

>> THE NEXT CASE ON THE DOCKET IS THE CASE OF CLARKE V. UNITED STATES OF AMERICA. WHAT DID I SAY, CLARKE V. UNITED STATES?

>> YEAH.

>> YOU MAY PROCEED WHEN YOU'RE READY, COUNSEL.

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

MY NAME IS TRACY DREISPUL, I'M AN ASSISTANT FEDERAL PUBLIC DEFENDER IN THE SOUTHERN DISTRICT OF FLORIDA, AND I REPRESENT BOBBY JENKINS IN THE UNITED STATES COURT OF APPEALS FOR THE 11TH CIRCUIT WHICH HAS CERTIFIED THE QUESTION TO THIS COURT OF WHETHER A PERSON IS CONVICTED UNDER FLORIDA LAW WHERE HE HAS ENTERED A GUILTY PLEA FOR WHICH ADJUDICATION WAS WITHHELD BY THE TRIAL COURT. WE ARE ASKING THIS COURT TO ANSWER THE CERTIFIED QUESTION IN THE NEGATIVE FOR THREE REASONS. FIRST, THE LEGISLATURE HAS GRANTED THE CRIMINAL COURTS OF THIS STATE THE DISCRETION TO MAKE A JUDICIAL FINDING THAT A DEFENDANT IS NOT LIKELY TO REOFFEND AND SHOULD NOT SUFFER THE CONSEQUENCES OF A CONVICTION.

SECOND, THE LEGISLATURE IS PRESUMED TO HAVE KNOWN THIS COURT'S LONG AND CONSISTENT HISTORY OF INTERPRETING THE TERM CONVICTED IN A CRIMINAL STATUTE WHEN USED AS AN ELEMENT OF A NEW AND SEPARATE OFFENSE TO REQUIRE AN ADJUDICATION.

AND THIRD, WERE THERE ANY LINGERING DOUBT ABOUT THE PROPER INTERPRETATION OF THE STATUTE THE RULE OF PLENTY WOULD PREVAIL.

>> LET ME ASK YOU THIS. IN THIS CASE YOU REPRESENT MR. CLARKE AND MR. JENKINS?

>> NO, YOUR HONOR, I JUST REPRESENT MR. JENKINS.
>> OKAY.
AND MR. JENKINS WAS CONVICTED OF WHAT CRIME?
>> IN THE PRIOR FLORIDA CASE, YOUR HONOR?
>> YES.
>> A THIRD-DEGREE FELONY POSSESSION OF COCAINE.
>> AND ADD USE CASE WAS WITHHELD--
>> YES, YOUR HONOR.
>> AND HE WAS PLACED ON PROBATION?
>> THE JUDGMENT ACTUALLY SAYS THE SENTENCE WAS SUSPENDED.
>> SO HE HAD NO KIND OF PROBATION OR ANY KIND OF HOUSE ARREST OR ANYTHING--
>> IT DOES NOT APPEAR THAT WAY FROM THE DOCUMENTS THAT WERE IN EVIDENCE.
BUT THE STATE, OF COURSE, DID NOT APPEAL, AND THAT CONVICTION-- I'M SORRY, THAT WITHHOLD OF ADJUDICATION OCCUR INSIDE 2008.
IN 948.01, THE LEGISLATURE INVESTED THE COURTS TO FIND THAT A DEFENDANT NOT LIKELY TO ENGAGE IN A CRIMINAL COURSE OF CONDUCT AND THAT THE ENDS OF JUSTICE IN WELFARE SOCIETY DO NOT REQUIRE THAT THE DEFENDANT PRESENTLY SUFFER THE PENALTY IMPOSED BY LAW.
THIS CODIFIED--
>> LET ME INQUIRE, IN A DIFFERENT SETTING LET'S SAY THAT THE DEFENDANT IN THIS CASE WAS ON THE STAND TESTIFYING.
AND THE PROSECUTOR WAS ABOUT TO IMPEACH HIM.
COULD THE PROSECUTOR HAVE IMPEACHED HIM UNDER PRESENT FLORIDA LAW?
>> NO, YOUR HONOR.
UNDER McFADDEN THIS COURT HELD CLEARLY THAT WITHHOLD OF

ADJUDICATION IS NOT A FELONY
CONVICTION.

AND, OF COURSE, THE COURT
RECOGNIZED THE PURPOSE OF THE
WITHHOLD IS TO ENCOURAGE
REHABILITATION.

>> BUT UNDER-- THERE ARE UNDER
CERTAIN CIRCUMSTANCES A WITHHELD
OF ADJUDICATION HAS, IN FACT,
BEEN CONSIDERED A CONVICTION.

>> YES, YOUR HONOR.

THE COURT HAS SO HELD IN TWO
CIRCUMSTANCES.

FIRST, WHERE THERE WAS EVIDENCE
OF CLEAR LEGISLATIVE INTENT THAT
WITHHOLD OF ADJUDICATION SHOULD
BE INCLUDED, OR OTHERWISE IN THE
CIRCUMSTANCE IN TWO CASES
DISCUSSED IN THE McFADDEN
OPINION, IN BETWEEN THE PERIOD
IN BETWEEN THE PLEA OR VERDICT
AND THE ADJUDICATION BY THE
COURT.

AND THAT WAS ACTUALLY WHERE THE
DISPUTE AROSE IN McFADDEN.

ALL OF THE DISTRICT COURTS OF
APPEAL THAT HAD LOOKED AT THE
ISSUE HAD DECIDED THAT ONCE THE
ADJUDICATION WAS WITHHELD, THE
DEFENDANT COULD NOT BE IMPEACHED
UNDER THE FLORIDA EVIDENCE
AROSE.

THE CONFLICT AROSE ABOUT THAT
INTERIM PERIOD BEFORE THE COURT
HAD MADE THE FINDING TO WITHHOLD
ADJUDICATION.

AND THE TWO CASES THAT I'VE
REFERRED TO IN THE BRIEF SAY THE
EXCEPTIONS TO THE RULE ARE GAZDA
AND McCRAY.

THE COURT STATED IT WAS
WITHHOLDING ADJUDICATION WHILE
PENDING THE PRESENTENCE
INVESTIGATION REPORT.

IN THE INTERIM, THE PATIENT WAS
TAKEN TO A TUBERCULOSIS HOSPITAL
AND SUBSEQUENTLY LEFT THE
JURISDICTION UNTIL AFTER THE
STATUTE OF LIMITATIONS HAD
EXPIRED.

WHEN THE FOURTH DISTRICT COURT OF APPEAL HELD THAT STATUTE OF LIMITATIONS HAD NO EXCEPTIONS, IT WROTE THAT THE CONVICTION MEANT DETERMINATION OF GUILTY BY THE JURY BUT DID NOT REQUIRE ADJUDICATION.

IN REVERSING THE FOURTH DISTRICT COURT OF APPEAL, THIS COURT STATED THAT IT AGREED WITH THAT LANGUAGE, BUT ULTIMATELY FOUND THAT IT MADE NO SENSE TO SAY THAT THE DEFENDANT HAD-- THAT ADJUDICATION HAD BEEN WITHHELD WHERE THE DEFENDANT SIMPLY FAILED TO APPEAR FOR SENTENCING. SO THAT LANGUAGE MAY, IN FACT, HAVE BEEN DICTA.

BUT ULTIMATELY, IT WAS A STATUTORY CONSTRUCTION CASE WHERE THE COURT FOUND CLEAR LEGISLATIVE INTENT THAT ADJUDICATION WITHHELD SHOULD BE ENCOMPASSED BY THAT STATUTE. THE SECOND CASE, DISCUSSED IN FOOTNOTE SEVEN OF McFADDEN, WAS McCRAY.

