

>> GOOD MORNING.

THE NEXT CASE ON THE DOCKET IS
GARY CZAJKOWSKI V. STATE OF
FLORIDA.

>> ON BEHALF OF GARY CZAJKOWSKI,
THE FOURTH DISTRICT UPHELD THE
CONSTITUTIONAL VALIDITY OF
SECTION 838.16, THE UNLAWFUL
COMPENSATION TESTED AGAINST
PETITIONER'S CLAIMS STATUTE WAS
UNCONSTITUTIONAL AS APPLIED TO
HIM.

IN UPHOLDING THE VALIDITY OF A
38.16 THE DISTRICT USED A PUBLIC
EMPLOYEE ETHICS LAW, ONE ONE
2.132 THE 5 DEFINITIONS OF
ESSENTIAL ELEMENT OF THE CRIME
OF UNLAWFUL COMPENSATION WHICH
NO CASE HAD PREVIOUSLY GIVEN IN
LAWFUL COMPENSATION STATUTE,
THAT INTERPRETATION, THROUGH USE
OF 112.

>> DO YOU CONTEND --

>> WAS THERE ANY CASE WHERE
THERE WAS A DEFINITION GIVEN TO
THAT TERM?

>> THERE IS NO CASE IN WHICH A
DEFINITION HAD BEEN GIVEN TO THE
TERM OF THE THIRD ELEMENT OF THE
CRIME, A BENEFIT NOT AUTHORIZED
BY LAW.

>> THE CASE LAW AND PRINCIPLES
SUCH THAT YOU CAN LOOK AT OTHER
STATUTES TO SEE WHAT MEANING THE
SAME TERM HAS BEEN GIVEN?

>> THAT IS A GENERAL STATEMENT
OF LAW, THAT IS CORRECT AND THE
STATEMENT THAT THE STATE OF
FLORIDA WAS USING TO REFER TO IS
THE CASE OF RODRIGUEZ VERSUS
STATE WHICH HAD TO DO WITH
UPHOLDING THE VALIDITY OF THE
STATUTE.

IN THAT CASE IT MADE IT A FELONY
TO USE THE FOOD STAMP IN ANY
MANNER NOT AUTHORIZED BY LAW.
THE DISTRICT COURT, THE FOURTH,
SAID THAT WAS VAGUE AND FOUND
THE STATUTE UNCONSTITUTIONAL.
THE COURT SAID BECAUSE OF THE
PECULIAR NATURE OF 409, IT GAVE
NOTICE BY STATING ALLSTATE AND
FEDERAL FOOD STAMP REGULATIONS
APPLY, THEN THE COURT COULD

CONCLUDE THAT IMPLICIT IN THE FOOD STAMP STATUTE IS A FACT NOT AUTHORIZED BY LAW REFERRED TO STATE AND FEDERAL FOOD STAMP LAW BUT THAT IS NOT THE CASE HERE. THERE HAS NEVER BEEN ANY JUDICIAL INTERPRETATION THAT THE WAY TO DEFINE THE ESSENTIAL ELEMENT NOT AUTHORIZED BY LAW AND UNETHICAL COMPENSATION STATUTE COMES FROM THE ETHICS CODE IN SECTION 112.13.

>> IF IT IS NOT IN THAT CONTEXT, IS THE MERE FACT, YOUR ARGUMENT THAT THE MERE FACT THAT THEY LOOK TO A DIFFERENT STATUTE, OR DEFINITIONS FOR THIS STATUTE IN AND OF ITSELF RENDERS THE STATUTE UNCONSTITUTIONAL?

>> I AM ARGUING SOMETHING MORE COMPLICATED THAN THAT.

>> IT WOULD HELP IF YOU LET ME ASK THE OTHER QUESTION. YOU ARE TRYING TO ASK ME TO RULE WITH YOU.

IS IT BECAUSE THE FOOD STAMP, THE WORDING OF THE STATUTE, THAT IS YOUR POSITION, BUT IT IS ALLOWED BECAUSE OF THAT WORDING NOT BECAUSE OF A GENERAL PRINCIPLE.

>> WHEN WE TALK ABOUT, THE CHAPTER 409, BECAUSE 409 REFERS TO STATE AND FEDERAL REGULATIONS THAT IS WHY IT WAS OKAY TO INCLUDE THAT IN THE DEFINITION OF NOT AUTHORIZED.

>> THE STATUTE IN WHICH YOU ARE ADOPTING A DEFINITION FROM ANOTHER STATUTE MUST MAKE REFERENCE TO THE SUBJECT MATTER OF THE OTHER STATUTE FROM WHICH YOU ARE ADOPTING?

>> IT HAS TO GET SOME INDICATION TO THE AVERAGE CITIZEN WHEN YOU GET A DEFINITION OF THE ELEMENT OF THIS CRIME AND ONE OF THE THINGS THAT IS

>> THAT DIDN'T ANSWER THE QUESTION I ASKED.

>> THAT WAS A VERY -- NOT IN ALL CASES.

NOT NECESSARILY IN ALL CASES. THE ONLY SPECIFIC EXAMPLE I HAVE YOU THE RODRIGUEZ CASE AND OTHER

CASES IN WHICH THEIR WAS A NOT
AUTHORIZED BY LAW OR ILLEGAL
ACT, THE PRICHARD CASE, THIS
COURT HELD THOSE STATUTES WERE
UNCONSTITUTIONAL BECAUSE YOU DID
NOT KNOW WHAT OTHER LAWS THEY
REFERRED TO.

