SERVICE TO THE
PORT AND THEY --

[INAUDIBLE]

>> I'M NOT CERTAIN THAT
KNOWING THAT YOU PROSECUTED
SANTA CLAUS THAT YOU WILL
GET A LOT OF SYMPATHY BEFORE
THE PADDLE.

WELL, HE GOT OFF LIGHTLY,
SIR.

MAY IT PLEASE THE COURT MY
NAME THE CERESE TAYLOR AND I
REPRESENT THE STATE OF
FLORIDA.

I RESERVE FIVE MINUTES FOR
REBUTTAL.

THE ISSUE ARISES FROM THE
BATTERY IN LAW ENFORCEMENT
OFFICER.

ON APPEAL TO SECOND DISTRICT
COURT OF APPEAL HE RAISED
FOR THE FIRST TIME THE ISSUE
THAT THE JURY INSTRUCTION
GIVEN IN THIS CASE
CONSTITUTED FUNDAMENTAL
ERROR.

BECAUSE IT CHARGED THE
BATTERY IN THE ALTERNATIVE,
THAT IS BATTERY BY
INTENTIONAL TOUCHING AND
BATTERY BY CREATING BODILY
HARM.

>> WHAT IS THE STATE'S

POSITION ABOUT WHETHER IT
WOULD BE REVERSIBLE ERROR IF
THERE HAD BEEN AN OBJECTION
MADE AT TRIAL?

>> IF THERE HAD BEEN
OBJECTION MADE AT TRIAL IT
WOULD HAVE BEEN PRESERVED
AND WE WOULD HAVE BEEN UNDER
HARMLESS ERROR ANALYSIS.
IN WRITING FOR THE SECOND
DISTRICT ACKNOWLEDGE THAT
UNDER HARMLESS ERROR
ANALYSIS THERE'S NO HARM IN
THIS CASE AND THEY WOULD
HAVE AFFIRMED THE
CONVICTION.

THE REVERSAL IN THIS CASE IS
A VERY RELUCTANT REVERSAL
AND IT DEMONSTRATES JUDGE
ALTON BURNS CONTINUING QUEST
TO DETERMINE THIS COURT'S
QUEST IN REED AND HOW IT
EFFECTS THE SECOND DISTRICT
OWN PRECEDENT.

FINALLY IN THE CASE THEY HAD
AN OPPORTUNITY TO WRITE FOR
THE MAJORITY AND THEY WERE
ABLE TO -- ALTHOUGH REVERSE,
DISCUSS ITS PRECEDENT IN THE
SECOND DA AND EXPRESS HIS
CONCERN AND HIS FRUSTRATION
WITH WHAT IMPACT IF ANY DOES
THIS COURT VISION HAVE ON
THESE DECISIONS.

THEY DETERMINED BUT FOR THE
PROVISION THEY ARE
CONSTRAINED BY PRECEDENT
THEY WOULD HAVE FOUND NO
HARM.

THAT'S THE STATE'S POSITION
THAT READ RULED THE SECOND
DISTRICT COURT IN DIXON AND
IN VEV -- VEGA BECAUSE YOU
LOOK AT PROFOUND ERROR.
IT'S NOT JUST LEER -- MERELY
HARM.

AND IN THIS CASE THERE WAS
NO SUCH QUANTITY OR QUALITY
OF ERROR.

BECAUSE BODILY HARM WAS
NEVER PLACED AT ISSUE.
THEY ACKNOWLEDGE THAT IN THE
POSITION AS WELL.
THAT THERE WAS NO EVIDENCE

OF BODILY HARM.

THERE WAS NO CHARGE OF
BODILY HARM.

THE CHARGE WAS PURELY
INTENTIONAL TOUCHING AND
BATTERY.

WHAT DID THE STATE WANT AN
INSTRUCTION ON BODILY
H.A.R.M.?

>> I DON'T BELIEVE, YOUR
HONOR, WHEN YOU LOOK AT THE
WAY IN BY THE JURY

INSTRUCTION WERE DISCUSSED
IT WASN'T REALLY DISCUSSED.

THEY GAVE THE STANDARD
INSTRUCK SHUB.

IT WOULD SEEM BECAUSE BODILY
HARM WASN'T AN ISSUE FOR
ANYBODY IT WAS SORT OF
MISSED THING AND SURPLUSAGE.
NOBODY WAS THINKING ABOUT OR
CONSIDERING IT.

THE RESPONDENT WASN'T
THINKING OR CONSIDERING IT.

>> THE JUDGE SAID I WILL
GIVE THE STANDARD
INSTRUCTION AND THAT'S
INSTRUCTION INCLUDED BOTH OF
THOSE.

>> EXACTLY.

AND THERE WAS REALLY NO
DISCUSSION ABOUT IT.