AND THAT WAS A CAPITAL SENTENCING CASE WHERE THE DEFENDANT HAD ADMITTED GUILT TO ASSAULT WITH INTENT TO COMMIT MURDER.

HE WAS THEN RELEASED ON BAIL PENDING THE PRESENTENCE INVESTIGATION REPORT AND COMMITTED A SECOND CAPITAL OFFENSE.

SO THIS COURT LOOKED AT THE PURPOSES OF CAPITAL SENTENCING TO FIND THAT THE UNADJUDICATED GUILTY PLEA SHOULD COUNT AND DECIDED THE ISSUE AS A MATTER OF STATUTORY CONSTRUCTION.

BUT, AGAIN, IT WAS NOT A 948.01 WITHHOLD.

THERE HAD NEVER BEEN A FINDING THAT ADJUDICATION SHOULD BE WITHHELD FOR THAT DEFENDANT AND, IN FACT, TODAY IT IS UNLIKELY THAT THAT WOULD EVEN BE

PERMISSIBLE IN LIGHT OF THE RESTRICTIONS THAT THE LEGISLATURE HAS PLACED ON WITHHOLDING ADJUDICATION.

>> YOUR POSITION IS THAT IF THE LEGISLATURE SAYS SO-- DOCTOR CORRECT, YOUR HONOR.

>>-- THEN A WITHHOLD CAN CONVICT CONSTITUTE FOR THAT SPECIFIC PURPOSE.

>> YES, YOUR HONOR. WHEN THE LEGISLATURE HAS SAID SO.

>> I BELIEVE THAT WHEN THIS STATE STARTED TOYING WITH SENTENCING GUIDELINES-- I'M TALKING BACK IN THE EARLY '80s-- THE ORIGINAL INTENT OF THE LEGISLATURE BACK THEN, THE LEGISLATURE WAS ACTUALLY SILENT AS TO WHETHER A WITHHOLD COULD BE, PRIOR TO CONVICTION INVOLVING A WITHHOLD IF THERE WAS A CONVICTION, COULD BE COUNTED, POINTS IN THE SENTENCING GUIDELINES SCHEME. AND THE COURTS, THE TRIAL COURTS AT THE TIME WERE PRETTY MIXED ON THAT.

I THINK EVENTUALLY ONCE THE GUIDELINES CAME AROUND AS A PERMANENT FIXTURE IN FLORIDA, THAT WAS FIXED, THAT EVEN A WITHHOLD CAN COUNT.

>> THE LEGISLATURE HAS ADDRESSED THIS SPECIFICALLY ON A STATUTE-BY-STATUTE BASIS. IN ADDITION TO SAYING FOR PURPOSES OF SENTENCING WHERE THE COURT IS LOOKING AT REAL CONDUCT, PARTICULARLY IN RECIDIVISM STATUTES AS WELL. AND IN 775.08435, THEY HAVE LIMITED CERTAIN PARTICULAR CRIMES FOR WHICH ADJUDICATION CANNOT BE WITHHELD. BUT THEY HAVE NOT DONE SO WITH RESPECT TO 790.23. AND THE GOVERNMENT CONCEDES THAT THERE'S NO INDICATION THAT THE

LEGISLATURE SO INTENDED.
IF THERE WERE ANY-- WE SUBMIT
THAT THE LANGUAGE IS CLEAR.
HOWEVER, IF IT WERE AMBIGUOUS,
THE RULE OF LENITY WOULD REQUIRE
THAT THE STATUTE CONTINUE TO BE
INTERPRETED AS IT ALWAYS HAS IN
THE DEFENDANT'S FAVOR.
AND IT IS SIGNIFICANT--
>> A QUESTION ON THIS WHOLE
CASE.

IT LOOKED LIKE, TO ME, THE 11TH
CIRCUIT REALLY THOUGHT THAT THEY
KNEW THE ANSWER BASED ON
McFADDEN THAT THIS WAS NOT A
CONVICTION, BUT BECAUSE THEY HAD
SOME CASES THAT SAID STATED
DIFFERENTLY THEY WANTED US TO
SORT OF REINFORCE THE LAWS, AM I
MISSING SOMETHING THERE?

>> IT'S VERY-- I THINK THAT'S A
GOOD EXPLANATION, YOUR HONOR.
WHAT IT IS IS THAT THE 11TH
CIRCUIT HAS A VERY STRICT PRIOR
PRECEDENT RULE.

THEY ARE NOT AT LIBERTY TO
OVERRULE A PRIOR PANEL ABSENT
GOING BACK OR SEEKING
INSTRUCTION FROM THIS COURT.
AND WHEN THE COURT FIRST
ADDRESSED THIS ISSUE, I BELIEVE
ABOUT 15-20 YEARS AGO, THEY
LOOKED AT THIS LANGUAGE IN THE
GAZDA OPINION THAT I BELIEVE MAY
HAVE BEEN DICTA WITHOUT
REALIZING THAT THERE ARE
DIFFERING INTERPRETATIONS OF
CONVICTION UNDER FLORIDA LAW.
AND SO NOW THEY HAVE ON A COUPLE
OF OCCASIONS RECOGNIZED
INTERVENING DECISIONS OF THIS
COURT INCLUDING THE SQUARELY
ON-POINT DECISION OF THE THIRD
DISTRICT COURT OF APPEAL IN
CASTILLO HOLDING DIRECTLY THAT A
WITHHOLD OF ADJUDICATION DOES
NOT QUALIFY FOR FLORIDA'S FELON
AND POSSESSION STATUTE.
AND SO THERE WERE ONLY TWO WAYS
THAT THE 11TH CIRCUIT COULD

OVERTURN ITS PRECEDENT.
THE FIRST WAS GOING ENBONK, AND
THE SECOND WAS ASKING THE COURT
TO DO SO.
>> AGAIN, THE TENOR IS THAT THEY
SEE IF THEY WERE JUST DECIDING
IT--
>> THAT IS MY INTERPRETATION OF
THE RECENT CASE.
>> THE OTHER THING IS MAYBE
TRYING TO UNDERSTAND, YOU KNOW,
THE CONTEXT HERE.
THIS ISN'T A FACTUAL CASE WHERE
THIS IS JUST A PERSON THAT'S IN
POSSESSION OF A FIREARM AND NOW
THE QUESTION IS, IS HE A FELON
OR NOT.
I MEAN, THIS WAS-- THE FIREARM
WAS IN CONNECTION WITH SOME, I
MEAN, SEVERAL-- THERE WAS A
ROBBERY, A CONSPIRACY TO--
>> THERE WERE OTHER, THERE WERE
OTHER CHARGES, YOUR HONOR.
>> AND THOSE ARE NOT AT ISSUE
HERE.
>> THOSE ARE NOT AT ISSUES HERE.
>> THIS IS NOT AN ADD-ON--
>> THIS IS A PURELY LEGAL
QUESTION--
>> IT'S ALMOST ACADEMIC AS TO
THIS PARTICULAR DEFENDANT.
>> CORRECT, YOUR HONOR, ON
WHETHER OR NOT FLORIDA LAW
REQUIRES THE PRIOR WITHHOLD AS A
CONVICTION.
>> SO YOU WOULD SAY IF THE COURT
MAKES A FINDING WITHHOLDING
ADJUDICATION, THEY'RE ACTUALLY
DECIDING THIS PERSON IS NOT A
DANGER TO SOCIETY.
>> THAT IS CORRECT, YOUR HONOR.
>> AND, THEREFORE, HAVING A
FIREARM-- WHICH IS, OF COURSE,
NOW THIS ISSUE WHO CAN POSSESS A
FIREARM-- THERE'S NO MORE
DANGER FOR THAT PERSON
POSSESSING A FIREARM THAN THE
GENERAL POPULATION.
>> CORRECT, YOUR HONOR.
AND I THINK THAT IS CONSISTENT

WITH THIS COURT'S HOLDING IN McFADDEN WHERE THE LEGISLATURE HAD USED THE CONVICTION FOR IMPEACHMENT PURPOSES.