IT WAS TOO VAGUE TO ADVISE A
CITIZEN WHAT WAS PROHIBITED AND
ALSO IN THIS CASE WHAT WE ARE
ARGUING IS BECAUSE THERE HAVE
BEEN WITHIN THE CONTEXT OF THIS
PARTICULAR CASE BECAUSE THE
STATE HAS TAKEN SO MANY
POSITIONS AS TO WHAT THIS
CONTESTED ELEMENT MEANS, HOW IS
THE AVERAGE CITIZEN SUPPOSED TO
KNOW WHAT IS PROHIBITED BY LAW
WHEN EVEN THE STATE CAN'T COME
UP WITH A CONSISTENT DEFINITION.
>> YOU ARE MAKING AN AS APPLIED
CHALLENGE AS OPPOSED TO A FACIAL
CHALLENGE AND THE FACTS OF THIS
CASE ARE SUCH THAT WHEN WE LOOK
AT THE FACTS, TO SAY ARE YOU
TELLING ME THAT THIS DEFENDANT
DIDN'T KNOW HE WAS NOT SUPPOSED
TO GIVE GIFTS TO EMPLOYEES OF A
GOVERNMENT WHEN HE WANTED TO GET
THEM TO GIVE HIM MORE BUSINESS,
THAT HE WOULDN'T UNDERSTAND NOT
AUTHORIZED BY LAW?
THAT IS WHERE I AM HAVING
TROUBLE WITH THE FACTS OF THIS
CASE.

>> THE FACTS OF THIS CASE, I
DISPUTE WHAT YOU SAY ABOUT IN
ORDER TO GET MORE BUSINESS.
THIS DEFENDANT HAD THE LOW BID
CONTRACT.
THE BUSINESS WAS IN PLACE.
THESE WERE GIFTS THAT WERE GIVEN
BECAUSE HE WAS A GENEROUS
PERSON.

>> THAT WAS YOUR DEFENSE.
>> I AM SAYING --
>> THE JURY IF THEY DIDN'T THINK
IT WAS GIVEN TO INFLUENCE AND
ACTION UNDER THAT DEFINITION
COULD FIND HIM NOT GUILTY.
V JURY QUESTION AS TO WHETHER HE
WAS JUST A NICE GUY TO GIVE AN
\$8500 WATCH, THESE ARE EXCESSIVE
GIFTS, NOT LIKE SAYING I WILL

GIVE YOU A BOX OF CHOCOLATE.
I AM HAVING TROUBLE WITH THE
VAGUENESS AS APPLIED TO YOUR
CLIENT IN THESE FACTS.
TELL ME THE DIFFERENCE BETWEEN
THE VAGUENESS ARGUMENT FACIALLY
AS APPLIED TO THIS CASE.
>> THE VAGUENESS ARGUMENT IS
APPLIED TO THIS CASE IS THIS IS
A NOVEL INTERPRETATION.
THE DEFINITIONS THAT APPLY ONLY
TO THE PUBLIC EMPLOYEES HAVE
NEVER BEEN APPLIED TO A CRIMINAL
PROSECUTION.
>> I AM JUST HAVING TROUBLE
UNDERSTANDING THAT.
IT SEEMS NATURAL TO ME THAT IF
YOU LOOK AT THIS STATUTE,
PROHIBITION ON PROVIDING
BENEFITS FOR PUBLIC EMPLOYEE,
THE QUESTION THAT IS NATURALLY
GOING TO OCCUR IS WHAT ARE THEY
ALLOWED TO ACCEPT?
AND THAT TAKES YOU TO THESE
STATUTES.
IT SEEMS THAT YOU HAVE TO IGNORE
THE CONTEXT AND THE REALITY HERE
TO SAY IT IS IMPROPER TO RELY ON
THAT DEFINITION.
THAT IS OBVIOUSLY THE DEFINITION
YOU WOULD RELY ON, IS IT NOT?
BECAUSE THAT DEFINES WHAT THEY
CAN'T ACCEPT, WHAT IS
UNAUTHORIZED BY LAW.
>> LET ME MOVE TO THE TWO
SUBSECTIONS THE FOURTH DISTRICT
CONSTRUED THE STATUTE IN LIGHT
OF.
IN THIS CASE THE JURY WAS ONLY
INSTRUCTED ON SUBSECTION 4 TO
WHICH THE DEFENDANT HAD
OBJECTIONS AND WHAT THE
DEFENDANT IS OBJECTING TO IS IT
TALKS ABOUT THE BENEFIT AND THEN
IT SAYS, THE PUBLIC EMPLOYEE
KNOWS OR THE EXERCISE OF
REASONABLE CARE SHOULD KNOW IS
GIVEN TO INFLUENCE.
GIVING TO INFLUENCE OTHER
ACTION.
THAT SUBSECTION ASSUMES THAT THE
GIFT WAS GIVEN TO INFLUENCE.
IT DOES NOT DAVIS IS WHAT THE
STATE HAS TO PROVE AND THAT IS

NOT PART OF THE JURY
INSTRUCTIONS FOR UNLAWFUL
COMPENSATION.

IT IS FOR BRIBERY BUT NOT
UNLAWFUL COMPENSATION AND THE
PROBLEM WITH REASONABLE PUBLIC
EMPLOYEE EXERCISING REASONABLE
CARE STANDARD IS THAT IT IS NOT
A CORRECT STANDARD.

