

*The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.*

## **Ricky Bradley v. State of Florida**

**SC08-196**

THE NEXT CASE ON THE COURT'S  
DOCKET IS BRADLEY v. STATE.

>> MR. ^BECKER?

>> YES.

>> MAY IT PLEASE THE COURT.

MY NAME IS MICHAEL BECKER AND I  
AM AN ASSISTANT PUBLIC DEFENDER  
IN DAYTONA BEACH AND I  
REPRESENT THE PETITIONER RICKY  
BRADLEY.

VERY BRIEFLY THE FACTS OF THIS  
CASE INVOLVE THE DEFENDANT  
BEING CHARGED WITH ATTEMPTED  
FELONY MURDER AND ROBBERY WITH  
A FIREARM.

>> WHICH ARE BOTH CRIMES THAT  
WOULD'VE CARRIED A, WOULD'VE  
CARRIED A LIFE SENTENCE.

>> YES.

>> SO HE PLED OUT TO SOMETHING  
THAT GAVE HIM 20 YEARS.

AND HE ADMITTED AT THE PLEA  
HEARING THAT HE CARRIED THE,  
THE, THAT HE DISCHARGED THE  
WEAPON AND HIS LAWYER DIDN'T  
AND HE KNEW HE WAS GETTING 20  
YEARS INSTEAD OF A LIFE  
SENTENCE, CORRECT?

>> YES.

>> AND YOU ARE NOT TRYING TO  
WITHDRAW THE PLEA TO REDO THE  
TRIAL.

YOU ARE CLAIMING UNDER THIS IF  
IN LEGAL SENTENCE THAT TEN  
YEARS LATER COULD HAVE BEEN,  
THAT HE BE ENTITLED TO GET OUT  
IN TEN YEARS.

IS THAT ESSENTIALLY WHAT  
YOU'RE, THE PRACTICAL EFFECT OF  
YOUR ARGUMENT.

>> YES, HE WON'T BE GETTING OUT  
IN TEN YEARS BUT IT'S A  
TEN-YEAR MANDATORY MINIMUM IS  
WHAT WE ARE SAYING.

>> TEN-YEAR MANDATORY MINIMUM  
SO IF SOMEBODY HAD BROUGHT THIS

TO THE ATTENTION OF THE, THE  
STATE AT THE TIME, BECAUSE  
COULD THE STATE HAVE AMENDED  
ITS INFORMATION TO HAVE  
CONFORMED WITH THE WHAT WAS  
THEN BEING ALLEGED?

>> YES.

>> CAN THEY DO THAT NOW?

>> I DON'T THINK SO.

>> WELL ISN'T THERE SOMETHING,  
YOU KNOW, AGAIN LAST -- LAST  
ARGUMENT WE'RE TALKING ABOUT  
PRACTICAL REAL WORLD THINGS.  
IT'S SOMETHING THAT I FIND  
WHETHER ABOUT DUE PROCESS AND  
THIS IDEA THAT YOU COULD  
CHALLENGE THIS JUST DOESN'T  
SEEM RIGHT WHICH IS TELL ME WHY  
THE FIFTH DISTRICT IS WRONG.

>> COUPLE QUESTIONS IN THERE,  
AND I'M, I'LL TRY TO GET TO ALL  
OF THEM.

>> I WANT TO TALK ABOUT  
THE PRACTICAL EFFECT YOU  
WEREN'T TRYING TO WITHDRAW THE  
PLEA.

>> I AM NOT TRY TO CHANGE.

>> A DEFECT IN THIS INFORMATION  
ONCE ITS NOT CORRECTED COULD BE  
CHALLENGED AT ANYTIME AS THEN  
RESULTING IN A LEGAL SENTENCE.

>> JEOPARDY IS ATTACHED.  
ONCE THE PLEA IS ACCEPTED.  
SO TO WITHDRAW THE PLEA AND  
ALLOW THE STATE TO AMEND THE  
INFORMATION OR ALLOW THE STATE  
TO AMEND THE INFORMATION  
WITHOUT CHANGING THE PLEA WOULD  
VIOLATE DOUBLE JEOPARDY AT THIS  
POINT.

>> LET'S LOOK AT THIS CASE AS  
JUSTICE PARIENTE SAID.

AT THE PLEA HEARING THE  
ATTORNEY FOR MR. ^BRADLEY SAYS  
WE STIPULATE THE FACTS ALLEGED  
IN THE COMPLAINT AFFIDAVIT IN  
THE COURT FILE WOULD PROVIDE A  
PRIMA FACIE CASE FOR EACH  
CHARGE PLED TO, NOT EACH CHARGE  
THAT WAS CHARGED.  
BUT EACH CHARGE THAT IS PLED  
TO.

>> RIGHT.

>> AND WHAT DOES THE COMPLAINT

AFFIDAVIT HAVE IN IT EXCEPT ALL OF THE INFORMATION ABOUT HOW THIS CRIME WAS COMMITTED. AND HOW MR. BRADLEY WENT UP TO THIS PERSON, PUT, DISPLAYED THE GUN, TOLD HER I WANT YOUR MONEY.

AND WHEN THIS PERSON WHO WAS A FOREIGNER AND OBVIOUSLY DIDN'T UNDERSTAND EXACTLY WHAT WAS GOING ON, SOMEWHAT RESISTED, HE, HE ATTEMPTS TO SHOOT HER. THE GUN MISFIRES, AND THEN HE IN FACT ON THE THIRD TRY SHOTS HER IN THE STOMACH.

THIS IS WHAT HE HAS PLED TO. TELL ME WHAT IS WRONG THEN.

>> BECAUSE IT A COMPLAINT AFFIDAVIT IS NOT A CHARGING DOCUMENT.

>> BUT THE --

>> BUT THE ATTORNEY SPECIFICALLY SAYS THAT WE ARE PLEADING TO THE FACTS.

AS ALLEGED IN THAT AFFIDAVIT.

>> NO, I BELIEVE HE SAYS WE'RE PLEADING -- THAT WE STIPULATE THAT THE COMPLAINT AFFIDAVIT PROVIDES A PRIMA FACIE CASE TO THE CHARGES PLED TO.

HE PLED TO WHAT WAS CHARGED, AND THAT WAS THAT HE POSSESSED OR CARRIED A FIREARM.

>> LET ME ASK YOU A BROADER QUESTION THAT REALLY I THINK TROUBLED MOST OF US.

THAT IS THAT ALTHOUGH HERE IT'S THE DEFENDANT AS OPPOSED TO THE STATE, WHATEVER, THAT, THAT ON ITS FACE THIS APPEARS TO BE THE PHRASE THAT'S MOST POPULARLY USED OUT THERE IN THE CASE LAW BY THE LEGAL SCHOLARS AND JUDGES WRITING ON THIS, IT LOOKS LIKE A GOTCHA.

THAT IS, THAT THIS IS RIDICULOUS.

THAT IS THAT THE DEFENDANT IN THE WORDS OF HIS LAWYER IS TRYING TO AVOID SOME MUCH MORE SERIOUS CONSEQUENCE HERE OF, AND, AND SOUNDS TO ME LIKE PROBABLY THE DEFENDANT IS BECAUSE IN THE OLDEN DAYS, THE

WOUND OF THE STOMACH -- A WOUND  
TO THE STOMACH BACK IN OUR  
AMERICAN CIVIL WAR WAS 100%  
FATAL.

>> MM-HMM.

>> ANYWAY,.

>> WHICH BRINGS ME TO THE --  
>> THE DEFENDANT IS TRYING TO  
AVOID -- OKAY.

>> WHICH BRINGS ME TO --

>> HERE WE HAVE ABOUT AS  
LITERAL OR EXPRESS AN  
ACKNOWLEDGMENT OF THE  
APPLICABILITY OF THIS STATUTE  
AS YOU CAN GET.