IT WAS SHORT -- SORT OF
TAKEN FOR GRANTED THAT WOULD
BE THE ININ -- STANDARD
INSTRUCTION.

THAT'S THE CHARGE BEFORE THE
COURT.

>> THESE CASES ARE FAIRLY
EASEY AND QUICK TRIALS
COMPARED TO MANY OTHERS.

>> YES, YOUR HONOR.

WERE WRITTEN INSTRUCTION
PREPARED BY EITHER THE STATE
OR THE COURT AND GIVEN TO
THE JURY OR WAS THIS SIMPLY
THE CASE WHERE THEY ARE
PULLING IT OUT OF THE BOOK
AND THEY ARE READING OFF THE
STANDARD INSTRUCTION.

>> I CAN HONESTLY I SAY I
DON'T RECALL.

MY RECOLLECTION THEY WERE
NOT GIVEN TO THE JURY.

BUT I WILL CHECK THE RECORD
AND I WILL GET BACK TO THE
COURT ABOUT THAT.

BUT -- BECAUSE I REALLY
CAN'T RECALL.

>> IT LOOKS LIKE AN ISSUE
THAT IN THE APPELLANT
SCREENING OF THE CASE THAT
THE APPELLANT LAWYERS.

>> ABSOLUTELY.

THEY PICKED UP ON --

>> ABSOLUTELY.

>> HERE'S AN ISSUE THAT
COULD BE RAISED.

>> WRIGHT -- RIGHT.

AND THAT'S WHERE THIS ARISEN
IN THE APPELLANT ARENA.
THAT'S WHY I WASN'T A
PRESERVED ERROR AND PROVIDED
THE COURT AND -- AN
OPPORTUNITY TO CERTIFY THE
QUESTION TO CERTIFY WITH THE
SECOND DEGREE HAS BEEN
MODELING THE BETTER OF LAW
ENRS TONENT OFFICER CASES
AND THAT SECOND DISTRICT
PRECEDENT HAS NOW BEEN TAKEN
OVER BY THE FIRST DCA AND
THEY HAVE FOLLOWED AS THESE
WITH REGARD TO EDEN CASE THE
WAY IN WHICH SECOND DEGREE
HAS CREATED A PER SE ERROR.
WHICH IS CONTRARY TO WHAT
THIS COURT HAS DIRECTED
SKWREFT WELLS OPINION IN
REED DIRECTS THAT THE
FUNDAMENTAL ERROR ANALYSIS
IS LOOKING AT THE OVERALL
EFFECT -- LOOKING TO SEE
WHETHER THE HARM IN THIS
CASE, IF HARM EXISTS, THEN
IT DOES THAT HARM INITIATE
THE ENTIRE TRIAL IS IT
MATERIAL TO WHAT THE JURY
HAS TO CONSIDER IN ORDER TO
CONVICT.

>> HOW DO YOU DISTINGUISH
THIS CASE FROM REED?

>> IN REED, IT'S A DIFFERENT
QUALITY OF CASE.

BECAUSE IN REED THE
ESSENTIAL ELEMENT THAT THEY
HAD TO CONVICTION WAS
MALISSE IT WAS A CHILD ABUSE

CASE WAS MISIDENTIFIED FOR THE JURY.
SO IT WAS A PROBLEM WELLMENT THAT THEY HAD TO CONSIDER.
IN THIS CASE THIS IS A SURPLUSAGE.
THIS IS SORT OF TACKED ON AT THE END.
AND IT ISN'T ARGUED.
IT ISN'T PRESENTED TO THE JURY AS WHAT THEY HAVE TO CONVICT.
NEITHER THE ARGUMENT OF COUNSEL FOR THE EVIDENCE PROVES THAT ANY BODILY HARM EVEN SUGGEST BODILY HARM.
AND THESE ARE -- IT'S IMPORTANT TO REMEMBER THAT THESE VICTIMS ARE LAW ENFORCEMENT OFFICERS.
YOU HAD THREE WITNESSES IN THIS CASE.
IT WAS A VERY SHORT TRIAL JUSTICE WELLS.
YOU ARE TALKING ABOUT LAW ENFORCEMENT OFFICER WHO WOULD APPRECIATE THE NEED TO ELICIT EVIDENCE ABOUT BODILY HARM IF THE HARMING EXISTED.
AND IT DIDN'T.
AND WHEN YOU LOOK TT WAY THEY TESTIFIED, WITH REGARD SPECIFIC MR. WEAVER IT WAS KIND OF ONE SHOVE WHICH IS SORT OF FREEBIE BECAUSE THE BRUSHED HIM INSIDE AND GO BACK INTO THE FRAY OF ASSISTING HIS BROTHER OFFICERS.
IT WAS ONLY AFTER MR. WEAVER CHARGED BACK IN FOR THE SECOND TIME AND THEY GOT TO PICK HIM UP AND PULL HIM AWAY FROM THE FIGHT THAT MR. WEAVER PUSHES HIM AGAIN.
THEY SAID YOU HAD YOUR FREE ONE.
YOU ARE GOING TO JAIL FOR BADTRY ON A LAW ENFORCEMENT OFFICER.
THE OFFICER DIDN'T SAY I HAD A SHOULDER OR ANYTHING LIKE THAT.
EVEN THE OFFICER RESPONDENT

BROTHER WAS CHARGED DURING THE ALTERCATION WITH POLICE OFFICERS HIS CASE IS SPENDING IN THIS COURT RIGHT NOW.