IT ALLOWS THE STATE TO USE A
STANDARD OF WHAT SOMEONE MIGHT
HAVE THOUGHT INSTEAD OF WHAT
THIS PUBLIC EMPLOYEE THOUGHT,
WHAT THE GIVER AND THE RECIPIENT
THOUGHT ABOUT THE GIFT.

>> GOING BACK TO THE INSTRUCTION
GIVEN, THE STATE PROPOSED THE
NOT AUTHORIZED BY LAW AS SET
FORTH IN RESPONSE, THE DEFENDANT
STATED WITHOUT WAIVING THE
ARGUMENT THAT THE USE OF THE
PHRASE NOT AUTHORIZED BY LAW WAS
UNCONSTITUTIONALLY VAGUE, HE
AGREED WITH THE STATE THE COURT
SHOULD INSTRUCT THE JURY ON THE
ELEMENT OF NOT AUTHORIZED BY LAW
PURSUANT TO SECTION 102.34.

IS THAT INCORRECT?

>> IS THAT INCORRECT, THAT
STATEMENT FROM THE FOURTH
DISTRICT?

>> THAT IS INCORRECT.
BECAUSE HE ASKED FOR A MODIFIED,
THIS DOESN'T APPLY TO
HYPOTHETICAL STATE EMPLOYEE BUT
THE ACTUAL PUBLIC EMPLOYEE,
KNOWS THAT IT IS INFLUENCE
BECAUSE HE IS REFERRING TO THIS
COURT'S DECISION, WHEN YOU ARE
CONSIDERING THE
CONSTITUTIONALITY OF 1.24 IS
TO A VAGUENESS CHALLENGE AGAINST
THE COMMISSION AND FOR SOMEBODY
TO CORRUPT A PUBLIC EMPLOYEE AND
BE CHARGED WITH IT, THE STATE
WOULD HAVE TO PROVE WHAT WAS IN
THE MIND OF THE PERSON GETTING
THE BRIBE.

>> THAT IS WHAT THE FOURTH
DISTRICT SAID, DEFINED THE GIFT
THAT IS NOT AUTHORIZED BY LAW,
THEN UNLAWFUL BENEFIT, WHAT A
PUBLIC EMPLOYEE WOULD HAVE
THOUGHT ABOUT THE GIFT.

>> WE HE SHOULD HAVE KNOWN WAS GIVEN TO INFLUENCE SO IT IS NOT WHETHER IT WAS THE EMPLOYEE ACTUALLY THOUGHT ABOUT IT. NOT CLEAR WHETHER THE JURY INSTRUCTION, THEY SHOULD HAVE GIVEN AN ADDITIONAL INSTRUCTION. AS APPLIED TO THIS DEFENDANT, HE DIDN'T KNOW OR COULDN'T HAVE KNOWN WHAT HE WAS DOING WOULD BE A CRIME.

>> IS THAT YOUR ARGUMENT?

>> THE STATUTE WAS UNCONSTITUTIONAL AS APPLIED AS PER JURY INSTRUCTIONS, ALLOWED AND UNCONSTITUTIONALLY VAGUE AND NOVEL INTERPRETATION OF THE STATUTE NEVER PREVIOUSLY GIVEN AND IT IS THE JURY INSTRUCTION.

>> CLARIFY THAT.

AND ARGUMENT ABOUT THE VAGUENESS OF THE STATUTE, PRIOR TO JURY INSTRUCTION SO -- THAT ARGUMENT WITH NOT SPECIFIC FOR THIS JURY INSTRUCTION.

>> THE STATE'S RESPONSE THAT THE MOTION TO DISMISS WHEN THEY ARE CONSIDERING THE UNCONSTITUTIONAL MOTION TO DISMISS THE STATE SAYS WE AGREE IT IS ESSENTIAL ELEMENT, YOU'RE IN SOME PERIL BUT IT WILL BE OKAY BECAUSE YOU WILL DEFINE IT BY THE SUBSECTIONS, SO RIGHT THEN AND THERE THEY ASKED THE JUDGE TO CONSIDER THE CONSTITUTIONALITY OF A STATUTE IN LIGHT OF THIS DEFINITION THAT COULD BE FOUND IN THE ETHICS STATUTE AND THAT IS WHAT THEY SAID, SAVE THE STATUTE FROM BEING UNCONSTITUTIONAL.

>> AS THEY WERE DISCUSSING IT, THEIR CLIENT SAYS I AGREE TO GIVING THAT INSTRUCTION BUT I AM NOT WAVING WHAT I HAVE ALREADY ARGUED IN REGARDS TO THE UNCONSTITUTIONALITY.