AND NOW AFTER IT IS JUST AS  
CLEAR AS CLEAR CAN BE, THAT  
EVERYBODY'S ON THE SAME PAGE,  
THAT LOW AND BEHOLD, IT JUST  
SEEMS TO BE WHAT THE PUBLIC  
WOULD SEE AS THE CLASSIC USE OF  
SOME LEGAL TECHNICALITY THAT  
MAKES ABSOLUTELY NO SENSE  
WHATSOEVER.

SO I AM VERY TROUBLED, I'M  
ALMOST TROUBLED THAT YOU WOULD  
BE HERE.

ADVOCATING THAT WHAT, WHAT THAT  
THE DEAL THAT WAS MADE THERE,  
SO EXPRESSLY SHOULD BE SET  
ASIDE.

SO HELP ME WITH, WITH WHY WE,  
WE SHOULD CONSIDER THIS IN THAT  
CONTEXT AND REALLY CREATE WHAT,  
WHAT THEN AMOUNT TO ALMOST AN  
ABSURDITY.

THAT IS, THE OLD PHRASE FROM  
THE ENGLISH LAW, IF THIS IS  
WHAT THE LAW IS, THEN THE LAW'S  
AN.

>> I'M GLAD YOU BROUGHT THAT UP  
BECAUSE I THINK THAT DOVETAILS  
INTO JUSTICE QUINCE'S QUESTION  
OF WHAT HE PLED TO.

THE INFORMATION IN THE  
COMPLAINT SUPPORTS A CONCLUSION  
THAT HE NOT ONLY DISCHARGE THE  
FIREARM, BUT HE CAUSED GREAT  
BODILY HARM.

THAT'S 21 MINIMUM MANDATORY  
THEN HE SHOULD BE HERE FOR 25  
TO LIFE MINIMUM MANDATORY BUT  
WE ARE NOT -- WE ARE --

>> DOES THE STATE HAVE THE

RIGHT TO PLEAD DOWN FROM THAT?

>> BUT THEY DIDN'T, IS THE  
THING.

THEY NEVER CHANGED THEIR  
CHARGING DOCUMENT.

>> LET ME GET THIS RIGHT.

IF -- I FEEL LIKE WE HAVE HAD A  
CASE, DEFECT IN INFORMATION,  
BECAUSE IT DIDN'T ALLEGE  
DISCHARGE.

IT ONLY SAID CARRY.

IT CAN BE RAISED.

-- GENERAL PRINCIPLE OF LAW.

CAN DEFECT IN INFORMATION BE  
WAIVED -- IF THERE'S NO  
OBJECTION OR CAN IT BE RAISED,  
BELIEVE ME A LOT OF PER SE  
PETITIONERS AND THEY GO BACK TO  
SOMETHING IN THEIR INFORMATION  
OR INDICTMENT THEY SAY THAT  
WASN'T IN AND/OR -- SO CAN IT  
BE WAIVED?

>> IF IT WHOLLY FAILS TO OMIT  
AN ESSENTIAL ELEMENT OF THE  
CRIME IT CAN BE RAISED AT ANY  
TIME.

THIS COURT SO HELD IN STATE v.  
GRAY IN 1983.

THAT --

>> THIS DIDN'T FAIL TO ALLEGE  
AN ESSENTIAL ELEMENT OF THE  
CRIME.

>> YES IT DID.

BECAUSE THE CASE LAW HAS HELD  
THAT THESE ENHANCEMENT UNDER  
THE 10-20-LIFE ARE ESSENTIAL  
ELEMENTS.

>> AND HOW DOES THAT DOVETAIL  
TO -- INTO THE REQUIREMENT  
UNDER RULE 3.190 THAT REQUIRES  
YOU TO FILE A MOTION IF THERE  
IS A PROBLEM WITH THE  
INFORMATION AND CASE LAW THAT I  
KNOW AS JUSTICE PARIENTE SAYS  
THAT IS OUT THERE THAT TALKS  
ABOUT IF THERE'S A DEFECT IN AN  
INFORMATION, IF YOU DON'T RAISE  
IT, AND IF IT'S NOT AN ISSUE  
THAT IS LITIGATED, OR DISCUSSED  
AT TRIAL AND IN THIS SITUATION,  
IT CERTAINLY WAS NOT DISCUSSED  
AT THE PLEA HEARING, THAT YOU  
HAVE WAIVED IT.

>> THERE WAS NO DEFECT WITH THE

INFORMATION HERE.

IT CHARGED A CRIME T. ONLY CHARGED THAT HE POSSESSED, OR POSSESSED AND CARRIED -- POSSESSION OF AND CARRIED A FOR EXAMPLE.

>> SO WHAT YOU ARE SAYING HERE --

>> THAT ISN'T DEFECTIVE.

>> AT THE PLEA HEARING TWO FINE LAWYERS LOOKED BACK AND SAID WE LOOKED BACK AT THAT INFORMATION AND BY THE WAY, JUDGE, THE STATE DOES -- WE WOULD LIKE TO MAKE SURE THAT THE AMENDMENT, THAT THE INFORMATION CONFORMS WITH WHAT HE IS PLEADING TO. CAN YOU PLEASE ALLOW US TO CHANGE THE INFORMATION -- NOTHING WOULD'VE BEEN WRONG WITH IT.

>> THAT'S RIGHT.

>> IF THIS WENT TO TRIAL AND THERE WAS A, LET ME ASK YOU THIS, IF IT WENT TO TRIAL AND THE INFORMATION INSTEAD OF INFORMATION THERE WAS A SPECIAL VERDICT FORM THAT SAID DID MR. ^BRADLEY DISCHARGE A FIREARM AND THE DEFENDANT FOUND THAT, AND THE JURY FINDS, YES, HE DISCHARGED, FOR EXAMPLE, AND -- DISCHARGED A FIREARM WOULD THAT BE DEFECTIVE CONVICTION BECAUSE IF NO ONE POINTED OUT TO THE STATE -- EVEN THOUGH EVERYONE CHARGED IT BASED ON HE DISCHARGED THE FIREARM, WOULD THAT BE FATAL TO HIS CONVICTION?

>> YES, I THINK IT WOULD.

>> UNDER WHAT CASE IS THAT?

>> SECOND DISTRICT COURT OF APPEAL.

NOT IN A JURY CONTEXT BUT IN A NONJURY TRIAL CONTEXT.

>> ROGERS CASE?

>> ROGERS v. STATE.

THAT WAS A NONJURY TRIAL WHERE THEY ONLY ALLEGED CARRIED A FIREARM OR USED A FIREARM I BELIEVE IN THE LANGUAGE BUT THE -- JUDGE IN THE COURSE OF HIS FINDINGS OF FACT AS A TRIER OF

FACT IN THAT MADE A SPECIFIC FINDING THAT HE DISCHARGED THE FIREARM.

AND ON APPEAL THE SECOND DISTRICT COURT OF APPEAL SAID SORRY HE WAS NEVER CHARGED WITH THAT.

>> THERE'S THAT, DOES MOBILE FROM THE FIRST DIRECT HELP YOU.

>> YES, I BELIEVE IT DOES.

>> SO YOU HAVE GOT REALLY -- HOW ARE THE DISTRICT COURTS ON THIS.

>> THE DISTRICT COURTS HAVE LINED UP IN ACCORD WITH THE FOURTH DISTRICT EXCEPT FOR THE FIFTH DISTRICT.

>> SO EVEN THOUGH WE ARE STANDING UP HERE AND SITTING HERE AND YOU ARE STANDING DOWN THERE SAYING THIS ALL SOUNDS ABSURD BUT YOU ARE TELLING US IF WE LOOK AT ALL THE OTHER DISTRICTS, THEY BOUGHT INTO THIS ABSURDITY.