AND HIS CASE IS VERY SIMILAR.

HE WAS CHARGED WITH A DIFFERENT OFFICER.

SO HE HAD TWO BROTHER OFFICERS AND TWO BROTHER DEFENDANTS IF YOU WILL THAT WERE TESTIFYING OR THAT WERE APPEARING AT TRIAL AND MR. GREGORY -- GREG WEAVER DIDN'T TESTIFY.

EVEN IN THAT SITUATION IT WAS ONLY SCUFFLING.

NORTH -- NOR IN BROTHER CASE OR HIS CASE WAS THERE ANY THAT HIS WERE HARMED BY THE INTERACTION BETWEEN THE POLICE AND THE DEFENDANTS.

THIS IS NOT

SOMETHING -- IT'S

DISTINGUISHABLE FROM REED IN ITS FACT.

WHAT'S IMPORTANT ABOUT REED IS THAT REED IS A CLEAR DIRECTIVE.

THERE'S A FUNDAMENTAL ERROR ANALYSIS THE CONTEMPORANEOUS OBJECTION RULE IS PARAMOUNT.

IF YOU DON'T OBJECT AT TRIAL IF THE ERROR WAS NOT ENOUGH TO RAISE YOUR ATTENTION TO CAUSE YOU CONCERN, THEN BEFORE WE LET YOU HAVE APPELLANT REDRESS, YOU HAVE TO RAISE THE BAR AND SAY THAT YOU VIDEO HAD NOT JUST HARMLESS ERROR.

NOT JUST HARMFUL ERROR BUT HARMFUL ERROR THAT IS SO PROFOUND THAT WE CAN BE CONFIDENT THAT THE VERDICT WAS REACHED IN THIS CASE IN A FAIR MANNER.

AND THAT'S NOT --

[AUDIO DIFFICULTIES]

>> YES.

[AUDIO DIFFICULTIES]

YES.

ABSOLUTELY.

ABSOLUTELY.

THERE IS NO HARM ASSOCIATED WITH THE INSTRUCTION IN THIS CASE.

IT'S NOT.

CONSTITUTIONAL HARM.

IT'S NOT FUNDAMENTAL ERROR.

IT'S NOT TRIAL COURT ERROR.

IT'S NOT PRESERVED ERROR.

THERE IS AN ERROR ON THE FACTS OF THE RECORD.

AND BECAUSE BODILY HARM WAS NOT MADE A COMPONENT OF WHAT THE JURY HAD TO CONSIDER TO CONVICT, IS SURPLUSAGE IN THE INSTRUCTION THAT ADDITIONAL LANGUAGE DOESN'T HAVE AN EFFECT.

THE TRIAL -- THE STATE ATTORNEY'S OFFICE PRESENTED THEIR INFORMATION AND THEY CHARGED A CRIME.

THE ATTORNEY'S OFFICE PRESENTED EVIDENCE PROVED THE CRIME THAT THEY CHARGED.

THERE'S NO ERROR IN THE PROOF AND THERE'S NO ERROR IN THE CHARGE AND THE JURY INSTRUCTION CAN'T A -- ERASE THE SUBSTANTIAL EVIDENCE AND IT'S NOT REASONABLE TO IMAGINE JUST DISCUSSES THIS IN HIS POSITION IS IT

PROBABLE TO IMAGINE THE JURY WOULD HAVE SAID WE HAVE THIS EVIDENCE AND THE PROOF IT'S PRESENTED IN A CERTAIN WAY BUT WE HAVE THIS ONE INSTRUCTION AND WE WILL PLACE THAT IN A PARAMOUNT POSITION IN THE QUANTITY OF EVIDENCE THAT'S BEEN PRESENTED HERETOFORE AND IT'S NOT REASONABLE TO IMAGINE --

>> LET ME ASK YOU A QUESTION.

TO YOU AGREE THAT THIS IS A SPECIFIC INTENT CRIME?

OR GENERAL INCIDENT?

OR IS THERE -- INTENT HAS TO BE PROVEN?