>> NOT EXACTLY BECAUSE HE DIDN'T SPECIFICALLY AGREE TO THAT JURY INSTRUCTION BECAUSE HE THOUGHT IT WAS WRONG BUT IT HAD THAT STANDARD OF REASONABLE CARE, EXERCISE OF REASONABLE CARE

BECAUSE IT ALLOWED THE STATE --
>> WHAT WAS ACTUALLY SAID IN
REGARDS TO THAT?
>> YOU HAVE TO LOOK AT THE
EVOLUTION OF THE ARGUMENT.
OF THE MOTION TO DISMISS HEARING
BE REFERRED TO A PRIOR
PROSECUTION OF MISTER
CZAJKOWSKI, THE JURY WAS
INSTRUCTED ON BOTH SUBSECTIONS 2
AND 4 AND THE DEFENSE ATTORNEY
SAYS HE DID NOT AGREE TO THOSE
INSTRUCTIONS.
THE JUDGE THAT THIS WASN'T EVEN
CLOSE TO THE DEFINITION HE
WANTED AND HE SAID THE JURY
INSTRUCTIONS CAN'T SUPPLY A
DEFINITION WHEN THE STATUTE
DOESN'T TELL US WHAT IS NOT
AUTHORIZED BY LAW.
WHEN IT GETS TIME FOR THE JURY
INSTRUCTION CONFERENCE ON
AUGUST 19TH HE SUBMITS A WRITTEN
JURY INSTRUCTION ASKING THE
112.313 INSTRUCTION BE MODIFIED
AS I READ YOU ABOUT, THIS ISN'T
JUST SOME HYPOTHETICAL WHAT A
REASONABLE PERSON WOULD THINK
WITH A LAWFUL GIFT.
AND ASK THE JUDGE TO GIVE THE
SUBSECTION 2 BECAUSE THE
DEFENDANT HAD BEEN ACQUITTED
WHEN THEY WERE GIVEN.
AND A PRIOR PROSECUTION.
SO YES, HIS UNCONSTITUTIONAL AS
APPLIED IS DIRECTLY RELATED TO
THE JURY INSTRUCTIONS THAT ARE
GIVEN BECAUSE THESE JURY
INSTRUCTIONS ARE WRONG, BECAUSE
THEY ALLOW THE STATE TO -- THEY
ALLOW THE STATE TO SHOW BY SOME
SUBJECTIVE STANDARD WHAT A
PUBLIC EMPLOYEE MIGHT HAVE
THOUGHT ABOUT A GIFT AND THEY
ALSO, THE STATE ALSO ARGUED AT
THE MOTION TO DISMISS THAT
BECAUSE THE GIFT WAS EXTRAVAGANT
IT WAS CORRUPT BUT THAT IS NOT
IN ANY OF THESE DEFINITIONS
GIVEN IN ANY OF THESE STATUTES
AS TO THE AMOUNT IF IT IS
EXTRAVAGANT THEN IT IS CORRUPT.
>> THESE BOYS REPORT GIFTS TO
THEIR SUPERVISORS?

>> I BELIEVE THEY DID NOT.
>> THEY CARED FOR THE SECRET.
>> I BELIEVE THEY DID.
>> THEY THOUGHT THEY SHOULDN'T
BE GIVEN.
>> THEY ALL TESTIFIED THEY
THOUGHT THIS WAS A GIFT OF
FRIENDSHIP AND DIDN'T THINK
ANYTHING OF IT.
>> THEY KEPT THE SECRET.
>> THEY DID NOT REPORTED ON
FINANCIAL DISCLOSURE.
IN YOUR REBUTTAL, THERE
>> I AM INTO REBUTTAL ALREADY.
THAT YOU HAVE ANOTHER QUESTION?
I WILL RESERVE THE REMAINDER OF
MY TIME FOR REBUTTAL.
I AM RELYING ON MY BRIEF FOR THE
SECOND POINT, THANK YOU.
>> MAY IT PLEASE THE COURT?
MARK J. HAMEL FOR THE STATE OF
FLORIDA.
I WANT TO DISCUSS JURISDICTION
VERY BRIEFLY.
THE FOURTH DISTRICT COURT OF
APPEAL EXPRESSLY FOUND THE
STATUTE TO BE CONSTITUTIONAL.
THEY EXAMINE ITS DECISION ON
JURISDICTION.
THE THIRD DISTRICT COURT OF
APPEAL WAS CONSTITUTIONAL.
GOING TO ISSUE NUMBER ONE.
AS A CHALLENGE THE COURT MUST
LOOK AT THE FACTS TO DETERMINE
WHETHER THE STATUTE MAY BE USED
TO DEFINE DEFENSE CONTRACT.
FOR 25 YEARS DIRECTING EMPLOYEES
GIVE GIFT TO MUNICIPAL
EMPLOYEES.
THE AMOUNT OF THE GIFTS WILL
DEPEND ON THE AMOUNT OF BUSINESS
FROM THE COMPANIES.
THE DEFENDANT SAID THE GIFTS
WERE GIVEN BECAUSE RECIPIENTS
WOULD REMEMBER THE CONSTRUCTION
AT THE TIME IT WAS AND ALSO WHEN
ONE OF THE EMPLOYEES FAILED TO
LIE ABOUT AN EXTENSIVE WATCH
THAT WAS GIVEN THE DEFENDANT
FIRED THAT EMPLOYEE.
BASED ON THE FACTS OF THIS CASE
THE STATUTE CAN BE USED TO
PRESCRIBE --
>> THERE ARGUMENT, UNDERSTANDING

THE VAGUENESS HAS TO DO WITH THE USE OF THE INSTRUCTION ON WHAT IS NOT AUTHORIZED BY LAW AND THE REFERENCE TO 112.3134 WHICH DOESN'T TALK ABOUT THE POINT OF VIEW OF WHAT YOU IS THE DEFENDANT REDOING AN ATTEMPT TO INFLUENCE BUT RATHER WHAT THE RECEIVING PARTY, WHAT WAS IN THEIR MIND.

CAN YOU ELABORATE ON WHETHER THAT WAS A PROPER DEFINITION TO USE.