>> YES, THE JACKSON CASE WE ARE HERE ON THE CONFLICT ISSUE IS THE, VIRTUALLY THE ACT AIM -- EXACT SAME FACTS.

AND THE FOURTH DISTRICT -- IT IS HERE ON CERTIFIED CONFLICT, CORRECT.

>> RIGHT.

AND THE FOURTH DISTRICT SAID IT'S A QUESTION OF ITS AN ILLEGAL SENTENCE BECAUSE YOU CANNOT STIPULATE TO AN ILLEGAL SENTENCE.

THAT SENTENCE, THAT MANDATORY MINIMUM CAN ONLY BE IMPOSED, THE 20-YEAR, IF IT'S ALLEGED IN THE, IN THE THING.

WHEN YOU --

>> IT WAS MY UNDERSTANDING THAT THE FIRST, THE SECOND, AND THE FIFTH HAVE FOUND THAT A PLEA CONSTITUTES AN AMENDMENT TO THE INFORMATION AND YOU ARE TELLING US IT'S ONLY THE FIFTH.

>> NOT IN THE CONTEXT OF 10-20-LIFE.

IN THE CONTEXT OF 10-20-LIFE.

THE FIRST, THE SECOND, I DON'T THINK THE THIRD HAS EVEN

DECIDED THE ISSUE.

THEY'RE THE ONLY ONES I WASN'T  
ABLE TO FIND A THIRD DCA CASE  
BUT THE FIRST, THE SECOND, AND  
THE FOURTH HAVE ALL GONE ALONG  
WITH THE JACKSON CASE.  
AND THEY HAVE CITED IT.  
WITH APPROVAL.

>> MAY I ASK A QUESTION?  
IT'S SORT OF, AND I GUESS I  
SHOULD REALLY ASK MR. JOLLEY,  
IT SEEMS TO ME CAN THEY NOT  
PLEAD IN THE ALTERNATIVE IN THE  
INFORMATION HE EITHER CARRIED  
OR DISCHARGED A FIREARM?

>> I THINK THEY COULD.

>> BUT THEY -- THEY DIDN'T IN  
THIS CASE.

>> HAVE THEY DONE THAT?  
I MEAN IS THAT AS A, YOU KNOW,  
IN YOUR EXPERIENCE, IS  
10-20-LIFE COME IN, HAVE THEY  
PLED THE INFORMATION IN THE  
ALTERNATIVE?

>> NO.

MY EXPERIENCE SEEING THESE ARE  
THE MAJORITY OF TIME THE  
STATE'S VERY SPECIFIC IN THEIR  
CHARGE.

>> THEY SAY DISCHARGE?

>> THEY SAY -- IF THAT'S WHAT  
THEY'RE ALLEGING.

I MEAN, I'M NOT SAYING IN EVERY  
CASE BUT CERTAINLY THE ONES  
THAT I'M FAMILIAR WITH, THAT'S  
USUALLY THE LANGUAGE THAT COMES  
ABOUT.

I'M CONCERNED THAT, AND PART OF  
THE ARGUMENT THAT I'M MAKING  
TODAY IS, IS REALLY KIND OF  
ALMOST A PUBLIC POLICY  
ARGUMENT.

THIS WHOLE CONCEPT OF IMPLICIT  
AMENDMENT IS SOMETHING THAT'S  
VERY, VERY DANGEROUS, AND I  
DON'T THINK THAT THIS COURT  
SHOULD PUT ITS STAMP OF  
APPROVAL IN THAT.

THE STATE HAS THE SOLE POWER  
TO CHARGE PEOPLE.

THEY AND THEY ALONE MAKE THE  
DECISIONS TO ALLOW A DEFENDANT  
OR A TRIAL COURT TO GET UP  
THERE AND SAY THROUGH THEIR

SPEAKING AT A PLEA HEARING OR  
WHATEVER TO CONSTITUTE AN  
IMPLICIT AMENDMENT --

>> [INAUDIBLE]

>> PARDON ME?

>> EVERYBODY AGREES [INAUDIBLE]  
STIPULATION, THE DEFENSE LAWYER  
EXPLAINED WHAT THE STIPULATION  
WAS, TRIAL COURT ASKED, THEY  
DIDN'T ACCEPT THAT, AND THE  
STATE SAID YES.

SO EVERYBODY KNEW WHAT WAS GOING  
ON.

>> RIGHT.

BUT AGAIN --

>> SPECIFICALLY, UNEQUIVOCALLY  
AGREED TO, ISN'T THAT CORRECT?

>> YES.

THIS WAS A VERY INTERESTING CASE  
BECAUSE THE PLEA HEARING, IF  
YOU'LL NOTICE, THE STATE  
ATTORNEY WAS ABSOLUTELY SILENT  
THROUGHOUT THE ENTIRE PLEA  
HEARING.

THE ONLY THING SHE SAID WAS AT  
THE VERY END, YES, BASICALLY.

WE AGREE TO THAT.

I MEAN, SHE DIDN'T SET FORTH THE  
TERMS OF THE PLEA AGREEMENT,  
WHICH THEY USUALLY DO.

SHE DIDN'T SET FORTH --

>> WELL, THIS WAS REALLY A PLEA  
THAT WAS QUITE FAVORABLE TO THE  
DEFENDANT.

SO THE DEFENSE ATTORNEY IN THIS  
CASE SEEMED VERY EAGER TO GET,  
TO GET YOUR CLIENT A 20-YEAR  
SENTENCE AS OPPOSED TO A LIFE  
SENTENCE.

>> YES.

>> AND THE STATE ATTORNEY WAS  
WILLING TO GO ALONG WITH THAT.

>> AGAIN, I'M NOT DISPUTING  
THAT, WHAT DEFENSE COUNSEL SAID  
HERE.

BUT THE QUESTION ARISES, SHOULD  
ANYONE BE ABLE TO STIPULATE TO  
SOMETHING THAT ISN'T ALLOWED  
UNDER THE LAW?

>> SEEMS TO ME YOU MIGHT HAVE A  
VERY GOOD AND EFFECTIVE  
ASSISTANCE OF COUNSEL CLAIM, BUT  
WHETHER OR NOT YOU -- I'M JUST  
DISTURBED THAT EVERYONE HERE

REALLY UNDERSTOOD WHAT WAS GOING ON TO THE POINT THAT WE EVEN REFER BACK TO THE AFFIDAVIT AS OPPOSED TO THE INFORMATION THAT WAS FILED, AND IT'S CLEAR THAT THAT AFFIDAVIT HAD THE DISPLAY AND USE OF A FIREARM.

>> OKAY.

JUSTICE QUINCE, I WILL SAY THIS: THE PLEA IN THIS CASE OCCURRED, I BELIEVE IT WAS JULY 3RD. THE JACKSON CASE CAME OUT THE FOLLOWING AUGUST 27TH, AND SHORTLY THEREAFTER IS WHEN THE MOTION WAS FILED.

SO THE JACKSON CASE WASN'T OUT THERE AT THE TIME OF THE PLEA. A GOOD ATTORNEY WILL SAY, OH, THIS NEEDS TO BE DONE. NOW, THE ATTORNEY WHO FILED THE MOTION TO CORRECT THE SENTENCE IS NOT THE SAME TRIAL ATTORNEY.

>> LET ME GO BACK TO SOMETHING YOU SAID.

YOU SAID YOU CAN'T STIPULATE TO WHAT IS NOT ALLOWED UNDER THE LAW.

NOW, I AGREE WITH THAT, THAT IS IF A SENTENCE IS UNDER THE LAW IS THE MAXIMUM SENTENCE IS 20 YEARS OR 15 YEARS AND SOMEHOW SOMEBODY ENDS UP PLEADING TO A 40-YEAR SENTENCE, WE HAVE MANY CASES THAT SAY THAT CAN'T BE DONE.