>> WELL -- WHAT HAS TO BE PROVEN IT'S A LAW

ENFORCEMENT OFFICER THEY
KNEW IT WAS A LAW
ENFORCEMENT OFFICER.
TO THE EXTENT AND
THEY -- INTENTIONAL TOUCHING
SO THAT -- THERE'S INTENT IN
THAT YOU KNEW IT WAS LAW
ENFORCEMENT OFFICER AND
INTENT IN THE INTENTIONAL
TOUCHING.

>> DOES THERE HAVE TO BE
INTENT TO CAUSE HARM?

>> NO.

THAT'S THE ALTERNATIVE.
YOU CAN HAVE A BODILY
HARM -- I DON'T BELIEVE IT
HAS BE INTENTIONALLY CAUSING
BODILY HARM.

WHAT WE HAVE IN FRONT OF US
IS INTENTIONAL TOUCHING
THAT'S AN INTENTIONAL
NATURE.

AND THAT WAS DEFINITELY
SHOWN.

ESPECIALLY WITH MR. GREG
WEAVER HE PUSHED THE OFFICER
TWICE.

TOM LEAVER HIS BROTHER
THERE'S A DEFENSE THAT HE
TRIED TO RAISE ABOUT
SELF-DEFENSE BECAUSE THE
CROWD WAS PRESSING IN UPON
HIM AND HE WAS SCUFFLING
WITH THE OFFICER IN AN
ATTEMPT TO PROTECT H HIS
BODY.

WITH MR. GREG WEAVER THERE'S
NO EVEN SUGGESTION OF THAT.
HE AGGRESSIVELY PUSHED THE
OFFICER IN AN ATTEMPT TO
SORT OF GET THE OFFICER
PERHAPS NOT ARREST HIS
BROTHER AND THEY BOTH WOUND
UP GETTING ARRESTED.

>> MR. FISHER.

>> GOOD MORNING.

>> GOOD MORNING.

SAYING THAT THIS WAS
RELUCTANT REVERSAL WAS
PUTTING IT MILDLY.

[LAUGHTER]

>> I BELIEVE THERE IS HARM
IN THIS -- IN BOTH OF THESE
CASES.

I BELIEVE THERE CAN BE IN
SIMILAR HARM IN MOST CASES
CHARGING OF BATTERY, BECAUSE
WHERE THERE IS SOME
UNAUTHORIZED TOUCHING AND
IT'S NOT USUALLY GOING TO
BE.

THE EVIDENCE WAS THAT
GREGORY WEAVER WITH FORCE
REPEATEDLY PUT HIS HANDS ON
THE OFFICER.

THAT THOMAS WEER THREW
COFFEE THAT MAY OR MAY NOT
HAVE BEEN HOT IN THE FACE OF
AN OFFICER.

>> LET'S GO TO THE STANDARD
OF FUNDAMENTAL ERROR THAT WE
HAVE TO APPLY.

BODILY HARM WAS NOT CHARGED.
NO EVIDENCE OF BODILY HARM
WAS PRESENTED.

THE STATE ARGUED NO BODILY
HARM.

SO HOW THE IS ENTIRE TRIAL
INITIATED AND HOW DOES IT GO
TO THE FAIRNESS OF THE TRIAL
THAT THERE WAS THIS JURY
INSTRUCTION GIVEN?

>> WELL, THIS IS ESSENTIALLY
THE JURY WAS GIVEN A CHARGE
IN INSTRUCTION ON AN
UNCHARGED CRIME.

>> CLEARLY.

>> AND TO SAY THAT THERE WAS
NO EVIDENCE FROM BY THE JURY
COULD DEDUCE THAT THERE
COULD HAVE BEEN GREAT BODILY
HARM I THINK IS NOT TRUE.

I THINK THAT PART SHOVING OR
THROWING HOT COFFEE IN THE
FACE CAN RESULT IN GREAT
BODILY HARM AND THE JURY
MAY --

>> BUT THIS DEFENDANT WAS
NOT THE ONE WHO THREW THE
COFFEE.

>> HE'S THE ONE WHO DID THE
HARD SHOVING.

THE TWO BROUGHTERS ARE TRIED
TOGETHER.

>> IN ORDER TO SHOW BODILY
HARM YOU HAVE TO SHOW MORE
THAN JUST SHOVING DON'T YOU.
YOU -- DON'T YOU HAVE TO

HAVE SOME SORT OF INJURY
TESTIFIED TO BY SOME OF THE
OFFICERS?

ONE OF THE OFFICER WHO WAS
SHOVED?

>> WELL --

>> COMMON SENSE WOULD TELL
YOU YOU NEED SOMETHING OTHER
THAN A SHOVE TO SHOW BODILY
HARM.

>> THE JURY WAS INVITED TO
SPECULATE ON WHETHER THERE
WAS BODILY HARM.