THE COURT STATED IT WAS THE CONVICTION ITSELF AND NOT THE UNDERLYING CONDUCT THAT BECAME THE RELEVANT ENTITY.

AND THE SAME IS HERE.

>> BUT IN THE McFADDEN CASE, WE'RE REALLY LOOKING AT WHETHER OR NOT THE WITHHOLD WAS A CONVICTION FOR PURPOSES OF IMPEACHMENT, CORRECT?

>> CORRECT, YOUR HONOR.

>> OKAY.

AND THEN WHEN WE LOOK AT SOMETHING LIKE THE SENTENCING GUIDELINES WHERE IT CLEARLY SAYS THAT A WITHHOLD IS A CONVICTION, CORRECT?

>> I BELIEVE THE GUIDELINES DO SAY THAT A WITHHOLD SHOULD COUNT.

>> AND THEN WE LOOK AT THE DEATH PENALTY AGGRAVATION AND A WITHHOLD CAN BE CONVICTION FOR THOSE PURPOSES, CORRECT?

>> BECAUSE THE LEGISLATURE HAS SAID SO.

>> YEAH.

BUT IT JUST SEEMS TO ME THAT WHEN YOU LOOK AT THE FACT THAT WHEN WE'RE TALKING ABOUT OTHER CRIMINAL ACTIVITY, THAT THE WITHHOLD OF ADJUDICATION DOES, IN FACT, SEEM TO COUNT IN THOSE KINDS OF SITUATIONS.

>> I WOULD--

>> EXCEPT FOR I KNOW THAT THERE ARE CASES FROM OUR DISTRICT COURTS THAT SAY A WITHHOLD FOR PURPOSES OF THE FELONY AND POSSESSION OF A FIREARM IS NOT A CONVICTION.

BUT--

>> I WOULD DISAGREE WITH YOUR HONOR ON THAT, BECAUSE I BELIEVE THERE'S A DISTINCTION BETWEEN SENTENCING STATUTES AND ELEMENTS

OF A NEW AND SEPARATE CRIMINAL OFFENSE.

AND THE COURT SAID THAT AS RECENTLY AS McFADDEN, AND THE COURT SAID THAT IN 1918 IN THE SMITH CASE.

BY THAT TIME IT WAS FIRMLY ESTABLISHED IN THE LAW OF THE STATE THAT WHERE THE COURT USES THE TERM A PRIOR CONVICTION OR A CONVICTED PERSON, ACTUALLY, AS AN ELEMENT OF A NEW AND SEPARATE CRIMINAL OFFENSE, IT IS REFERRING TO THE ADJUDICATION OF THE COURT.

IN ELLIS IN 1930, THIS COURT STATED THAT A CONVICTION UNDER FLORIDA LAW HAS TWO PARTS. THERE'S THE FINDING OF GUILT IN THAT CASE OR HEAR THE PLEA, BUT IT DOES NOT BECOME EFFECTIVE UNTIL ADJUDICATION BY THE TRIAL COURT.

THE ADJUDICATION--

>> ADJUDICATION BY THE TRIAL COURT MEANS WHAT EXACTLY? IN THE JUDGMENT YOU HAVE TO SAY THAT THE PERSON IS GUILTY?

>> CORRECT, YOUR HORN.

IT WOULD HAVE TO SAY ADJUDICATED.

IN THIS CASE THE DEFENDANT IS TOLD YOU DO NOT HAVE A CONVICTION.

AND IN THE ELLIS ARE CASE, THE COURT--

>> JUST FOR MY OWN PURPOSES HERE, WHAT DOES THE JUDGMENT ON THAT THIRD-DEGREE FELONY SAY?

>> THE JUDGMENT RECITES THE STATUTORY LANGUAGE THAT THE COURT MADE A FINDING THAT THE DEFENDANT WAS NOT LIKELY TO ENGAGE IN A FUTURE COURSE OF CONDUCT AND SHOULD NOT SUFFER THE PENALTY IMPOSED BY LAW AND THAT ADJUDICATION WAS WITHHELD. AND THAT SENTENCE WAS SUSPENDED.

>> GUESS THE COURT WAS WRONG ABOUT THAT, HUH?

>> WELL, YOUR HONOR, WE CAN CERTAINLY DEBATE THAT. AND AT THE TIME THAT HE WAS CHARGED IN THE FEDERAL CASE, OF COURSE, HE HAD THE PRESUMPTION OF INNOCENCE. AND SO OUR POSITION WOULD HAVE BEEN THAT HE SHOULD NOT HAVE BEEN FORCED UNDER 11TH CIRCUIT PRECEDENT TO SAY HE WAS A CONVICTED PERSON BY FLORIDA WHEN THE SENTENCING JUDGE HAD FOUND THAT HE SHOULD NOT BE. AND I WANTED TO MAKE ANOTHER POINT ABOUT THE ELLIS CASE. THE COURT HELD THAT IF THE JURY'S VERDICT WAS SUFFICIENT, IT WOULD BE LITTLE FUNCTION OF THE TRIAL COURT. AND I WOULD SUBMIT THAT AS THE SAME HERE WHEN WE ARE-- THE LAW IMPOSES A NEW AND SEPARATE CRIMINAL OFFENSE BASED ON STATUS THAT THE SENTENCING COURT IN 2008 SPECIFICALLY FOUND AND MADE A JUDICIAL FINDING OF FACT SHOULD NOT APPLY. THE GOVERNMENT HAS ASKED THIS COURT TO CHANGE THE LAW OF THE STATE WHICH IS CURRENTLY SETTLED AND HAS BEEN AT LEAST SINCE 1991, AND ANOTHER POINT I WANTED TO MAKE IS, OF COURSE, THAT THE LEGISLATURE IS PRESUMED TO BE AWARE OF JUDICIAL INTERPRETATIONS OF ITS LAWS AND HAS MADE NO EFFORT TO CHANGE 790.23 SINCE THE THIRD DISTRICT OF COURT OF APPEALS RULING. AS THE LAW IS TO CHANGE AS THIS COURT WROTE IN OVERTON-- I'M SORRY, IN OVERSTREET, IT IS FOR THE LEGISLATURE. IN THE LIGHT OF THE ABSENCE OF ANY CONFLICT AMONG THE DISTRICT COURTS OF APPEAL AND THE ABSENCE OF ANY LEGISLATIVE INTENT TO THE CONTRARY, WE WOULD ASK THE COURT TO ANSWER THE CERTIFIED QUESTION IN THE NEGATIVE, AND I WILL

RESERVE THE REMAINDER OF MY TIME
FOR REBUTTAL.

>> OKAY, THANK YOU.

>> GOOD MORNING.

YOUR HONOR, MAY IT PLEASE THE
COURT, MY NAME IS LISETTE REID,
I'M AN ASSISTANT UNITED STATES
ATTORNEY, AND I'M HERE
REPRESENTING THE UNITED
STATES OF AMERICA.

THE QUESTION THAT WE'RE ASKING
THE COURT TO ANSWER TODAY IS
WHETHER A DEFENDANT WHO HAS PLED
GUILTY TO ALL THE ELEMENTS OF
THE OFFENSE OF A FELONY IN THIS
STATE AND HAS BEEN FOUND GUILTY
BY THE COURT, THE COURT HAS
ACCEPTED HIS GUILTY PLEA,
WHETHER THAT IS A CONVICTION FOR
PURPOSES OF THE FLORIDA FELON IN
POSSESSION STATUTE.