OR IF IN THIS CASE, YOU KNOW, THEY CHARGED, YOU KNOW, ARMED ROBBERY, AND HE ENDED UP PLEADING TO ANOTHER FELONY, YOU KNOW, I DON'T KNOW IF THEY CHARGED ATTEMPTED FELONY MURDER?

>> HE WAS --

>> WELL, HE WAS THAT.

OKAY.

LET'S JUST ASSUME THEY ONLY CHARGED ARMED ROBBERY, AND HE PLED TO ANOTHER CRIME THAT WASN'T CHARGED.

WE NOW HAVE ANOTHER SITUATION. THAT'S TRULY WHERE THE ILLEGALITY COMES IN. BUT HERE YOU'RE TALKING ABOUT A SENTENCE ENHANCEMENT.

I SEE THAT AS BEING A VARIANCE BETWEEN THE INFORMATION AND WHAT HE PLED TO, AND YOU'RE SAYING THAT'S FATAL.

AND WE'RE ALL SAYING, BUT WAIT A SECOND, HE WAS ON NOTICE.

EVERYBODY WAS ON NOTICE.

THEY WERE GOING UNDER THE MANDATORY 10-20-LIFE STATUTE, AND THAT'S WHAT THE DEFENSE LAWYER WANTED TO GET THE BEST DEAL FOR HIS CLIENT.

SO I DON'T SEE IT AS THE SAME AS YOU CAN'T STIPULATE TO WHAT IS NOT ALLOWED UNDER THE LAW.

SO COULD YOU ADDRESS THE DISTINCTION BETWEEN THINGS THAT WE'VE SAID ARE TRULY ILLEGAL WHERE SENTENCES ARE AGREED TO IN EXCESS OF THE MAXIMUM VERSUS THIS SITUATION.

>> NOW, OF COURSE, THIS COURT CAN DISAGREE WITH THE OTHER COURTS, BUT THE COURTS HAVE HELD THAT THE ENHANCEMENT PROVISIONS OF THE 10-20-LIFE ARE ESSENTIAL ELEMENTS OF THE CRIME.

THEY MUST BE ALLEGED TO SUPPORT THE IMPOSITION OF THAT ENHANCEMENT.

THEREFORE, IF YOU'RE GOING TO GET THE 25-LIFE, YOU MUST ALLEGE, DISCHARGE GREAT BODILY HARM.

IF YOU DON'T ALLEGE THAT AND IT'S IMPOSED, THE FOURTH DISTRICT CERTAINLY IN JACKSON AND AGREEING WITH JACKSON HAVE HELD THAT'S AN ILLEGAL SENTENCE. SO THAT'S SOMETHING THAT CAN'T BE DONE UNDER THE LAW.

SO I SUGGEST THAT IT IS THE SAME THING AS --

>> EVEN WITH THE CONSENT OF THE DEFENDANT?

>> I DON'T BELIEVE THE --

>> WHAT'S THE CASE THAT SAYS EVEN WITH THE CONSENT OF THE DEFENDANT?

>> I BELIEVE I'VE CITED IN THE --

>> BECAUSE YOU'VE AGREED THAT IF THE STATE ATTORNEY WANTED TO

AMEND IT TO CONFORM TO THE AFFIDAVIT IT, THAT THAT COULD HAVE BEEN DONE, AND I THINK YOU'VE AGREED THAT IF IT WAS MADE EXPLICIT AT THE TIME, THAT IS, IF IT WAS BROUGHT UP THAT THE DEFENDANT ALSO COULD HAVE WAIVED --

>> RIGHT, RIGHT.

OKAY.

THE CASES ARE -- JACKSON SAYS THAT A DEFENDANT CANNOT AGREE TO AN ILLEGAL SENTENCE.

MOBLEY SAYS THAT AND LEAVITT OUT OF THE FIRST DISTRICT.

>> AND WHAT IS YOUR DEFINITION OF AN ILLEGAL SENTENCE?

>> A SENTENCE THAT, WELL, I'LL GO WITH WHAT THE FOURTH SAID IN JACKSON, A SENTENCE THAT IMPOSES A MANDATORY MINIMUM UNDER THE 10-20-LIFE THAT IS NOT SUPPORTED BY THE CHARGING DOCUMENT.

>> WHAT HAVE WE, THIS COURT, SAID IS AN ILLEGAL SENTENCE?

[LAUGHTER]

>> WELL, ON VARIOUS OCCASIONS THIS COURT HAS SAID THAT AN ILLEGAL SENTENCE IS ONE THAT EXCEEDS THE STATUTORY MAXIMUM, IS ONE THAT --

>> WELL, WE'VE HAD A DEFINITION THAT --

>> THAT NO JUDGE IN COURT, NO COURT IN THE WORLD COULD -- OR IN THE UNIVERSE COULD IMPOSE. AND ACCORDING TO THE FOURTH, FIRST, AND SECOND DISTRICTS THIS IS ONE OF THOSE.

THEY HAVE NO PROBLEM WITH CALLING THIS AN ILLEGAL SENTENCE WHEN THAT IS DONE.

>> YOU ARE WELL IN YOUR REBUTTAL IF YOU WOULD LIKE TO RESERVE A MINUTE OR SO.

>> AND I WOULD, BUT I'D MAKE ONE LAST COMMENT.

THE FIFTH IN THEIR OPINION SAID THE RULES OF PROCEDURE ARE NOT TO BE USED AS A MEANS TO ESCAPE JUSTICE, BUT THEY'RE CALLED RULES OF PROCEDURE, NOT SUGGESTIONS OF PROCEDURE.

IT'S CASE LAW THAT SAYS THESE  
ARE ESSENTIAL ELEMENTS.

THEY'RE NOT SUGGESTIONS, IT'S  
LAW.

THE STATE SHOULD HAVE TO FOLLOW  
THESE, TOO, AND TO PERMIT THE  
STATE TO JUST GET BY ON SLOPPY  
PLEADING OR WHATEVER, THIS COURT  
SHOULD NOT COUNTENANCE THAT.

THANK YOU.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, I'M  
ASSISTANT ATTORNEY GENERAL MARY  
JOLLEY REPRESENTING THE COURT IN  
THIS CASE.

THE KEY FACT IS THAT THIS IS A  
PLEA --

>> LET'S LOOK AT THIS  
INFORMATION.

>> SURE.

>> YOU GO THROUGH THE  
INFORMATION THAT WAS FILED IN  
THIS CASE --

>> UH-HUH.

>> AND YOU'VE GOT TWO COUNTS.

>> CORRECT.

>> THE FIRST ONE WHICH TALKS  
ABOUT AN ACT THAT IS NOT AN  
ESSENTIAL ELEMENT OF ARMED  
ROBBERY AND/OR ROBBERY AND THAT  
COULD HAVE BUT DID NOT CAUSE THE  
DEATH OF THE VICTIM NEVER SAYS  
OF THIS ACT THE PERSON WAS SHOT.  
AND SO THERE'S NO ALLEGATION IN  
THAT PARTICULAR COUNT ABOUT THE  
USE OF A FIREARM.

>> CORRECT.

>> AND THEN YOU GET TO THE  
SECOND COUNT OF THE INFORMATION,  
AND IT SAYS, AND IN THE COURSE  
OF COMMITTING THE ROBBERY, RICKY  
BRADLEY WAS IN POSSESSION OF AND  
CARRIED A FIREARM.

NEITHER ONE OF THOSE COUNTS  
WOULD PUT A DEFENDANT ON NOTICE  
THAT WE ARE TALKING ABOUT A USE  
OR DISCHARGE OF THE FIREARM AS  
OPPOSED TO SIMPLY HAVING THE  
FIREARM IN HIS POSSESSION.