THERE WAS EVIDENCE UNDER
WHICH SOMEONE MAY DETERMINE
THAT THEY BELIEVED THERE WAS
NOT JUST GREAT BODILY HARM.
ALL THEY ARE LOOKING FOR IS
GREAT BODILY HARM.

[AUDIO DIFFICULTIES]

THERE WAS NO EVIDENCE OF
THIS THAT ACTUALLY MIGHT
HELP THE DEFENDANT.

[AUDIO DIFFICULTIES]

>> WELL, THAT'S THE ISSUE.

[INAUDIBLE]

YES.

SO AND IF THE JURY THOUGHT
THEY HAD MORE THAN JUST THAN
FINDING GUILT AND THERE
WASN'T THAT EVIDENCE IT
SEEMS LIKE IT COULD HAVE
BEEN USED TO CREATE AND I
DON'T KNOW HOW THAT WOULD
HAVE IN ANY WAY HARMED YOUR
CLIENT --

[AUDIO DIFFICULTIES]

>> IT'S NOT NEED DEFINE
MORE.

THEY WERE BEING OFFERED AN
ALTERNATIVE THAT SHOULD NOT
HAVE BEEN OFFERED.

AN ALTERNATIVE WAY TO FIND
IT.

[AUDIO DIFFICULTIES]

>> INTENTIONAL TOUCHING IS
WHAT -- WHAT WAS CHARGED AND
THAT'S WHAT WAS INSTRUCTED
BUT THEY WERE ALSO
INSTRUCTED THAT THEY COUNT
FIND THIS OFFENSE COMMITTED
BY BODILY H.A.R.M..

THEY WERE INVITING THE JURY
TO SPECULATE ON SOMETHING

THAT SHOULDN'T HAVE BEEN
BEFORE THE JURY.

>> ARE YOU SUGGESTING THAT
BECAUSE A COURT USED THAT
LANGUAGE OR MADE THAT
INSTRUCTION THAT THE COURT
WAS IN SOME MANNER
SUGGESTING THAT MAYBE THERE
WAS SOME KIND OF BODILY
HARM?

>> I THINK THAT THE UNDER
THE FACTS THE JURY COULD
SPECULATE.

WE'VE BEEN TOLD TO LOOK AND
SEE WHETHER THIS WAS PROVED
BY BODILY HARM.

NOW THAT WE HAVE UNANIMOUS
JURY, WE CAN'T KNOW.

WE CAN'T LOOK INTO THE
JURY'S MIND.

THE JURY SHOULD NOT HAVE
RECEIVED AN INSTRUCTION ON
THE THEORY OF DEFENSE THAT
WAS NOT CHARGED.

>>

[AUDIO DIFFICULTIES]

[INAUDIBLE]

>> THEY WERE --

[AUDIO DIFFICULTIES]

THE HARM COMES FROM
YOUR -- IT DENIES DUE
PROCESS TO CONVICT SOMEONE
OF A CRIME THAT WASN'T
CHARGED.

THE JURY WAS INVITED HERE TO
MAKE A FINDING ON AN
UNCHARGED CRIME.

THEY WERE ASKED IN THE
ALTERNATIVE TO FIND EITHER
BODILY HARM OR INTENTIONAL
TOUCHING, YOU HAVE A GENERAL
VERDICT HERE.

ALTHOUGH THE STATE WAS NOT
STRESSING BODILY HARM THE
JURY COULD DEDUCE THAT THERE
MUST HAVE BEEN BODILY HARM
FROM A HARD SHOVING OR FROM
THROWING HOT COFFEE IN THE
FACE.

>> WOULDN'T YOU -- WHAT IS
YOUR VIEW OF WHAT STATE vs.
DELVA?

>> STATE vs. DELVA.

REED WAS REALLY WRITTEN ON

THE BASIS OF WHAT THIS COURT HAD SAID ABOUT FUNDAMENTAL ERROR AND THE RESPECTED JURY INSTRUCTIONS.

IN STATE vs. DELVA; CORRECT, WHICH HAS BEEN THE LAW OF THIS STATE SINCE THE EARLY 80s.

>> YES, SIR.

>> AND REALLY THE CONTEXT AS I UNDERSTOOD IT IS -- AND UNDERSTAND IT IS THAT THERE WOULD BE FUNDAMENTAL ERROR IN RESPECT TO AN INSTRUCTION THAT YOU HAVE TO LOOK AT THE RECORD AND DETERMINE WHETHER THE INSTRUCTION HAD TO DO WITH A DISPUTED ISSUE IN THE CASE.

AND HERE IT DIDN'T.

ISN'T THAT THE SIMPLE FACT OF THIS CASE?