>> SURE, YOUR HONOR.

THAT IS NOT A PROPER ARGUMENT IS THAT THE STATUTE WAS UNCONSTITUTIONAL AS APPLIED TO THE DEFENDANT.

THAT IS A SEPARATE ARGUMENT INSTRUCTIONS WERE PROPER.

>> THAT IS WHAT I WAS SORT OF THINKING BUT IT HAS BEEN PUT TOGETHER BECAUSE THEY ARE SAYING BECAUSE IF YOU GIVE A DEFINITION OF THE DEFINITION IS EXPANDING WHAT IS MEANT BY NOT AUTHORIZED BY LAW, THAT IS HOW WOULD HE HAVE KNOWN ABOUT THAT, SOMEONE WOULD APPLY THAT STATUTE WHEN HE WAS COMMITTING OR GIVING THESE GIFTS.

>> MY MAIN RESPONSE IS THEY AGREE TO THIS INSTRUCTION, THEY WANTED ADDITIONAL LANGUAGE ON A REASONABLE PERSON BUT THE JUDGE DIDN'T GIVE IT BECAUSE THERE WAS NOTHING ABOUT A REASONABLE PERSON IN THE INSTRUCTION THAT WAS GIVEN.

THE INSTRUCTION TALKED ABOUT ACTUAL CONSTRUCTIVE KNOWLEDGE AND THE LANGUAGE DOESN'T TALK ABOUT A REASONABLE OR HYPOTHETICAL MUNICIPAL EMPLOYEE. IT SAID SUCH EMPLOYEE KNEW OR SHOULD HAVE KNOWN.

IT WAS REFERRING TO THE PARTICULAR RECIPIENTS OF THE GIFTS IN THIS CASE.

THERE WAS NOTHING ABOUT HYPOTHETICAL.

THEY AGREED TO THIS INSTRUCTION. WHETHER THE INSTRUCTION WAS NEEDED, IT LOGICALLY, IF WE LOOK

TO A STATUTE TO TALK ABOUT WHAT IS PROHIBITED BY LAW, A PUBLIC EMPLOYEE RECEIVING GIFTS, 112 IS A PROPER STATUTE.

>> THAT IS WHAT THE ARGUMENT IS, WHY SHOULD THERE BE, WHAT DOES THERE NEED TO BE, A DEFINITION OF NOT AUTHORIZED BY LAW.

THE FACTS OF THIS CASE THAT HE DID THIS TO OBTAIN BUSINESS AND ALL THE OTHER FACTS, WHY DO YOU NEED TO REFER TO WHAT THE PUBLIC MIGHT HAVE THOUGHT ABOUT WHY THEY WERE GIVING THE GIFT? WASN'T THE INTENT ON THE PART OF THE DONOR, SO FOR ME THAT WAS A LITTLE CONFUSING IF I WERE THERE IS A JURY.

>> IT WAS A LITTLE CONFUSING BECAUSE THE JURY HAD A QUESTION ABOUT THIS.

THEY ASKED IF THERE WAS ANY MORE INSTRUCTION ABOUT NOT AUTHORIZED BY LAW AND THE PARTIES AGREED THEY HAD BEEN INSTRUCTED.

>> IS THE PROBLEM THAT THE STATUTE SHOULD HAVE A BETTER -- IF THE INSTRUCTIONS ARE GIVEN IN FUTURE CASES THERE BE AN AGREED-UPON STANDARD JURY INSTRUCTION ON IT?

>> THERE COULD BE AND IT WAS PROPOSED BASED ON THIS CASE WHICH IS PROBLEMATIC.

THE INSTRUCTION THAT WAS GIVEN IN THIS CASE BECAUSE THE INSTRUCTIONS THAT NOT AUTHORIZED BY LAW MEANS -- AND IT SAYS THIS IS PROHIBITED BY LAW.

IT DOESN'T MEAN THAT LOGICALLY JUST BECAUSE SOMETHING IS PROHIBITED BY LAW, IT IS A REASONABLE INFERENCE IT IS NOT AUTHORIZED BY LAW BUT WHAT THE STATE HAS TO PROVE BY STATUTE IS IT IS NOT AUTHORIZED BY LAW, NOT THAT IT IS PROHIBITED.

>> THAT IS EQUIVALENT.

IT MAY BE THAT THERE ARE SOME THINGS NOT AUTHORIZED BY LAW THAT ARE NOT PROHIBITED, THAT IS A DIFFERENT CATEGORY BUT HERE THE FOCUS WAS ON THE CATEGORY OF WHAT IS PROHIBITED AND IF IT IS

PROHIBITED IT IS NOT AUTHORIZED
BY LAW.

I'M CONFUSED BY YOUR ARGUMENT.

>> IT IS MORE NARROW.

THE STATES OF THE STATE HAD A
DUTY TO PROVE THE GIFT IS NOT
AUTHORIZED BY LAW.

THEY SAID WE WON'T PROVE THAT
SHOW THAT IT WAS PROHIBITED BY
LAW WHICH IS A STEP FURTHER.

TO SAY THAT IT EXPANDED THE
MEANING OF THE STATUTE IT DID
NOT.

IT RESTRICTED IT, FORCED THE
STATE TO PROVE SOMETHING IT DID
NOT HAVE TO PROVE, IT ONLY HAD
TO PROVE IT WAS NOT AUTHORIZED
BY LAW.