I DO WANT TO CLARIFY JUSTICE
PARIENTE'S QUESTION ABOUT THE
FEDERAL COURT'S POSITION, THE
11TH CIRCUIT'S POSITION ON THIS
ISSUE.

SINCE 1987 FOR AT LEAST THE PAST
30 YEARS, THE 11TH CIRCUIT HAS
FOUND BASED ON UNITED STATES V.
OR GAZDA, I'M SORRY, BASED ON
GAZDA V. STATE, IT IS BASED THAT
THE WHOLE ADJUDICATION IS FOR
PURPOSES OF THE FELON IN
POSSESSION STATUTE.

NOW, THE GAZDA CASE WAS A CASE
THAT WAS, I AGREE, NOT
CORRECTLY-- NOT DIRECTLY ON
POINT.

IT WAS ABOUT THE WITHHOLD OF
SENTENCES.

AND THE STATUTE INVOLVED THERE
SAYS THAT A SENTENCE CAN BE
WITHHELD FOR A FIVE-YEAR PERIOD.
AND IF AFTER FIVE YEARS THE
COURT HAS NOT CONVERTED THAT
INTO A JUDGMENT OF CONVICTION,
THEN IT IS NOT-- THEY CAN NO
LONGER CONVERT THAT PARTICULAR
ADJUDICATION WITHHELD INTO A
JUDGMENT OF CONVICTION.

BUT THAT CASE AND STATE V. SNYDER HAS DIFFERENTIATED IN THE FLORIDA COURTS THE DIFFERENCE BETWEEN A CONVICTION AND A JUDGMENT OF CONVICTION.

A CONVICTION IS SIMPLY THE ELEMENTS OF THE OFFENSE HAVE BEEN ADMITTED EITHER BY THE DEFENDANT CAN HIMSELF OR FOUND BY A TRIAL COURT.

THE COURT'S ACCEPTED THAT, AND THERE'S NOTHING ELSE LEFT TO DO BUT TO SENTENCE THAT DEFENDANT. THAT'S THIS COURT'S DECISION IN STATE V. SNYDER.

>> I GUESS IN TERMS OF THE PURPOSE OF WITHHOLD ADJUDICATION, IT'S GOT TO HAVE CERTAIN LEGAL MEANING FOR THE COURT TO HAVE TO MAKE THESE FINDINGS AND THEN DO SOMETHING DIFFERENT THAN MOST OTHER CASES. BECAUSE MOST CASES THERE'S NOT A WITHHOLD OF ADJUDICATION.

IT'S A NARROW CLASS OF CASES WHERE FINDINGS ARE MADE. SO IS IT THE, YOU KNOW, THE STATE, THE UNITED STATES' POSITION AND, OF COURSE, WE DON'T HAVE THE STATE OF FLORIDA HERE THAT THE WITHHOLD ADJUDICATION JUST MEANS NOTHING FOR THE PERSON'S STATUS, HAVE YOU BEEN CONVICTED OF A FELONY? AGAIN, WE TALK A LOT NOW ABOUT GUN CONTROL LAWS AND WHETHER THIS PERSON COULD HAVE LEGALLY BOUGHT A GUN.

WHAT IS THE WITHHOLD ADJUDICATION MEAN IF THEY'RE NOT ALLOWED TO SAY, NO, I WAS NOT CONVICTED OF A FELONY?

>> THE WITHHOLD ADJUDICATION STATUTE, 948.01, FIRST, WE HAVE TO LOOK AT THAT TO CONSTRUE, I AGREE, WHAT 790.31 WANTS US TO DO.

WHAT IS A CONVICTION. WE WERE LOOKING AT 938.01. HERE'S WHAT IT SAYS, THAT— AND

THE LANGUAGE IS TRACKED IN MR. JENKINS' ORDER, THAT THE COURT FINDS THE ENDS OF JUSTICE AND THE WELFARE OF SOCIETY DO NOT REQUIRE THAT THE DEFENDANT PRESENTLY SUFFER THE PENALTY IMPOSED BY LAW.

SO OUR POSITION IS THAT THE PURPOSE OF 948 IS STATED RIGHT IN THE STATUTE THAT THE DEFENDANT NOT SUFFER THE PENALTY AT THIS POINT.

>> BUT IS HE, IS HE ENTITLED TO SAY I'M NOT A, I'M NOT A CONVICTED FELON?

>> SIMPLY BECAUSE THE TRIAL COURT HAS DECIDED THAT HE SHOULDN'T HAVE A PENALTY IMPOSED AT THIS POINT DOESN'T MEAN THAT HE IS NOT--

>> BUT THE PENALTY, HE GOT NO-- DID HE GET A PENALTY?

>> HE GOT A SUSPENDED SENTENCE. BUT THE LAW REQUIRES A NUMBER OF OTHER PROVISIONS THAT ARE NOT PENALTIES THAT ARE ARE IMPOSED UPON CONVICTED FELONS.

FOR INSTANCE, FLORIDA STATUTE 77.13-- 7 75.13 REQUIRES THAT MR. JENKINS REGISTER AS A FELON BECAUSE CONVICTIONS, SPECIFICALLY UNDER THAT STATUTE, THE LEGISLATURE HAS SAID ADJUDICATION WITHHELD OR ADJUDICATION BY COURT.

SO THERE ARE A NUMBER OF OTHER PROVISIONS--

>> I SEE.

BUT THERE'S WHERE YOU HAVE IT. I THINK THE POINT IS THAT THE LEGISLATURE HAS THE ABILITY TO CONTROL WHETHER THERE'S A NEW CRIME OR NOT OR WHAT THE REQUIREMENTS ARE.

AND THEY HAVE PLENARY POWER IN THAT REGARD.

DO YOU AGREE WITH THAT IN.

>> ABSOLUTELY.

>> THEY CAN CHANGE IT TO NEXT LEGISLATIVE SESSION TO SAY,

NOPE, ADJUDICATION WITHHELD.
YOU STILL CAN'T POSSESS A
FIREARM, RIGHT?
THEY CAN DO THAT.

>> ABSOLUTELY.

>> BUT THEY HAVEN'T DONE IT.
AND SO--

>> WELL--

>> SO ISN'T IT UP TO THE
LEGISLATURE TO MAKE-- YOU'RE
ASKING US TO TAKE SOMETHING
WHERE WE HAVE SAID UNLESS THE
LEGISLATURE SPEAKS DIFFERENTLY
ARE, WE'RE GOING TO ASSUME AN
ADJUDICATION WITHHELD IS NOT A
CONVICTION FOR LEGAL PURPOSES.

>> WHAT I'M ASKING THE COURT TO
DO IS TO DETERMINE WHAT THE
LEGISLATIVE INTELLIGENT WAS
IN-- INTENT WAS IN 790.23 AND
IN 948.01.

THAT'S EXACTLY WHAT THE COURT
DID IN McCRAY V. FLORIDA AND
WHAT THIS COURT DID IN ROLLSON
V. STATE.

THE TRADITIONAL METHODS OF
DETERMINING WHAT A STATUTE MEANS
IS BY DETERMINING LEGISLATIVE
INTENT AND BY STARTING WITH THE
PLAIN MEANING OF THE STATUTE.
AND BY LOOKING AT WHAT THE COURT
HAS DONE IN SIMILAR SITUATIONS.

>> IN THE FEDERAL SYSTEM, ARE
JUDGES ALLOWED TO WITHHOLD
ADJUDICATION?

>> NO.

WE HAVE NO SUCH--

>> NO SUCH THING.