>> WELL, I BELIEVE THAT ALTHOUGH THIS WAS NOT WHAT THE STATE WAS ARGUING, I BELIEVE THAT THIS IS SOMETHING THAT THE JURY COULD DEDUCE AND WAS INVITED TO MAKE A FINDING ON.

AND THAT, THAT RESULTS IN FUNDAMENTAL --

>> BUT THAT WOULD BE CONTRARY TO WHAT THIS COURT HELD IN DELVA; CORRECT?

>> I GUESS IT WOULD COME DOWN TO SEMANTICS ABOUT WHAT IS DISPUTED.

THE FACT THAT THERE'S EVIDENCE FROM BY THE JURY COULD FIND BODILY HARM I THINK MAKES THIS FUNDAMENTAL ERROR.

DO YOU AGREE OR -- WHAT WAS THE INSTRUCTION?

BECAUSE THE STATUTE TALKS ABOUT INTENSELY TOUCHING OR STRIKING OR INTENTIONALLY CAUSING BODILY HARM?

WHAT WAS THE INSTRUCTION SPECIFICALLY GIVEN IN THIS CASE FOR THE DCA REFERS TO IT AS INTENTIONALLY TOUCHED OR STRUCK THE DEPUTY AGAINST HIS WILL CAUSED BODILY HARM.

ARE YOU EVEN MAKING THAT
DISTINCTION?

>> I GUESS MY QUESTION IS
DID THE -- WOULD THE -- BUT
DID BOTH REQUIRE THE
ESTABLISHMENT OF INTENT?
THE INTENT TO CAUSE BODILY
HARM?

>> YOUR OPPONENT HAS THE --
>> TO PROVE THE CRIME OF
BATTERY AND LAW ENFORCEMENT
OFFICER THE STATE MUST PROVE
THE FOLLOWING BEYOND
REASONABLE TKOUBLGT.
GREGORY WEAVER INTENTIONALLY
STRUCK OR DAVID FEENAUGHTY
AGAINST HIS WILL OR CAUSE
HARM TO DAVID FEENAUGHTY.
HE WAS A LAW ENFORCEMENT.
GREGORY CORNELL WEAVER KNEW
THAT DAVID FEENAUGHTY WAS A
LAW ENFORCEMENT OFFICER.
DAVID FEENAUGHTY WAS ENGAGED
IN LAW.
PERFORMANCE WHEN THE BATTERY
WAS COMMITTED.

>> THANK YOU.

>> WHAT WAS THE DEFENSE IN
THIS CASE?

WHAT WAS IT --

>> LARGELY THE DEFENSE
PROPOSED THAT THEY HAD NOT
COMMITTED A BATTERY.

[AUDIO DIFFICULTIES]

[AUDIO DIFFICULTIES]

JUST BODILY HARM.

I'M SORRY.

[AUDIO DIFFICULTIES]

>> I BELIEF IT'S GIVEN BY
OR.

[AUDIO DIFFICULTIES]

>> INTENTIONALLY TOUCHED OR
STRUCK AGAINST HIS WILL OR
CAUSED BODILY HARM.

[AUDIO DIFFICULTIES]

>> BASED ON BODILY HARM.
OR AT LEAST IT WAS NOT A
UNANIMOUS TERM.

I SEE WHAT YOU MEAN.

[AUDIO DIFFICULTIES]

WELL, I BELIEVE IT'S GIVEN
IN THE ALTERNATIVE OF
INTENTIONAL TOUCHING OR
BODILY HARM AND, THEREFORE,

NO, THEY DON'T HAVE TO FIND INTENTIONAL TOUCHING IF THEY CAUSED BODILY HARM TO THE OFFICER THE WAY THAT THEY ARE INSTRUCTED.

HOW DO YOU CAUSE BODILY HARM WITHOUT INTENTIONALLY TOUCHING OR STRIKING?

>> I GUESS -- THE UP STRUCKION DOESN'T NECESSARILY REQUIRE THAT THE INFLICKION OF BODILY HARM WAS INTENTIONAL. IS THE WAY I READ THAT INSTRUCTION.

>> BUT THAT'S NOT THE ARGUMENT MADE BELOW.

>> NO. THERE WAS A QUESTION EARLIER ANT WHETHER THE JURY WAS GIVEN THE INSTRUCTIONS AT THE END OF THE INSTRUCTIONS THEY -- THE JURY WAS INSTRUCTED THAT THEY WOULD BE RECEIVING.

I HAVE DONE A QUICK REVIEW OF THE CHARGE CONFERENCE AND THE ONLY ISSUE DISCUSSED AT THE CHARGE CONFERENCE WAS ABOUT WHETHER SELF-DEFENSE WAS APPLICABLE.

THAT'S ALL I COULD FIND. YOU ALL HAVE ANY OTHER QUESTIONS?

>> THANK YOU.

>> THANK YOU VERY MUCH. REBUTTAL.