>> ANOTHER SITUATION, IF THE
JURY IS TRYING TO STRUGGLE WITH,
YOU ARE GIVING ME A STATUTE
ABOUT WHAT THE PUBLIC EMPLOYEES
CAN'T DO, ETHICS STATUTE, NOT A
CRIMINAL STATUTE, THEY DIDN'T
KNOW THAT.

I NEED TO KNOW WHETHER THE --
THIS WAS NOT AUTHORIZED.

NOW WE HAVE A JURY THAT IS
CONFUSED ABOUT THE MEANING.

I DON'T KNOW IF THEREFORE MAKES
IT UNCONSTITUTIONALLY VAGUE
ABOUT I AM LOOKING TO WHAT IS
GOING TO HAPPEN THE NEXT CASE
BUT THE STATE SAID NO, LET'S
GIVE THIS INSTRUCTION, THE STATE
ASKED FOR IT AND DIDN'T ASK FOR
AN ADDITIONAL INSTRUCTION ABOUT
AUTHORIZED BY LAW.

THEY SAID EVERYONE KNOWS THIS
COULDN'T BE AUTHORIZED BY LAW,
YOU CAN'T BE GIVING A GIFT TO
TRY TO INFLUENCE A PUBLIC
EMPLOYEE'S ACTIONS.

>> THIS WAS AGREED TO IN THIS
CASE WHICH IS WHY IT IS NOT A
PROBLEM IN THIS CASE, THIS IS
WHAT THE DEFENSE WANTED.

IT WAS BENEFICIAL FOR THE
DEFENSE TO HAVE THIS INSTRUCTION
GIVEN IN THIS CASE.

>> COULD I TAKE YOU BACK TO YOUR
JURISDICTIONAL ARGUMENT?

WHEN I AT THE CASE, THE FIRST
PARAGRAPH, THE COURT THAT THE

DEFENDANT ARGUES THE STATUTORY SECTION WE HAVE BEEN TALKING ABOUT CODIFYING THE CRIME OF UNLAWFUL COMPENSATION WAS UNCONSTITUTIONAL AS APPLIED TO HIM.

AND THEY GO ON TO SAY WE DISAGREE WITH THAT ARGUMENT, THAT SEEMS TO EXPRESS -- >> EXPRESS WOULD BE IN SOME CASES THE COURT HAS TAKEN JURISDICTION, EXPRESS WOULD BE IN ONE CASE WHERE THE DISTRICT COURT SAID THE STATUTE IS CONSTITUTIONAL.

THAT WOULD BE EXPRESSLY -- THERE ARE LOTS OF CASES WHERE IT IS IMPLICIT.

>> THAT IS NOT IMPLICIT. THEY EXPRESSLY REJECT THE ARGUMENT.

THEY STATE THE ARGUMENT AND EXPRESSLY REJECT IT.

I DON'T KNOW HOW THAT IS IMPLICIT.

>> YOU HAVE TO DRAW AN INFERENCE.

THEY ARE NOT STATING THE STATUTE IS CONSTITUTIONAL, THEY ARE SAYING WE REJECT THE ARGUMENT.

>> WITH PUT IT THIS WAY.

IF THEY SAID IT IS CONSTITUTIONAL WE HAVE DISCRETION NOT TO TAKE IT BUT THE ISSUE IS WE HAVE JURISDICTION, DEFINITELY A CHALLENGE TO THE CONSTITUTIONALITY OF THE STATUTE AS APPLIED TO THIS DEFENDANT.

>> IT HAS TO BE EXPRESSLY STATED.

IT USED TO BE IT COULD BE IMPLICIT.

IT IS IMPLICIT IN THIS CASE.

>> WHAT WAS THE ISSUE BEFORE THE FOURTH DISTRICT?

>> IT WAS THE CONSTITUTIONALITY OF THE STATUTE.

>> WHAT IS IMPLICIT ABOUT THAT? WE HAVE CASES WHERE THEY DON'T TALK ABOUT THE CONSTITUTIONALITY BUT IT IS IMPLICIT THEY FIND A CONSTITUTIONAL.

THOSE CASES ARE NOT THIS CASE.

YOU SAY THERE ARE CASES WHERE IT SAID IF THE DISTRICT -- WE DON'T HAVE TO HAVE THAT CASE?

>> THE CONSTITUTION GOT CHANGED, HAD TO BE HONEST WITH FINDING. THAT WAS IN MY GENEROUS BRIEF.

>> WHAT THE FOURTH DISTRICT DO?

>> THE FOURTH DISTRICT COURT & STATUTE WAS CONSTITUTIONAL.

I AGREE WITH YOU, YOUR HONOR.

>> THIS IS YOUR WEAKEST ARGUMENT.

>> THAT WILL ADDRESS ONLY THE CONSTITUTIONAL ISSUE.

I AM NOT SURE WHAT MORE YOU THINK THE COURT SHOULD HAVE SAID.

THEY REJECT THE ARGUMENT AND THEY SAY THIS OPINION WILL ADDRESS ONLY THE CONSTITUTION.

>> IT WOULD BE CLEAR -- IT WOULD BE EXPLICIT.

>> CERTAINLY DOES IT MEAN THE CONSTITUTION?

>> I AGREE, YOUR HONOR.