>>-- THING.

>> AND MY UNDERSTANDING IS THAT
FLORIDA IS ONE OF THE FEW STATES
IN THE COUNTRY THAT ALLOW FOR
WITHHOLD.

OHIO, FOR EXAMPLE, EVERYBODY'S
ADJUDICATED GUILTY.

YOU'RE A CRIMINAL.

>> THAT MAY BE TRUE.

>> SO WHAT DOES THAT MEAN AS FAR
IN THE OVERALL SCHEME OF THINGS
THAT WE ACTUALLY, FLORIDA

ACTUALLY GOES OUT THAT FAR AND SAYS, YOU KNOW, WE'RE WILLING TO GIVE SOMEBODY AN OPPORTUNITY TO REDEEM HIMSELF AND SO ON AND ON. DOESN'T IT HAVE SOME SPECIAL MEANING--

>> ABSOLUTELY.

I AGREE, YOUR HONOR.

AND THE SPECIAL MEANING THAT IT HAS IS STATED RIGHT IN THE VERBIAGE OF THE STATUTE ITSELF. IT MEANS, SIMPLY, THAT THIS PARTICULAR DEFENDANT WILL NOT SUFFER THE PENALTY AT THIS POINT IMPOSED BY LAW, THE PENALTY BEING THE IMPOSITION OF A SENTENCE.

SENTENCE IS SUSPENDED. ALL OTHER CONSEQUENCES, HOWEVER--

>> LET'S SAY THAT MR. JENKINS DECIDED TO PURCHASE A FIREARM, AND HE GOES TO A GUN STORE, AND HE HAS TO FILL OUT AN APPLICATION.

AND I'M SURE HE WILL ASK HAD HE BEEN CONVICTED OF A FELONY, HOW WOULD HE ANSWER?

UNDER OATH--

>> THAT IS WHY WE'RE HERE AT THE COURT.

I KNOW AS AN ATTORNEY WHAT I WOULD ADVISE MR. JENKINS TO DO. I WOULD ADVISE MR. JENKINS THE STATE OF THE LAW FOR AT LEAST THE LAST 30 YEARS IN THE 15TH CIRCUIT HAS BEEN THAT YOU CAN BE PROSECUTED FOR BEING A FELON IN POSSESSION EVEN IF YOUR ADJUDICATION HAS BEEN WITHHELD. BECAUSE ADJUDICATION WITHHELD IS NOT-- IS CONSIDERED TO BE A CONVICTION UNDER THE LAW. AND THE PERSON-- SORRY.

>> A PERSON WHO HAS ADJUDICATION WITHHELD, DO THEY HAVE THE RIGHT TO VOTE OR NOT?

>> THAT'S A VERY GOOD QUESTION. I CAN'T SAY THAT I KNOW THE ANSWER TO THAT ONE, WHETHER OR

NOT THEIR CIVIL RIGHTS TO VOTE
IS AFFECTED.

I THINK THAT'S A VERY IMPORTANT
ISSUE FOR THE COURT TO CONSIDER.
BUT WHAT'S BEFORE US TODAY IS
WHETHER OR NOT THE PENALTY THAT
948 REFERS TO IS--

>> IS AN ACTUAL SENTENCE.

>>-- IS JUST A SENTENCE, OR
DOES IT INCLUDE THE COLLATERAL
CONSEQUENCES OF THAT CONVICTION?
NOW, AS I POINTED OUT IN MY
BELIEF, THE ABILITY, THE RIGHT
TO POSSESS A FIREARM IS NOT A
PENALTY, AND THIS COURT HAS
CLEARLY STATED THAT THE FELON IN
POSSESSION STATUTE IS A STATUTE
PUT IN PLACE FOR PROTECTION OF
THE PUBLIC.

IT IS A SITUATION LIKE IN
McCRAV V. STATE WHERE WE NEED
TO DETERMINE THE TYPE OF
INDIVIDUAL.

AND THIS COURT HAS STATED IN
DICKERSON, THE UNITED STATES
SUPREME COURT HAS STATED THAT
THE POSSESSION OF A FIREARM HAS
TO BE PROPERLY REGULATED AND
THAT SOMEONE WHO HAS COMMITTED A
FELONY HAS SHOWN THEMSELF TO BE
UNFIT.

>> BUT THE LEGISLATURE HAD IT--
YOU SAY WE HAVE TO INTERPRET
WHAT THEY MEANT BY CONVICTION,
BUT THEN YOU SAID IN OTHER
SITUATIONS THEY'LL SAY
CONVICTION INCLUDING OR WITHHOLD
ADJUDICATION.

THAT'S ALL THEY HAVE TO SAY.

AND I DON'T KNOW THAT YOU
ANSWERED JUSTICE LABARGA'S
QUESTION WHICH IS IN THE STATE
OF FLORIDA WHICH IS WITHIN THE
UNITED STATES BUT HAS SEPARATE
JURISPRUDENCE CASTILLO WAS THE
LAW SINCE 1991 SPECIFICALLY
SATING THAT ADJUDICATION WAS
WITHHELD, YOU CANNOT BE
CONVICTED OF BEING A FELON
THAT'S A STATUS, BEING A FELON

IN POSSESSION OF A FIREARM.

>> SPECIFICALLY--

>> IS THAT CORRECT?

I MEAN, THE STATE OF THE LAW IN FLORIDA IS WHAT THE APPELLANT OR PETITIONER IS STATING IT IS.

>> IF WE'RE DISCUSSING CASTILLO, IT'S A THIRD DCA CASE IN WHICH THE THIRD DCA HELD THAT A CONVICTION, AN ADJUDICATION WITHHELD IS NOT A CONVICTION.

>> NOW, DID ANYBODY, WAS THERE ANOTHER DISTRICT COURT OF APPEALS SINCE 1991 IN FLORIDA THAT HELD DIFFERENTLY?

>> NO.

THERE HASN'T BEEN.

THE FOURTH DCA, OF COURSE, YOU KNOW THE DCA, ONCE ONE DCA HAS RULED, THE OTHERS ARE ACCORDED THAT OTHER DCA DECISION IS RECORDED IN SOME--

>> ONLY IN THE TRIAL COURTS. NOT IN THE APPELLATE COURTS. AGAIN, NO APPELLATE COURT IN FLORIDA IS HELD DIFFERENTLY FOR--

>> THAT'S CORRECT.

>>-- THREE DECADES OR HOWEVER MANY THERE ARE.

TWO.

25.

>> SINCE CASTILLO.

BUT I DO WANT TO POINT OUT TO THIS COURT THAT CASTILLO DID NOT USE THE TRADITIONAL MEDS OF LEGISLATIVE OR STATUTORY INTERPRETATION.

IT SIMPLY CITED TO TWO VERY OLD SUPREME COURT CASES WHICH HAD NOTHING TO DO WITH THE FELON IN POSSESSION STATUTE.

AND GAVE NO ANALYSIS TO SUPPORT ITS DECISION.

AS THIS COURT POINTED OUT IN ROLLSON AND IN McCRAY V. FLORIDA WHERE YOU DID DO THE PROPER STATUTORY ANALYSIS, ADJUDICATION WITHHELD IN THOSE PARTICULAR CASES WHERE THE

STATUTE DID NOT SPEAK, BUT LEGISLATIVE INTENT SPOKE, THIS COURT DECIDED THAT ADJUDICATION WITHHELD IS A CONVICTION.

SO I JUST WANT TO BE CLEAR, JUSTICE PARIENTE, THAT THERE ARE CASES WHERE THE STATUTE DID NOT STATE SPECIFICALLY, BUT YET THIS COURT INTERPRETED BASED ON NORMAL PROCEDURES OF INTERPRETATION LOOKING AT THE HISTORY AND INTENT THAT ADJUDICATION WITHHELD WAS A CONVICTION.