>> JUST VERY BRIEFLY. THANK YOU.

IT'S IS IN THE RECORD ON PAGE 275 OF THE TRIAL TRANSCRIPT THAT THE JURY WAS GIVEN THE INSTRUCTIONS BACK A COPY FOR THE JURY ROOM. JUST QUICKLY WITH REGARD TO DOES BODILY HARM NECESSITATE INTENTIONAL TOUCHING.

DOES ONE PERCEIVE THE OTHER THE STATE HAS SUPPLEMENTED THE RECORD WITH THE CASE WHICH JUST CAME OUT OF DCF AND A TRAFFICKING CASE IT'S THE SAME SORT OF ANALYSIS TO TRAFFICKING BY POSSESSION

YOU HAVE TO MO SESSION
BEFORE YOU CAN MANUFACTURER.
IN THAT INSTANCE THEY FOUND
THERE WAS NO FUNDAMENTAL
ERROR IN THE ALTERNATIVE
INSTRUCTION.

THAT'S THE SAME SITUATION WE
HAVE HERE.

IN ORDER TO HAVE BODILY HARM
YOU WOULD HAVE HAD TO HAVE
INTENTIONAL TOUCHING.

WE DON'T EVEN GET TO THAT
BECAUSE WE HAVE SUFFICIENT
EVIDENCE TO PROVE THE CHARGE
THAT WAS MADE IN THIS CASE
THAT THE STATE SAID THEIR
WOULD CHARGE HIM WITH
INTENTIONAL TOUCHING BADTRY
AND THAT'S WHAT THEY DID.
THE EVIDENCE PROVED THAT.
THERE WAS NO EVIDENCE
CONTRARY TO THAT.

AND IT'S MOST REASONABLE
CONCLUSION THAT THE JURY
BASE IF VERDICT ON THAT.

[AUDIO DIFFICULTIES]

RIGHT.

IT'S AN ALTERNATIVE, RIGHT
YOU CAN CHARGE IT EITHER
WAY.

PROVE IT EITHER WAY.

IN THIS CASE WHEN YOU LOOK
AT THE FINAL JURY
INSTRUCTION -- CLOSING
ARGUMENT BY THE STATE THEY
HAD SORT OF THE SANDWICH
ARGUMENT.

AT THE END THE STATE SAYS TO
THE JURY AND WE WANT YOU TO
FIND THE BATTERY ON LAW
ENFORCEMENT OFFICER AS TO
TOM WEAVER FOR HIS THROWING
THE COFFEE AND SHOVING WITH
THE OFFICER AND GREG WEAVER
FOR HIS SHOVING THE OFFICER.

IT'S CLEAR IN THE STATE'S
FINAL -- FINAL WORD TO THE
JURY THAT THEIR

A -- INTENTION IS TO CHARGE
BASE OD INTENTIONAL
TOUCHING.

THERE WAS NO CONFUSION AS TO
INDICATION THE JURY WAS
CONFUSED.

AND THE SECOND DISTRICT
RELIANCE ON DICKON AND VEGA

--

[AUDIO DIFFICULTIES]

>> THEY CAN'T WITHSTAND THE
COURT IMPLICATION OF REED
AND THEY NEED DIRECTION TO
ADVICE THEM THEY ARE GOING
FORWARD.

THAT'S THE WAY IT HAS TO BE
IN THE SECOND DIRECT.

>> MY QUESTION IS AS TO
WHY --

[AUDIO DIFFICULTIES]

RIGHT.

[AUDIO DIFFICULTIES]

YOU KNOW THIS CAME UP IN THE
OLD OFFICE.

WE WERE TALKING ABOUT.

I THINK THE MOST -- I CAN'T
IMAGINE.

BECAUSE EVEN I'M NOT
PHYSICALLY TOUCHING WITH MY
HAND IF I EMPLOY AN
INSTRUMENT.

THAT INSTRUMENT IS TOUCHING
THROUGH MY --

>> WHAT ABOUT THROWING A
BASEBALL.

>> WHAT IF I THROW A
BASEBALL.

THEN I TOUCH THE BASEBALL
AND THE BASEBALL TOUCHES.

>> ISN'T THAT WHERE THE
LEGISLATURE SAYS WELL WE'RE
GOING TO COVER ALL THE BASES
SO TO SPEAK?

>> EXACTLY.

>> AND SAY IF SOMEBODY
FINDING THAT THROWING A
BASEBALL IS NOT A TOUCHING.

>> RIGHT.

>> IT'S STILL BODILY HARM.
IF THAT IS PROVEN.

[INAUDIBLE]

WE DON'T HAVE TO GET THERE
BECAUSE WE GET INTENTIONAL
TOUCHING.

>> IT DEPENDS ON THE SPEED
OF THE PITCHER.