>> YOU MIGHT BE IN A BETTER ARGUMENT THAT THIS ISN'T THE CASE THE COURT SHOULD CONTINUE TO WRITE AN OPINION ON BECAUSE OF THIS ISSUE OF WHERE 112 FALLS INTO THE JURY INSTRUCTION ISSUE WHICH I KNOW YOU DON'T AGREE ON THIS POINT BUT THAT COULD BE, THIS IS A MESSED UP CASE, BUT THERE IS NO PROBLEM WITH THE CONSTITUTIONALITY AS APPLIED TO THIS DEFENDANT, MESSED UP ON A JURY INSTRUCTION.

>> I CAN CLEAR UP SOME QUESTIONS ABOUT WHAT HAPPENED IN THIS CASE.

THERE WAS A DISCUSSION ON THE MOTION, WHY THIS ISSUE WAS BEING RAISED IN THIS CASE.

THIS IS FROM THE TRANSCRIPT OF TRIAL.

A CODEFENDANT TRIED BEFORE AND WAS CONVICTED, THERE WAS A COMMENT ON FOURTH DISTRICT COURT OF APPEALS JUDGE ABOUT THE NOT AUTHORIZED BY LAW LANGUAGE.

>> IS THIS IN THE RECORD?

>> IT IS, THIS WAS DISCUSSED.

>> DISCUSSED IN THE TRIAL IN

THIS CASE?

>> IN THE TRIAL IN THIS CASE.
IN THIS CASE THE DEFENDANT WAS
ARGUING THE STATUES WAS
UNCONSTITUTIONAL.
LOOK WHAT THE JUDGE SAID, THIS
WAS IN THE RECORD.
THERE MUST BE SOME MEANING TO IS
NOT AUTHORIZED BY LAW.
I THINK THE JURY NEEDS TO BE
INSTRUCTED ON IT WAS THE TRIAL
COURT, THE PROSECUTOR IN THIS
CASE DID TAKE A DIFFERENT
APPROACH THAN IN A PRIOR CASE
BECAUSE THEY WERE TRYING TO
ENSURE THAT THE CONDITION WAS IN
ACCORDANCE WITH THE LAW.
THEY IN THIS CASE TALK AN
APPROACH THAT NEEDED TO BE
DEFINED IN THIS DEFINITION
SUGGESTED THAT IS WHY THE STATE
SAID WE SHOULD USE THIS.
THEY WERE CONCERNED IT MAY
CREATE ISSUES ON APPEAL.
IN THIS CASE THE PROSECUTOR
SUGGESTED, THE DEFENSE JUMPED ON
IT AND SAID WE WILL AGREE TO
THAT BUT THEY ASKED ADDITIONAL
LANGUAGE THE THAT HAPPENED IN
THIS CASE.

>> THEY SAY THE ADDITIONAL
LANGUAGE WAS IT HAD TO BE WHAT
WAS IN THE MIND OF THE EMPLOYEE,
NOT WHAT A REASONABLE EMPLOYEE
WOULD THINK.
>> HERE IS WHAT THE LANGUAGE IS.
THAT WAS GIVEN IN THIS CASE, NOT
AUTHORIZED BY LAW, NO EMPLOYEE
SHOULD ANYTIME ACCEPT
COMPENSATION WHEN SUCH PUBLIC
OFFICE, NOT A HYPOTHETICAL, WHEN
THE PUBLIC OFFICER INVOLVED IN
THAT TRANSACTION NEW EXERCISE
REASONABLE CARE SHOULD HAVE
KNOWN SO THEY WERE ASKING FOR
THAT LANGUAGE AND IT DIDN'T
APPLY, WE ARE NOT TALKING A
HYPOTHETICAL PERSON BUT ACTUAL
CONSTRUCTIVE KNOWLEDGE.

>> IT WAS MODIFIED.
I THOUGHT THAT WAS WHAT WAS
GIVEN.

>> THAT WAS WHAT I JUST READ.

>> IS THAT WHAT WAS STATED?

112.314?

>> YES.

>> WHAT ELSE DID THE DEFENDANT WANT?

>> ONE TO FURTHER LANGUAGE ABOUT A HYPOTHETICAL PERSON.

THE JUDGE SAID NO BECAUSE IT DIDN'T INVOLVE A HYPOTHETICAL PERSON.

>> THERE IS MENTION ABOUT THE DEFENDANT BEING ACQUITTED BEFORE WITH OTHER INSTRUCTIONS BEING GIVEN, IS THIS A RETRIAL?

>> THE PREVIOUS TRIAL WAS FOR A CODEFENDANT.

>> WHO WAS ACQUITTED TO DO YOU MENTIONED SOMEBODY WAS ACQUITTED.

>> MAY HAVE SET ACQUITTED AFTER THE APPEAL, THERE WAS A DOUBLE JEOPARDY PROBLEM ON APPEAL AND THE CONVICTION WAS REVERSED. THE CODEFENDANTS, NOT IN THIS CASE.

THERE ARE NO FURTHER QUESTIONS I ASK THE COURT AFFIRMED.

THANK YOU.

>> LET ME PLEASE CLARIFY.

THE DEFENDANT WAS PREVIOUSLY CHARGED WITH ANOTHER ACT OF UNLAWFUL COMPENSATION REFERRED TO AS THE PALM BEACH CASE INVOLVING A BUILDING INSPECTOR FOR PALM BEACH NAMED STEPHEN WHITE.