THE IMPORTANT THING ABOUT THOSE PARTICULAR CASES IS THAT THOSE WERE SITUATIONS WHERE PUBLIC SAFETY WAS AT STAKE, AND THAT'S WHAT WE'RE TALKING ABOUT IN THIS CASE.

WHEN THE PURPOSE OF THE FELON IN POSSESSION STATUTE IS TO PREVENT PEOPLE WHO HAVE DEMONSTRATED BY THEIR CONDUCT THAT THEY ARE UNFIT TO POSSESS A GUN--

>> BUT THEN YOU HAVE THAT, THE FINDING THAT THEY'RE NOT LIKELY TO ENGAGE IN FUTURE CRIMINAL BEHAVIOR.

SO IT'S THE VERY FINDING. IT'S NOT EVEN AS IF, AND, AGAIN, I DIDN'T PRACTICE CRIMINAL LAW ARE.

YOU JUST GO, OKAY, I'M GOING TO BE NICE TODAY AND WITHHOLD ADJUDICATION.

YOU HAVE TO MAKE A FINDING ABOUT THAT.

HE WAS IN POSSESSION OF COCAINE, NONVIOLENT.

HE DIDN'T USE A FIREARM, I'M ASSUMING, IN THAT CRIME THAT HE--

>> YES, YOUR HONOR.

>> SO WHAT INDICATION IS THAT HE DIDN'T ENGAGE IN ANY KIND OF CRIME THAT WOULD BE LIKELY TO LEAD TO VIOLENCE IN THE FUTURE, AND THERE WAS A SPECIFIC FINDING MADE.

SO UNDER THOSE CIRCUMSTANCES,
SEEMS TO ME THE LEGISLATURE HAS
TO BE VERY CLEAR ABOUT WHETHER A
WITHHOLD MEANS THAT SOMEBODY NOW
NO LONGER CAN POSSESS A FIREARM.

>> I APPRECIATE YOUR POINT.
BUT I DO WANT TO POINT OUT WHEN
YOU LOOK AT 948, THE STATEMENT
THAT-- THE LAW SAYS IF IT
APPEARS TO THE COURT TO FIND A
HEARING OF THE MATTER, THAT THE
DEFENDANT IS NOT LIKELY TO
REMAIN ENGAGED IN A CRIMINAL
CODE OF CONDUCT AND THE WELFARE
SOCIETY DO NOT REQUIRE HE
PRESENTLY SUPPORT THE-- THE
COURT MAY DO EITHER OF TWO
THINGS.

THE COURT MAY EITHER ADJUDGE THE
DEFENDANT TO BE GUILTY OR STAY
AND WITHHOLD ADJUDICATION OF
GUILT.

SO I DO WANT TO POINT OUT THAT
BOTH ON THAT FINDING THAT THE
ENDS OF JUSTICE AND THE WELFARE
OF SOCIETY DO NOT REQUIRE THE
DEFENDANT TO BE, TO PRESENTLY
SUFFER THE PENALTY IMPOSED.
THE COURT COULD DO EITHER OF TWO
THINGS.

THAT DEFENDANT STILL COULD HAVE
BEEN ADJUDGED GUILTY BASED ON
THAT SAME FINDING OR NOT
ADJUDGED GUILTY.

>> SO WE WOULDN'T BE HERE THEN.
[LAUGHTER]

>> THE ONLY DIFFERENCE THEN IS
THAT NO, THAT WHEN THE PERSON IS
ADJUDGED, WELL, GUILTY, WE CAN
SAY, OKAY, VERY CLEARLY, VERY
EASILY THAT'S A CONVICTION.

>> WHAT DOES WITHHOLD
ADJUDICATION MEAN?

>> EXACTLY.

WHEN WE LOOK AT THE LEGISLATIVE
STATUTES, WHEN WE LOOK AT THE
INTENT AND ALL OF THE OTHER
STATUTES TOGETHER AND THE
COURT'S INTERPRETATION, AT THIS
POINT ADJUDICATION WITHHELD

MEANS THAT-- WE KNOW WHAT IT DOESN'T MEAN.

IT DOESN'T MEAN THAT THE DEFENDANT IS NOT GUILTY.

IT DOESN'T MEAN THAT THE DEFENDANT HAS NOT COMMITTED THE OFFENSE.

THE ONLY THING IT CAN MEAN BASED ON THE STATUTE IS THAT HE'S NOT GOING TO BE SUFFERING THE PENALTY WHICH IS THE SENTENCE, THE IMPRISONMENT AT THIS PERIOD OF TIME.

HE'S GOING TO BE PUT ON PROBATION--

[INAUDIBLE CONVERSATIONS]

>> SORRY?

>> EVEN IF THE DEFENDANT WAS ADJUDICATED, THAT COULD HAPPEN--

>> THAT CAN HAPPEN.

>> SO WHAT, AGAIN, I GUESS WHAT WE'RE STRUGGLING WITH IS WHAT IS THE USE IN HAVING THIS WITHHOLD ADJUDICATION, THAT EVERY LAWYER IF YOU'VE BEEN A TRIAL JUDGE STRIVING FOR, A JUDGE WANT MY CLIENTS AND ADJUDICATION TO BE WITHHELD.

THEY FIGHT FOR THAT.

WHAT IS THE USE IN HAVING IT IF IT AMOUNTS TO THE SAME THING? THAT'S THE BOTTOM LINE.

>> I'M LOOKING AT THE TERMS OF THE STATUTE AND IT DOES SAY, YES, THIS DEFENDANT COULD BE PUT ON PROBATION WHETHER HE'S JUDGED GUILTY OR ADJUDICATION IS WITHHELD.

THEY ARE PARTICULAR STATUTES THAT SAY ADJUDICATION WITHHELD IS NOT INCLUDED HERE.

ONE OF THEM WOULD BE RAULERSON, WE'RE TALKING ABOUT SOMEONE WHO'S DRIVING WITH THE SUSPENDED OR CANCELED DRIVER'S LICENSE ON THEIR FIRST OFFENSE.

IT SAYS ADJUDICATION CAN BE WITHHELD THIS THAT SITUATION. THEY DON'T LOSE THEIR DRIVER'S

LICENSE.

THERE ARE A NUMBER OF OTHER STATUTES THAT TALK ABOUT WHETHER ADJUDICATION IS TO BE WITHHELD OR NOT.

BUT WHEN WE'RE LOOKING AT THE STATUTES THAT DEAL WITH PUBLIC SAFETY, WHEN WE'RE LOOKING AT THE DECISIONS OF THIS COURT TO DEAL WITH PUBLIC SAFETY, I CAN TELL YOU THIS, THAT THIS COURT HAS LOOKED AT THE CHARACTER AND THE HISTORY OF THE DEFENDANT AND DECIDED THAT IN THOSE TYPES OF CASES ADJUDICATION WITHHELD IS A CONVICTION.

>> YOU DESCRIBE THE WITHHOLD AS ONE WITHOUT PENALTY.

BUT ISN'T THE PROHIBITION OF POSSESSION OF A FIREARM IN AND OF ITSELF A PENALTY?

>> THIS COURT HAS CALLED IT AN ESSENTIAL REGULATORY PROVISION. IN THE CASES WHERE THIS COURT HAS INTERPRETED THE OR HAS DISCUSSED THE CONSTITUTIONALITY OF 790.23, THE FELON IN POSSESSION STATUTE, ITS CONSTITUTIONALITY HAS BEEN HELD AS AN ESSENTIAL REGULATORY PROVISION.