AND SO WHY ISN'T THIS A  
DEFECTIVE AND FATAL?

>> I DON'T THINK --

>> INFORMATION?

>> IT'S OUR POSITION THAT ONE  
CAVEAT ON THAT IS THAT AT THE  
END OF COUNT TWO, WHICH IS WHERE  
THE DEFENDANT RECEIVED THE  
20-YEAR MINIMUM MANDATORY, HE  
DIDN'T RECEIVE ID FOR --

>> SUBSECTION 2 HAS THREE  
SECTIONS.

>> CORRECT.

>> THE FIRST ONE IS ABOUT  
POSSESSION OF THE FIREARM.

>> CORRECT.

>> AND THEN THE OTHER TWO TALK  
ABOUT USE OF THE FIREARM,  
DISPLAY OF THE FIREARM, AND THEN  
WHETHER THERE'S SERIOUS BODILY  
INJURY.

SO HOW DOES THAT HELP TO PUT A  
DEFENDANT ON NOTICE THAT OF  
WHICH PART OF 775.0872 THAT  
YOU'RE TALKING ABOUT?

>> IT PUTS IT ON NOTICE, AND WE  
HAVE TO LOOK AT THIS, JUSTICE  
QUINCE, IN TERMS OF THE FACTS OF  
THIS CASE IN TERMS OF A PLEA.  
AND THE ONLY WAY THAT HE CAN  
FIND A VIOLATION, THIS COURT  
TELLS YOU YOU CAN WAIVE  
DEFECTIVE INFORMATION.

IN A CASE THAT I CITED IN MY  
BRIEF, DuBOISE, THEY'VE WAIVED  
MATERIAL ELEMENT OF A CRIME, AND  
THAT'S BECAUSE THERE WAS A  
REFERENCE TO THAT STATUTORY  
CRIME AS IT'S LISTED IN THE  
CHARGING DOCUMENT THAT THAT'S  
ENOUGH TO PUT A DEFENDANT ON  
NOTICE.

THE INFORMATION'S NOT DEFECTIVE  
COUPLED WITH THE FACT THAT THIS  
PLEA WAS BASED SPECIFICALLY ON  
DISCHARGE.

FOR THIS DEFENDANT TO COME  
FORWARD AND ARGUE BEFORE THIS  
COURT THAT HIS SENTENCE IS  
ILLEGAL BASED UPON A  
CONSTITUTIONAL VIOLATION WHICH  
HAS TO BE DUE PROCESS, HE HAS TO  
SHOW LACK OF NOTICE AND  
PREJUDICE WHICH HE CAN'T SHOW  
HERE.

HE'S NOT ENTITLED TO RELIEF

UNDER 3800A BASED UPON AN  
ILLEGAL SENTENCE.

>> SO ARE YOU SAYING HE HAS TO  
SHOW BOTH OF THOSE?

>> ABSOLUTELY.

>> LACK OF NOTICE AND PREJUDICE?  
DO YOU AGREE THERE WAS LACK OF  
NOTICE HERE?

>> I DISAGREE BECAUSE WITH THIS  
AND THE CHARGING INFORMATION AND  
THE BASIS OF HIS NEGOTIATED PLEA  
WHICH WAS STIPULATED TO  
DISCHARGE, THERE CAN'T BE ANY  
LACK OF NOTICE.

HE DIDN'T KNOW THAT DISCHARGE  
WAS PART OF -- THEN HIS PLEA  
BECOMES NOT KNOWING.

HE'S NEVER ALLEGED THAT, SO HOW  
CAN HE SAY NOW THERE'S NO NOTICE  
OR PREJUDICE?

>> SO YOU'RE SAYING THAT SINCE  
STATE V. GRAY THIS COURT HAS  
EXPLAINED THAT THERE COULD BE A  
WAIVER OF A DEFECT?

>> DuBOISE V. STATE, WHICH I  
HAVE QUOTED IN MY BRIEF AS BEING  
QUOTED FROM ANOTHER DCA OPINION,  
FAILURE TO INCLUDE AN ESSENTIAL  
ELEMENT OF A CRIME DOES NOT  
NECESSARILY RENDER AN INDICTMENT  
WHEN INDICTMENT REFERENCED  
SPECIFIC SECTION OF THE CRIMINAL  
CODE IS INCLUDED AND THAT  
SUBSEQUENTLY, IT'S NOT IN MY  
BRIEF, SO I WON'T RELY ON IT,  
BUT I'LL MENTION FORD V. STATE,  
ANOTHER DECISION OUT OF THIS  
COURT RELATING TO ELEMENTS OF A  
SUBSTANTIVE CRIME, NOT EVEN A  
SENTENCING STATUTE.

IT'S OUR POSITION THAT IT'S NOT  
FUNDAMENTAL, IT'S NOT DEFECTIVE,  
AND I THINK THIS COURT ALSO  
POINTED OUT DUE EMOTION FOR A  
STATEMENT OF PARTICULARS IF  
YOU'RE CONCERNED.

AND INFORMATION IS TO GIVE A  
DEFENDANT NOTICE SO HE CAN  
PREPARE A DISSENT AT TRIAL AND  
THAT THEY HAVE SUFFICIENT  
INFORMATION TO --

>> BUT THIS PROBLEM, YOU KNOW,  
AGAIN, AND I'M SYMPATHETIC ON  
THIS.

BUT THE STATE, YOU KNOW, THEY KNOW WHAT THE CRIME IS, AND INSTEAD OF SAYING CARRY OR DISCHARGE, THEY SIMPLY SAY CARRY.

AND IT'S LIKE WHAT'S THE STATE THINKING?

THEY KNOW THE FACTS OF THE CRIME, AND THEY'RE INTENDING TO CHARGE AN ENHANCEMENT WHICH IS, YOU KNOW, AGAIN, YOU WOULD AGREE IF IT HAD BEEN -- LET ME ASK YOU THIS WAY, THERE WAS NO MENTION OF THAT ENHANCEMENT STATUTE, COULD THE STATE AFTER THE TRIAL -- AND THERE WAS A TRIAL.

>> OKAY.

>> COULD THE STATE HAVE ASKED FOR AND RECEIVED THE MANDATORY MINIMUM UNDER THE STATUTE?

>> UNFORTUNATELY, THE DCAS EXCLUDING THE THIRD HAS HELD IN THE CONTEXT OF A TRIAL THAT THERE HAS TO BE A JURY FINDING, AND IT HAS TO BE ALLEGED IN THE INFORMATION.

>> OKAY.

SO THERE YOU WOULD HAVE HAD, YOU'RE SAYING, AND WE DON'T NECESSARILY NEED TO DISAPPROVE THE ONES WHERE THERE'S A TRIAL, THAT WHERE THE DEFENDANT ADMITS TO THE ESSENTIAL ELEMENT, IS THAT DEFENDANT THEN, YOU KNOW, IT'S NOT A MISSING ELEMENT HERE. OKAY, SO LET'S JUST, AGAIN, SAY IT'S A PLEA, BUT NOTHING'S ALLEGED ABOUT THE MANDATORY MINIMUM.

BUT HE PLEADS TO THE MANDATORY MINIMUM, AGAIN, TO GET A BETTER DEAL.

>> CORRECT.

>> IS THAT, IS THAT THE SAME THING, THAT IS, THAT NOTHING ABOUT THE MANDATORY MINIMUM IS IN THE INFORMATION?

>> UH-HUH.

>> ALL RIGHT, WHICH YOU'VE SAID, OR YOUR OPPONENT SAID THE DCAs HAVE SAID THAT'S AN ESSENTIAL ELEMENT, BUT NOTHING ABOUT IT IS IN THERE, BUT THE DEFENDANT PLEADS TO IT.

CAN THAT BE DONE?