THE DEFENDANT WAS ACQUITTED IN THAT CASE WHEN SUBSECTIONS 2 AND 4 OF 112.313 WERE GIVEN AS AN INSTRUCTION ON WHAT IS A GIFT NOT AUTHORIZED BY LAW.

>> WHATEVER YOU SAID, IT IS IN THE RECORD.

>> THAT IS IN THE RECORD, THAT IS REFERRED TO IN THE MOTION TO DISMISS HEARING, ALL THE PEOPLE ARE AWARE OF IT AND THE JUDGE AND PARTIES ARE AWARE OF IT AND IT IS DURING THIS TIME THEY CAN TALK ABOUT THE CODEFENDANT IN THE SAME PROSECUTION AND THE SAME INFORMATION WAS ACQUITTED AT TRIAL AND ACQUITTED OF EVERYTHING ON APPEAL. HIS NAME WAS WHITE.

>> HE WAS THE EMPLOYEE?
>> HE WAS THE VICE PRESIDENT,
ALSO CHARGED WITH GIVING GIFTS
AND THE RELEVANCE OF THAT --
>> THE RELEVANCE OF THAT HAS TO
DO WITH THE STATE'S SHIFTING
POSITIONS ON THE DEFINITION OF
NOT AUTHORIZED BY LAW.
THE PROSECUTION OF THE
CODEFENDANT IN THE SAME CASE THE
STATE SAID YOU DO NOT GET
INSTRUCTION UNDER 112.313.
IN THE PALM BEACH CASE AGAINST
MISTER CZAJKOWSKI IN WHICH HE
WAS ACQUITTED SUBSECTIONS 2 AND
4 WERE GIVEN TO THE JURY AND
THAT IS IMPORTANT 2 IS MORE
FAVORABLE TO THE DEFENDANT
BECAUSE IT IS CLEAR THERE HAS TO
BE AN UNDERSTANDING BETWEEN THE
PUBLIC EMPLOYEE AND THE PERSON
WHO GIVES THE GIFT.
>> THOSE ARE TWO SEPARATE
PROVISIONS OF LAW.
THEY BOTH DEFINE THINGS THAT ARE
PROHIBITED BY LAW.
IN THE ONE THERE ARE
CIRCUMSTANCES WHERE AN AGREEMENT
IS NOT NECESSARY AND THAT WAS
WHAT THE STATE DECIDED THEY WERE
GOING ON THAT THEORY SO I AM
CONFUSED BY YOUR ARGUMENT HERE
BECAUSE THE PROHIBITION IS IN
INDEPENDENT PROHIBITION.
WHAT AM I MISSING?
>> FIRST OF ALL, YOU USED THE
WORD AGREEMENT.
THERE DOESN'T HAVE TO BE AN
AGREEMENT.
112.313 DOESN'T SAY AGREEMENT,
IT IS UNDERSTANDING AND THERE IS
A DIFFERENCE BETWEEN THOSE TWO
CONCEPTS AND IT IS IMPORTANT
BECAUSE THIS COURT SAID THIS IS
A QUID PRO QUO TYPE BRIBERY
STATUES, UNLAWFUL COMPENSATION
BUT GIVING A GIFT TO INFLUENCE A
PUBLIC EMPLOYEE IS THE
DEFINITION OF BRIBERY.
THAT IS NOT THE DEFINITION OF
UNLAWFUL COMPENSATION.
TO SAY THAT IS WHAT MISTER
CZAJKOWSKI WAS DOING HERE WHEN
HE WASN'T CHARGED WITH THAT IS

NOT THE NATURE OF THIS CHARGE.
DISCHARGE THE STATE PROVES MUCH
LESS THAN BRIBERY TO PROVE
UNLAWFUL COMPENSATION.

THAT IS WHY IT IS IMPORTANT ALL
THESE ELEMENTS THAT ARE VAGUE,
THIS PRIVATE CITIZEN WOULD NOT
HAVE UNDERSTOOD ARE ADEQUATELY
DEFINED AND BY REFERRING TO WHAT
PUBLIC EMPLOYEES WOULD HAVE
KNOWN ABOUT WHAT THEY WERE
WILLING TO ACCEPT DOESN'T SAY
ANYTHING ABOUT THAT STATUTE
DOESN'T APPLY TO A PRIVATE
CITIZEN.

THAT IS WHAT THE ARGUMENT IS,
DISTRICT COURT AND UPHOLDING THE
CONSTITUTIONALITY OF THIS
STATUTE REFERRED TO THE LANGUAGE
OF IMPLICIT IN 838.16 IS IT
REFERS TO 102.313, THAT IS
TRACKING THE LANGUAGE OF
RODRIGUEZ WHICH SAID IMPLICIT IN
AND WHEN THEY TALK ABOUT THE
FOOD STAMP STATUTE, IT IS NOT
IMPLICIT IN THIS STATUTE.
THAT APPLIES TO THE PUBLIC
EMPLOYEE.

WE ARE SAYING IT WOULD BE LOVELY
IF THE STATUTE HAD WHAT THE
STATE SAID, IN THAT CASE --
>> WE ARE OUT OF TIME SO IF YOU
WANT TO JUST CONCLUDE.
>> SOMETHING GIVEN, THAT SHOULD
BE THE DEFINITION AND YOU WILL
ADDRESS THEM LATER IN JURY
INSTRUCTION ISSUE.
>> THANK YOU FOR YOUR ARGUMENT.
THE COURT IS IN RECESS UNTIL
9:00 TOMORROW MORNING.