BUT THE OPPONENT

SAY -- SEEMS TO SAY I DON'T
KNOW IN THIS THE PROPERLY
PRESERVED OR NOT IF YOU ARE

SAYING THAT THESE ARE IN THE ALTERNATIVE AND THE OR REALLY SEPARATES THE ENTIRE PHRASE THAT THE ELEMENT OF THE INTENTIONAL TOUCH NEED NOT BE PRESENT TO SUSTAIN A CONVICTION WITH REGARD TO THE HARM.

THAT COULD BE A NEGLIGENT ACT OR ANY NUMBER OF ACTS. I DON'T KNOW.

THAT SEEMS TO BE WHERE THE ARGUMENT WAS GOING THIS MORNING.

SURE.

>> WHAT ARE YOUR THOUGHTS ON THAT?

WAS THAT PRESERVED?

IS THAT A POSSIBILITY?

IS THAT -- WE'RE OUT IN THE MIDDLE OF THIS THING, THIS IS GOING ON AND PEOPLE ARE TOUCHING ONE ANOTHER.

>> RIGHT.

>> AND MAYBE THEY DON'T PERCEIVE IT AS INTEND TO PUSH YOU THAT IT'S A SCUFFLE.

>> RIGHT.

EXACTLY.

>> IT'S JUST A CROWD.

>> I THINK THE DIFFERENCE BETWEEN THOSE OTHER FOLKS WHO WERE NOT CHARGED WITH ANY CRIME AND THESE BROTHER WHOSE WERE CHARGED WITH A CRIME IS THERE SCUFFLE WAS DIRECTLY WITH AN OFFICER. IN PROCESS OF AN ARREST OR ATTEMPTING TO FORCE THE LAW AND SAYING YOU NEED TO GET AWAY FROM ME I'M TRYING TO BREAK UP THE CROWD. THOSE WERE DIRECT ACTS INTENTIONALLY COMMITTED AGAINST THE LAW ENFORCEMENT. IT'S A DIFFERENT SITUATION. I THINK THE OFFICERS SHOWED RESTRAINED IN NOT HAULING EVERYONE OFF SAYING YOU ARE CAUSING A RAUCOUS AND DISORDERLY CONDUCT AND THAT SORT OF THING.

[AUDIO DIFFICULTIES]

>> RIGHT.
IF YOU ACCIDENTLY TOUCH THE
OFFICER.
RIGHT.
EXACTLY.
YOU WOULDN'T HAVE A BODILY.
>> YOU WOULDN'T HAVE BODILY
HARM.

[AUDIO DIFFICULTIES]

>> RIGHT.
[AUDIO DIFFICULTIES]
I AGREE BECAUSE YOU
ACCIDENTLY TRIPPED THEM AND
IT WAS AN INADVERTENT
TOUCHING.

THESE GUYS ARE IN A
DIFFERENT CLASS.

THEE WERE INTENTIONAL ACTS.
THEY KNEW THEY WERE OFFICERS
AND THEY WERE SCUFFLING WITH
REGARD TOED TO LEAVEY THERE
WAS DISCUSSION WHETHER I WAS
ONLY PUSHING THE OFFICER
BECAUSE THE CROWD WAS
PUSHING US A AND I WAS GOING
TOWARD THE WALL AND I WAS
CONCERNED FOR MY SAFETY.
THE JURY DIDN'T BUY THE
ARGUMENT.

WITH MR. GREG WEAVER NO
ARGUMENT WAS MADE.
YOU HAVE A CHARGE, A SOLE
CHARGE OF BATTERY ON A LAW
ENFORCE WAS OFFICER EMPTY
EARNINGSAL TOUCHING WITH THE
SECOND DEGREE IS LOOKING FOR
IS A DEFINITIVE STATEMENT
THAT WHEN YOU HAVE A
SITUATION LIKE THIS, WHERE
THE ALTERNATIVE ELEMENT
ISN'T IN DISPUTE AT ALL,
THAT FUNDAMENTAL ERROR
ANALYSIS APPLIES AND IT HAD
TO BE DEEP PROFOUND QUANTITY
AND QUALITY OF ERROR THAT
THEY USE THE ENTIRE TRIAL
AND IF YOU DON'T HAVE THAT
THEN YOUR LACK OF OBJECTION
DOESN'T PROVIDE YOU WITH
APPELLANT RELIEF.

AND WE WOULD ASK THIS COURT
ANSWER THE CERTIFIED
QUESTION IN THE NEGATIVE AND
REVERSE THE SECOND DISTRICT

REVERSAL OF CONVICTION.
>> THANK YOU VERY MUCH.
WE WILL TAKE THE CASE UNDER
ADVISEMENT.
THE COURT WILL TAKE ITS
MORNING RECESS.
>>