>> YES, ABSOLUTELY.

>> OKAY.

SO IT'S NOT THAT THIS COULD BE MISLEADING, WELL, HE'S CARRIED -- YOU'RE THINKING THIS IS BETTER, ACTUALLY, WHEN YOU REFERENCE THE ENHANCEMENT EVEN THOUGH YOU'RE ONLY REFERENCING A CARRYING.

>> YEAH.

WE CITE TO THE STATUTE AS A WHOLE.

YOU KNOW, THE CASE LAW HAS EVOLVED AND ACTUALLY, JUSTICE KENNEDY, YOU NOTED IN A DIFFERENT ROGERS CASE OUT OF THE SECOND IN A FOOTNOTE THAT THIS NOTION THAT THE MINIMUM MANDATORY FACT THAT'S REQUIRED TO IMPOSE HAS BECOME AN ELEMENT OF THE CRIME.

LET'S UNDERSTAND SOMETHING, THE STATE DIDN'T HAVE TO PROVE DISCHARGE TO PROVE ARMED ROBBERY HERE.

THAT'S THE CHARGE AND THE CONVICTION FOR IT.

SO THE STATE'S CONVICTION IS CLEAR IN THE CONTEXT OF A PLEA. THE IMPOSITION OF THE MINIMUM MANDATORY 10-20-LIFE, MOBLEY, JACKSON, AND THE CASE THAT WE'RE HERE, AND BRADLEY.

MOBLEY IS A 3800A CASE, JACKSON, AGAIN, THE CASE THAT'S UP HERE ON CONFLICT IS DIFFERENT BECAUSE IT'S RAISED IN 3800B WHICH, AGAIN, GOES BACK TO MY ARGUMENT THE SENTENCE IS NOT ILLEGAL. ANY SENTENCING ERROR THIS COURT CAN REVIEW.

SO I WANTED TO REITERATE THERE'S NO CONFLICT ERROR IN JACKSON -- WE DO HAVE HERE.

>> CAN I JUST GO BACK BECAUSE YOU SAID A LOT OF THOUGHTS, YOU KNOW, ON THIS.

I JUST WANT TO MAKE SURE I UNDERSTAND THE PARAMETERS. AGAIN, LET ME -- MAYBE I'M CHANGING THE HYPOTHETICAL.

>> OKAY.

>> NOTHING IS CHARGED IN THE

INFORMATION ABOUT 10-20-LIFE.

>> OKAY.

>> IT'S NOT A PLEA.

IT GOES TO TRIAL, ALL RIGHT?

AND THE PERSON'S CONVICTED OF  
ARMED ROBBERY.

THE JUDGE GOES TO SENTENCE.

THEY SENTENCE THEM TO LIFE IN  
PRISON WITH A MANDATORY 20-YEAR  
SENTENCE.

WE'RE ONLY REALLY TALKING ABOUT  
THE ENHANCEMENT.

>> RIGHT.

>> IS THAT LEGAL OR ILLEGAL  
SENTENCE?

>> STATE'S POSITION IS THAT'S A  
LEGAL SENTENCE.

IF THEY PROVED THE CHARGE AND  
THE FACTS SUPPORT IT, THEY CAN  
BE SENTENCED --

>> SO YOU'RE SAYING THIS IS A  
MORE FUNDAMENTAL THING WHICH  
YOU'RE SAYING 10-20-LIFE DOESN'T  
HAVE TO BE ALLEGED IN THE  
INFORMATION?

>> YES.

THE DCAs DISAGREE.

>> IS THAT CORRECT?

WE DON'T HAVE TO REACH THAT  
ISSUE HERE?

>> WE DON'T, NO.

YOU DON'T HAVE TO, PARTICULARLY  
IN THIS CASE WHICH IS AN  
UNKNOWING AND VOLUNTARY PLEA.  
BUT REFERRING TO THAT FOOTNOTE  
IN ROGERS THE CASE LAW, I THINK  
IT ASSUMED THAT'S WHAT THE  
LEGISLATURE IS INTENDING, BUT WE  
DON'T HAVE TO REACH THAT HERE IN  
TERMS OF A TRIAL AND JURY  
FINDING.

BUT IT'S OUR POSITION THAT A  
10-20-LIFE IS NOT AN ELEMENT OF  
ROBBERY, THAT'S PLAIN.

IT DOESN'T BECOME AN ELEMENT OF  
THE ACTUAL CRIME.

THE PROBLEM IN JACKSON AND  
THAT'S COMPOUNDED IN MOBLEY  
WHICH IS THE ONLY OTHER PLEA  
CASE WHICH IS OUT OF THE FIRST  
IS WHAT THEY'RE DOING HERE IS  
THEY'RE FINDING BECAUSE  
DISCHARGE IS NOT LISTED IN THE

INFORMATION, THE SENTENCE IS BECOMING ILLEGAL.

AND I THINK WHEN THIS COURT LED OFF WITH ITS QUESTIONING, IT'S, OKAY, I WANT TO KEEP MY PLEA TO TWO FIRST-DEGREE PENALTIES PUNISHABLE BY LIFE, BUT I ONLY WANT A TEN-YEAR SENTENCE. THAT ERADICATES THIS NOTION OF A DOUBLE JEOPARDY PROBLEM. HE CAN'T HAVE THE BENEFIT OF HIS PLEA BARGAIN, BUT THE STATE -- BUT THE PLEA HAS TO BE WITHDRAWN.

AND I THINK THAT THE REMEDY IN JACKSON OR THE RESOLUTION IN JACKSON WHEN THEY FOUND THIS ERROR, WHICH WE DON'T THINK THERE EVEN IS ONE, AGAIN, COMPOUNDS THE PROBLEM. THERE'S NO RELIEF UNDER 3800A. MOVE TO WITHDRAW YOUR PLEA BECAUSE IT'S NOT KNOWING BECAUSE I DIDN'T KNOW THAT DISCHARGE WAS A PART OF IT WHICH CLEARLY UNDER THE FACTS OF THIS CASE IT WAS STIPULATED TO, IT WAS THE BASIS FOR THIS NEGOTIATION.

THAT'S THE ONLY AVENUE THAT CAN BE DONE IS FILE A 3800 AND SAY --

>> THE APPELLANT ARGUING HERE THAT THIS IS AN ILLEGAL SENTENCE ACCORDING TO SOME OF THE DISTRICT COURT CASE LAW THAT A SENTENCE THAT IS IMPOSED, THAT IMPOSES A MANDATORY MINIMUM OR AN ENHANCEMENT --

>> CORRECT.

>> AND THAT ENHANCEMENT HAS NOT BEEN PLED BECOMES AN ILLEGAL SENTENCE.

>> THAT'S HIS ARGUMENT, AND I DON'T THINK THAT COMPORTS WITH WHAT THIS COURT HAS DEFINED AN ILLEGAL SENTENCE TO BE.

WE ALL CONSIDER IT FOR 3800A AS A SENTENCE THAT EXCEEDS THE STATUTORY MAXIMUM.

WELL, A 20-YEAR SENTENCE CLEARLY DOESN'T EXCEED THE LIFE SENTENCE HE COULD GET, SO WE'RE NOT UNDER THAT.

DOES IT HAVE A CONSTITUTIONAL

ASPECT WHICH I CITE IN MY BRIEF  
THIS COURT HAS USED IN THE  
LANGUAGE IN WRIGHT, IS IT A  
CONSTITUTIONAL PROBLEM?  
THERE'S NO CONSTITUTIONAL  
PROBLEM BECAUSE THERE'S NO DUE  
PROCESS PROBLEM.

SO THE SENTENCE IS NOT ILLEGAL  
UNDER, UNDER 3800A, SO IT'S JUST  
NOT AN AVENUE FOR RELIEF HERE.  
AND, AGAIN, WE WANT THE PLEA TO  
BE UPHELD, BUT I WANT MY  
SENTENCE EVEN LOWER.