SO IT HAS NOT BEEN CALLED A PENALTY TRADITIONALLY.

>> WHAT WOULD BE THE REAL DIFFERENCE BETWEEN IF SOMEONE WERE ADJUDICATED GUILTY AND JUST HAD PROBATION AND PART OF THEIR PROBATIONARY PROVISIONS THAT THEY COULDN'T HAVE A FIREARM? AND IN THAT CIRCUMSTANCE AS COMPARED TO A WITHHOLD, THEN THEY HAVE SUBJECT TO THE STATUTORY INTERPRETATION THAT YOU'RE PROPOSING THAT THEY'RE PROHIBITED FROM A FIREARM, WHAT'S THE REAL DIFFERENCE IN THAT?

>> THERE'S NO DIFFERENCE FROM WHAT YOU'RE--

>> YEAH, RIGHT.

>>-- IF I UNDERSTAND YOUR QUESTION CORRECTLY.
>> RIGHT.
>> IF A PERSON'S ADJUDICATION IS WITHHELD OR THEY'VE BEEN ADJUDICATED AND PLACED ON PROBATION, THE QUESTION IS ARE THEY, IS THERE ANY DIFFERENCE BETWEEN THEIR ABILITY TO THEN POSSESS A FIREARM?
>> YES.
>> THE ANSWER IS NO. IN EITHER CASE, THEY HAVE CONCEDED THAT THEY HAVE SATISFIED ALL THE ELEMENTS OF THE OFFENSE OF A FELONY. AND THE FELONY IS A SERIOUS OFFENSE THAT WE ALL AGREE DISQUALIFIES SOMEBODY--
>> WHAT HAPPENS--
>> IS THAT PROBATIONARY TERM THAT PROHIBITS A FIREARM, IS THAT A PENALTY OR REGULATORY?
>> THE PROBATIONARY TERM?
>> YEAH.
>> WELL, SINCE-- AT THIS POINT THE STATUTE SAYS THAT THEY PRESENTLY, THAT THE COURT IS SAYING THAT THIS PERSON WILL PRESENTLY NOT SUFFER THE PENALTY IMPOSED, THEN IT DOES SEEM AS THOUGH PROBATION IS NOT A PENALTY IN THAT CASE.
>> WELL, THE THING IS--
>> I WILL SAY THERE'S A SEPARATE STATUTE THAT SAYS WHEN ADJUDICATION IS WITHHELD, THE COURT MUST IMPOSE PROBATION.
>> WHEN ONE IS PLACED ON PROBATION IN FLORIDA WHETHER ADJUDICATION WAS HELD OR NOT--
>> OR NOT.
>>-- THERE'S STILL A CONDITION OF PROBATION THAT PROHIBITS A PERSON FROM POSSESSING A FIREARM. WHETHER ADJUDICATION IS WITHHELD OR NOT. IF THAT PERSON VIOLATES THEIR

PROBATION BY POSSESSING A
FIREARM, THEN IT'S A VIOLATION
OF PROBATION.

ADJUDICATION WITHHELD OR NOT.
THE SAME PENALTIES WILL APPLY.
SO THAT'S NOT THE ISSUE HERE.
THAT'S A CONDITION OF PROBATION
THAT'S BEING VIOLATED.

AND THE FACT THAT THE PERSON WAS
ADJUDICATED OR NOT IS IRRELEVANT
TO THAT EFFECT.

THE QUESTION HERE IS, YOU KNOW,
AS FAR AS WHAT IS THE MEANING OF
A WITHHOLD OF ADJUDICATION, WE
HAVE A NUMBER OF STATUTES THAT
SPECIFICALLY DEAL WITH IT.

FOR EXAMPLE, IF SOMEBODY APPLIES
TO BE A STATE SCHOOLTEACHER,
SCHOOL BOARD, THERE IS A
PROVISION OF THE STATUTES THAT
SAYS HAVE YOU EVER BEEN
CONVICTED OF A FELONY?
EVEN IF THE ADJUDICATION WAS
WITHHELD.

>> YES.

>> IT SAYS THAT IN THE STATUTE.

>> YES.

>> SO IT LOOKS LIKE THE
LEGISLATURE HAS MADE PROVISIONS
FOR THAT WHICH, IN MY BOOK, WHAT
I'M SEEING, IT TELLS ME THAT IF
IT'S A WITHHOLD UNLESS OTHERWISE
STATED BY THE LEGISLATURE, IT IS
JUST THAT.

A WITHHOLD.

>> I UNDERSTAND.

>> WHY ISN'T THAT THE CASE HERE?

>> WELL, IT WOULD BE, CERTAINLY,
A LOT MORE HELPFUL TO MY
ARGUMENT IF THE LEGISLATURE HAD
MADE-- WE PROBABLY WOULDN'T BE
HERE.

BUT WE KNOW THAT THIS COURT HAS
ENGAGED IN THE NORMAL
REQUIREMENT TO STATUTORY
INTERPRETATION LOOKED AT
LEGISLATIVE HISTORY IN MANY
DIFFERENT SITUATIONS TO TRY TO
FIGURE OUT WHAT THE LEGISLATIVE
INTENT WAS IN A PARTICULAR

STATUTE.

AND I WILL POINT THIS OUT WHERE
IN McCRAY V. FLORIDA THIS
COURT DECIDED WHETHER THE
STATUTE SAID IT OR NOT, THAT IT
WAS THE LEGISLATIVE INTENT OF
THE LEGISLATURE WHEN IT SAID
THAT A PERSON WHOSE ADJUDICATION
IS WITHHELD, THE CONVICTION CAN
BE COUNTED IN DETERMINING
WHETHER THEY RECEIVE THE
ULTIMATE PENALTY WHICH IS THE
PENALTY OF DEATH.

THOSE AGGRAVATED FELONIES,
WHETHER OR NOT ADJUDICATION WAS
WITHHELD, THIS COURT DECIDED
SHOULD BE COUNTED.

THESE ARE CRITICAL
CONSIDERATIONS THAT I THINK
SHOULD PLAY INTO THE COURT'S
DECISION TODAY.

I ALSO WANT TO POINT OUT IN
TERMS OF MY OPPONENT'S USE OF--
MAY I JUST FINISH?

I SEE I HAVE A RED LIGHT.

>> SURE, GO AHEAD.

>> ON THE RULE OF LENITY, THE
THE RULE SHOULD NOT BE APPLIED
TO SUCH A SERIOUS DECISION AND,
CERTAINLY, THIS COURT HAS NEVER
APPLIED THE RULE OF LENITY IN
ITS DETERMINATION OF WHETHER OR
NOT AN ADJUDICATION WITHHELD IS
A CONVICTION.

>> I DON'T UNDERSTAND THE
ARGUMENT THAT THE RULE OF LENITY
WOULD JUST HAVE NO POSSIBLE
APPLICATION HERE.

BECAUSE WE'RE TALKING ABOUT THE
ELEMENTS OF-- THE OFFENSE OF
BEING A FELON IN POSSESSION, AND
IT SEEMS TO ME THAT THE RULE OF
LENITY-- NOW, WHETHER YOU WIN
OR LOSE UNDER THAT IS A
DIFFERENT QUESTION.

BUT THE ARGUMENT THAT IT JUST
HAS NO APPLICATION I DON'T
FOLLOW.

COULD YOU ELABORATE ON THAT.

>> OKAY.

SO AS I SAID, THE COURT, THIS COURT HAS NEVER APPLIED THE RULE OF LENITY IN DETERMINING--

>> WELL, OKAY, I UNDERSTAND WHAT WE MAY HAVE DONE OR MIGHT NOT HAVE DONE, BUT THE RULE OF LENITY IS A STATUTORY RULE OF CONSTRUCTION.