THE NOTION -- THIS IS A CLASSIC  
INSTANCE WHERE LET'S GET OUR  
CAKE AND EAT IT, TOO, WHEN YEARS  
LATER, WELL, MONTHS LATER AFTER  
JACKSON CAME AT IT, CANDIDLY,  
OH, THAT ONE WORD IS NOT IN  
THERE.

>> IT WAS A PLEA JUST TO A  
20-YEAR SENTENCE?

>> YES, HE RECEIVED TWO  
CONCURRENT 20-YEAR SENTENCES --  
>> SO THE IDEA BEING THAT HE HAS  
TO -- WHICH IS WHAT THE DEFENSE  
LAWYER WAS VIGOROUSLY ARGUE --  
HE HAD TO SERVE HIS 20 YEARS.

>> CORRECT.

AND THE DEFENSE ATTORNEY SAID HE  
KNOWS HE WILL HAVE TO SERVE DAY  
FOR DAY 20 YEARS --

>> AND WHAT THEY'RE REALLY  
SAYING, WHAT THEY'RE SAYING IS  
HE KEEPS HIS 20-YEAR SENTENCE,  
BUT, WHAT, HE CAN BE ELIGIBLE --  
I MEAN, I GUESS I NEED TO ASK  
HIM WHAT THE RELIEF WOULD BE.

>> I THINK THE RELIEF IS TO DROP  
DOWN TO JUST TEN YEARS.

>> WELL, IT WOULD HAVE TO BE A  
20-YEAR SENTENCE.

>> WELL, THEY'RE CONCURRENTLY.  
BUT THAT'S NOT A MINIMUM  
MANDATORY.

>> AS A PRACTICAL MATTER, I  
MEAN, I KNOW THESE ARE IMPORTANT  
ISSUES.

THE WAY THE DOC GOES THESE DAYS  
WITH A 20-YEAR SENTENCE, IT'S  
REALLY UNLIKELY HE'D GET OUT  
MUCH MORE THAN 20 YEARS.

>> MUCH MORE THAN 20 YEARS.  
I THINK THE PROSECUTOR AT THE

3800A HEARING KIND OF  
RESTRUCTURED THE SENTENCE, THAT  
HE WOULD STILL HAVE TO SERVE  
ALMOST THE 20 YEARS.

>> MUCH ADO ABOUT NOTHING, BUT  
WE'RE NOT TALKING ABOUT  
GET-OUT-OF-JAIL-FREE CARD HERE.

>> BUT MUCH --

>> CORRECT?

>> CORRECT.

BUT MUCH ADO ABOUT SOMETHING IN  
THAT WE HAD TWO LIFE TERMS ON  
THE TABLE HERE, AND THE STATE  
CAME THROUGH AND NEGOTIATED AND  
AGREED TO THIS PLEA DEAL.

HE CAN TALK ABOUT HOW THE  
PROSECUTOR DIDN'T SAY ANYTHING  
AT THE PLEA HEARING, BUT THE  
DEFENSE ATTORNEY SAYS WE HAD  
SIGNIFICANT, EXTENSIVE PLEA  
NEGOTIATING HERE.

SO THIS COMES TOGETHER AS A  
NEGOTIATED AGREEMENT.

WELL, BUT THE SENTENCING PART'S  
NOT RIGHT.

WELL, THEN THE WHOLE THING'S GOT  
TO COME DOWN, AND HE HAS TO COME  
BACK AND ANSWER TO TWO LIFE  
TERMS --

>> BUT THE POTENTIAL FOR THIS TO  
COME UNRAVELED WITH THE STATE'S  
MISTAKE.

>> THE STATE --

>> THE STATE KNOWING WHAT THE  
FACTS HAPPENED IMMEDIATELY UPON  
THE HAPPENING OF THE CRIME.

THE STATE IS THE ONE THAT HAD  
THE OBLIGATION TO ALLEGE WHAT  
THEY KNEW, WHAT THEY WERE GOING  
TO RELY ON.

AND THAT IS THAT THERE WAS A  
DISCHARGE.

BECAUSE THERE IS A DIFFERENT  
CONSEQUENCE BETWEEN MERE  
POSSESSION OR DISCHARGE AND, OF  
COURSE, THE SERIES BODILY INJURY  
OR DEATH THAT MAY FLOW FROM THAT  
TOO.

BUT THE STATE IS THE ONE -- IN  
OTHER WORDS, THE STATE IS NOT  
COVERED IN GLORY IN THIS CASE BY  
ITS PLEADING HERE.

A CAREFUL PROSECUTOR SHOULD HAVE  
ALLEGED THAT THERE WAS A

DISCHARGE OF THIS WEAPON IF THEY WERE GOING TO RELY ON THAT ASPECT OF IT IN AN ENHANCED SENTENCE.

>> ABSOLUTELY.

I DON'T DISAGREE THAT THAT -- IF THAT HAD BEEN ALLEGED PROPERLY --

>> AND THERE COULD BE A FAR DIFFERENT OUTCOME TO THIS CASE HAD THIS THING SIMPLY GONE TO TRIAL UNDER AN INFORMATION LIKE THIS, AND THEN WE'RE TALKING ABOUT THIS BEING BROUGHT UP AFTER THE SAME SENTENCE BUT AFTER A TRIAL IN WHICH THERE WAS NO PLEA OR STIPULATION.

>> UNDER THE POINT OF CASE LAW, I AGREE, JUSTICE ANSTEAD. WE HAVE TO BE CAREFUL --

>> YOU ARE RELYING HERE ENTIRELY ON THE FACT THAT IT WAS VERY EXPLICITLY MADE CLEAR WITH THE AGREEMENT OF BOTH PARTIES AS TO WHAT THE FACTS AND CIRCUMSTANCES WERE AND WHAT THE POTENTIAL SENTENCE COULD BE.

>> CORRECT.

WITH THE CAVEAT THAT, AND I POINT THIS COURT TO THE KOCH DECISION OUT OF THE FOURTH DCA WHICH COMES OUT LATER WHERE THEY FOUND THE REFERENCE TO THE STATUTE WAS ENOUGH GIVEN THE FACTS OF THAT CASE.

THAT'S THE ONLY ONE THAT I COULD FIND THAT SOUNDED -- AND MY RECOLLECTION IS A LITTLE OFF ON THAT --

>> WAS THAT A PLEA CASE?

>> I KNEW YOU WERE GOING TO ASK ME THAT, AND I TRIED TO FIND IT IN MY PILE RIGHT BEFORE THE ARGUMENT.

BUT I JUST WANT TO DIRECT THE COURT THAT IT'S CITED IN MY BRIEF.

IT CAN SATISFY LISTING IT IN THE STATUTE, CAN SATISFY THAT CONCERN.

>> I THINK THE PART THAT I'M MOST -- THE ONLY PART THAT I'M REALLY CONCERNED ABOUT IS THAT WE END UP APPROVING A CONCEPT OF

IMPLICIT AMENDMENT OF INFORMATION BECAUSE, I MEAN, THIS ONE WE ALL THINK, AGAIN, THESE ARE FACTS AND IT DOESN'T SEEM JUST TO ALLOW HIM TO GET ANYTHING OTHER THAN WHAT HE BARGAINED FOR BECAUSE WE'RE NOT TALKING ABOUT A DIFFERENT CRIME. YOU AGREE THAT REALLY THIS IDEA OF AN IMPLICIT AMENDMENT OF INFORMATION IS REALLY NOT WHERE WE'RE GOING HERE.

WHAT WE'RE SAYING IS THEY PLED IT SUFFICIENTLY, AND BY HIM HAVING PLED TO SPECIFIC MANDATORY MINIMUM, THE INFORMATION, THERE WAS NO DEFECT IN THE INFORMATION.

>> CORRECT.

>> THAT, TO ME, IS A LITTLE DIFFERENT BECAUSE OTHERWISE WE DON'T WANT THE STATE WITH SLOPPY INFORMATION DRAFT, AND, WELL, HE PLED TO THAT OTHER CRIME, SO WE DIDN'T HAVE TO AMEND THE INFORMATION.

>> I AGREE WITH THAT.

THE FIFTH DCA DID RELY ON CASE LAW, THOUGH, OUT OF THE SECOND AND THE FOURTH.

THERE'S A LINE OF CASES THAT HAVE NOTED BY AGREEMENT THAT THERE CAN BE AN IMPLICIT AMENDMENT.

>> WE DON'T NEED TO GET THERE BECAUSE, AGAIN, I DON'T KNOW HOW FAR YOU'D GO WITH IT.

YOU WOULDN'T WANT TO GO FROM A CRIME THAT WAS TO SAY IF SIMPLE ROBBERY WAS CHARGED, AND HE ENDS UP PLEADING TO ARMED ROBBERY AND WASN'T CHARGED, YOU KNOW, AT SOME POINT YOU SAY JUST WHAT JUSTICE ANSTEAD'S SAYING, THE STATE SHOULD KNOW HOW TO PLEAD AND PUT LANGUAGE AND INFORMATION.

>> I AGREE.

THAT, CLEARLY, WE WANT TO START CLEANLY WITH A PROPERLY-PLED INFORMATION, BUT THAT'S NOT A PER SE REVERSIBLE.

YOU STILL HAVE TO LOOK AT THEM AT A FACTUAL BASIS OR KNOWINGLY

ENTER A PLEA.  
SO IT CAN'T BE PIGEON-HOLED INTO  
A BRIGHT LINE.  
WHAT HAS TO BE LOOKED AT IS THE  
TERMS OF THE FACTS OF EVEN CASE,  
AND THIS COURT HAS FOUND DEFECTS  
IN INFORMATION ARE CERTAINLY  
WAIVEABLE.  
THERE ARE REMEDIES FOR A  
STATEMENT OF PARTICULARS IF  
THEY'RE CONCERNED BEFORE THEY GO  
TO TRIAL --  
>> UNDER YOUR ARGUMENT HOW,  
THEN, CAN THIS CASE OUT OF THE  
FIFTH AND JACKSON LIVE OUT THERE  
SIDE BY SIDE?

>> THEY CAN'T.  
>> SO THERE IS NOT -- SO  
ALTHOUGH YOU SAY WE SHOULD  
DISCHARGE, REALLY THERE'S A NEED  
TO RESOLVE.  
>> JACKSON DOESN'T EVEN DO A DUE  
PROCESS OR NOTICE ANALYSIS.  
IT'S A BLANKET, IT'S ILLEGAL,  
AND OUR POSITION, OBVIOUSLY BY  
THE TONE OF MY VOICE, IS THAT IS  
INCORRECT, AND MOBLEY COMPOUNDS  
THAT PROBLEM.  
THERE HAS TO BE A DETERMINATION  
OF PREJUDICE OR AN ILLEGALITY IN  
THE SENTENCE TO HAVE RELIEF  
UNDER 3800, AND IT'S NOT THERE.  
JACKSON AND MOBLEY ARE WRONG,  
AND THIS COURT SHOULD, YOU KNOW,  
DISAPPROVE MOBLEY AND UPHOLD  
BRADLEY.  
>> BUT YOU AGREE THERE IS A BIG  
DIFFERENCE BETWEEN 3800B AND A.  
>> CORRECT.  
>> AND ARE YOU SAYING THAT  
JACKSON WAS UNDER 3800B?  
>> WHAT HAPPENED WAS HE WENT TO  
TRIAL FOR TWO DAYS AND THEN  
DECIDED WHEN HE SAW THE TRIAL --  
I'M GOING TO GO AHEAD AND TAKE  
THAT PLEA.  
SO HE PLED AND FILED A DIRECT  
APPEAL AND FILED HIS RELIEF  
UNDER 3800B.  
OURS THERE WAS NO DIRECT APPEAL,  
SO THERE IS A JURISDICTIONAL  
DIFFERENCE.  
>> IT'S A DIFFERENCE IN THE

STANDARD FOR --  
>> ABSOLUTELY.  
>> FOR 3800B AND A.  
>> RIGHT, WHICH CAN MAKE --  
THERE'S NO EXPRESS AND DIRECT  
CONFLICT BECAUSE IT'S A  
DIFFERENT LEGAL ANALYSIS.  
REALLY IF THIS COURT DOESN'T  
WANT TO REACH IT, WE URGE YOU TO  
LOOK AT WHAT'S GOING ON WITH  
CASES LIKE JACKSON AND MOBLEY IN  
PLEA CASES WHERE THERE HAD NEVER  
BEEN AN ALLEGATION OF AN  
UNKNOWING PLEA, AND WE'RE STILL  
GOING TO TRY TO GET RELIEF.  
AND THAT, TO ME, IS AN ERROR.  
WE THANK YOU FOR YOUR  
CONSIDERATION AND ASK THAT YOU  
UPHOLD BRADLEY.  
THANK YOU.  
>> MR. BECKER, YOU'VE USED ALL  
OF YOUR TIME, BUT WE'LL GIVE YOU  
ONE MINUTE FOR REBUTTAL.  
>> I WANT TO CLARIFY WHAT WE ARE  
SEEKING.  
WE'RE NOT SEEKING TO HAVE THE  
SENTENCE REDUCED TO TEN YEARS,  
WE ARE SEEKING TO UPHOLD THE  
20-YEAR SENTENCES ON BOTH COUNTS  
BUT REDUCE THE MANDATORY MINIMUM  
ON THE SECOND COUNT TO TEN  
YEARS.  
>> WHY IS IT A BETTER SOLUTION  
ASSUMING THAT WE AGREE WITH YOU  
IS TO, IN FACT, HAVE THE PLEA  
DECLARED A NULLITY AND HAVE THEM  
GO TO TRIAL?  
>> I DON'T THINK THERE'S  
ANYTHING THAT --  
>> WELL, IT SEEMS TO ME THAT HE,  
THAT THE ARGUMENT CAN BE MADE  
THAT THIS WAS AN INVOLUNTARY  
PLEA BECAUSE HE PLED TO  
SOMETHING THAT WAS NOT ALLEGED  
IN THE INFORMATION.  
  
>> BUT HE PLED TO THE 20-YEAR  
SENTENCE.  
AND THAT'S WHAT HE GOT.  
>> BUT YOU'RE, BUT AS A PART OF  
THIS ARGUMENT IT SEEMS TO ME  
THAT YOU'RE SAYING HE PLED TO  
ROBBERY, JUST CARRYING -- AND  
CARRYING A WEAPON.

NOT ROBBERY DISPLAYING A WEAPON,  
CORRECT?

>> BECAUSE THAT'S THE ONLY THING  
THE STATE CHARGED.

AND THE STATE AND MS. JOLLEY  
MENTIONED THERE WERE SIGNIFICANT  
PLEA DISCUSSIONS.

IF THERE WERE SIGNIFICANT PLEA  
DISCUSSIONS, IT WOULD HAVE BEEN  
VERY SIMPLE FOR THE STATE TO  
COME IN THE DAY OF THE PLEA  
HEARING AND TO SAY, TO TIDY  
THINGS UP WE HAVE THIS AMENDED  
INFORMATION WHERE WE'VE PROPERLY  
CHARGED HIM.

>> THANK YOU VERY MUCH.

THANK YOU.

COURT IS NOW ADJOURNED FOR  
TODAY.

>> PLEASE RISE.