>> I UNDERSTAND.

>> AND MAYBE WE DIDN'T CONSIDER IT BECAUSE NOBODY RAISED THE ARGUMENT IN CERTAIN CASES.

NOW, WHETHER WE WERE CORRECT TO DO THAT OR NOT IS A DIFFERENT QUESTION.

BUT HERE THE ARGUMENT HAS BEEN RAISED.

SO WHY IS THAT NOT AN ARGUMENT THAT WE SHOULD-- IF I UNDERSTAND WHAT YOU'RE SAYING, THAT'S AN ARGUMENT THAT JUST HAS ABSOLUTELY NO MERIT, CAN'T EVEN BE CONSIDERED.

AND I DON'T FOLLOW THAT.

>> OKAY.

WELL, OF COURSE, THE CASES SAY THAT THE RULE OF LENITY CAN ONLY BE USED WHEN THERE'S--

>> WELL, WE HAVE SAID THAT, BUT WE'VE GOT A STATUTE, AND WE'VE GOT A CASE MAYBE THAT QUOTES THE U.S. SUPREME COURT, BUT THAT'S-- THE FEDERAL LAW ON THAT, I BELIEVE, IS DIFFERENT THAN OUR STATUTORY RULE OF CONSTRUCTION THAT IS THERE IN THE FLORIDA STATUTES.

>> I'M NOT SURE I'M FOLLOWING THE COURT'S QUESTION.

BUT IF I UNDERSTAND CORRECTLY, YOU'RE SAYING THAT WHY SHOULDN'T THE RULE OF LENITY APPLY IN THIS CASE EVEN THOUGH WE HAVEN'T APPLIED IT BEFORE.

IS THAT CORRECT?

>> THAT'S IN THE BALLPARK.

[LAUGHTER]

>> OKAY.

WELL, MY ANSWER WOULD BE THAT THE STATUTE HERE WHETHER OR NOT

790.23 AND 940-- THE STATUTE DEALING WITH WITHHOLD OF ADJUDICATION, IF WE LOOK AT THOSE TWO STATUTES TOGETHER AND INTERPRET WHAT THEY SAY, ALL THAT STATUTE SAYS WITHHOLD OF ADJUDICATION SAYS IS THAT THE INDIVIDUAL SHOULD NOT SUFFER THE PENALTY, PRESENTLY SUFFER THE PENALTY IMPOSED BY LAW, AND IT CAN BE INTERPRETED VERY SIMPLY A FAIR INTERPRETATION OF THAT STATUTE AS THIS COURT HAS DONE BEFORE IS TO STATE THAT THAT MEANS THE PENALTY OF IMPRISONMENT AT THAT TIME. AND IT DOESN'T MEAN THAT THE COLLATERAL CONSEQUENCES OF THE PERSON'S ACTIONS, OF THE FACT THAT THEY'VE COMMITTED THIS FELONY SHOULD NOT BE RECOGNIZED BY THE COURT.

>> OKAY.

THANK YOU.

>> THANK YOU.

>> THANK YOU.

I BELIEVE THAT THE COURT, IN FACT, DID APPLY THE RULE OF LENITY TO INTERPRETING THE DEFINITION OF A CONVICTION IN THE OVERSTREET DECISION. THE LEGISLATURE DID SUBSEQUENTLY AMEND THE STATUTE, BUT THE COURT WROTE THAT THE INTERPRETATION OF THE LAW MUST BE BASED ON THE PLAIN LANGUAGE OF THE STATUTE AND SUGGESTED THAT IF THE LEGISLATURE INTENDED OTHERWISE, IT SHOULD AMEND THE STATUTE. I WOULD NOTE THAT THE UNITED STATES CONGRESS AMENDED THE FEDERAL FELON IN POSSESSION STATUTE AFTER THE DICKERSON CASES THAT THE GOVERNMENT HAS CITED IN ORDER SPECIFICALLY TO ACCOMMODATE PROBATIONARY REFORMS SUCH AS THE WITHHOLD OF ADJUDICATION STATUTE IN THIS CASE.

I DO NOT KNOW HOW MANY OTHER STATES PRESENTLY HAVE SIMILAR DISPOSITIONS TO FLORIDA, BUT THE CONGRESSIONAL HISTORY OF THE FIREARM OWNER'S PROTECTION ACT WHICH WAS THE AMENDMENT TO THE FEDERAL FELON IN POSSESSION STATUTE WAS SPECIFICALLY TO DEFER TO THE STATES ON WHAT CONSTITUTED A CONVICTION AND TO ALLOW FOR THE NONADJUDICATORY POSITION SUCH AS THE WITHHOLD OF ADJUDICATION THAT WAS ALLOWED IN THIS CASE.

MY OPPONENT HAS MENTIONED SOME LANGUAGE THAT WAS IN THE GAZDA OPINION ABOUT THE DISTINCTION BETWEEN A CONVICTION AND A JUDGMENT OF CONVICTION.

I BELIEVE THAT IS A BIT OF A RED HERRING BECAUSE THE LANGUAGE OF 790.23 SAY THAT IS THE DEFENDANT HAS BEEN CONVICTED.

THAT WAS THE SAME LANGUAGE USED IN THE EVIDENTIARY STATUTE AS ISSUED IN McFADDEN.

THE CASTILLO CASE FROM THE THIRD DISTRICT COURT OF APPEAL, THE GOVERNMENT SUGGESTED NOT FOLLOW TRADITIONAL METHODS OF STATUTORY INTERPRETATION BUT, IN FACT, IT'S CITED BOTH WEATHERS AND SMITH WHICH WERE PREVIOUS DECISIONS OF THIS COURT WHICH ESTABLISHED THE GENERAL RULE THAT WHERE AN ELEMENT OF THE STATUTE USED THE PHRASE THAT A PERSON HAS BEEN CONVICTED, IT IS REFERRING TO THE ADJUDICATION BY THE TRIAL COURT.

WHETHER IT IS CRIMINAL OR CIVIL, THE REGULATORY SCHEME OF PROHIBITING A PERSON FROM POSSESSING A FIREARM, THE ADJUDICATIONING AND THE LOSS OF CIVIL RIGHTS IS CERTAINLY A PENALTY, AND IT IS CERTAINLY WHAT THE LEGISLATURE HAD IN MIND WHEN IT CODIFIED 948.01.
CRIMINAL DEFENDANT CANS IN

FLORIDA UNDERSTAND THEY ARE TOLD
THEY DO NOT HAVE A CONVICTION.
THEY DO NOT LOSE THEIR RIGHT TO
VOTE ARE, THEY DO NOT LOSE THEIR
RIGHT TO SERVE ON JURIES.

THEY ARE ENTITLED TO SAY WHEN
ASKED IF THEY HAVE A CRIMINAL
CONVICTION, THEY DO NOT.

AND THE REMEDY THAT THE UNITED
STATES IS SUGGESTING IN THIS
CASE WOULD RESULT IN A GRAVE
INCONGRUITY IN THE LAW WHERE A
DEFENDANT WOULD BE FORCED TO
KNOW, WELL, I AM A CONVICTED
PERSON AND I'M NOT FOR THAT
PURPOSE.

IT HAS ALWAYS BEEN UNDERSTOOD
THAT A WITHHOLD OF ADJUDICATION
IN THIS STATE IS SIMPLY NOT A
CONVICTION.

THE PUBLIC SAFETY CONCERNS THAT
THE UNITED STATES IS ADVOCATING
HAVE BEEN ADDRESSED BY THE
LEGISLATURE ON A
STATUTE-BY-STATUTE BASIS.

THE LEGISLATURE HAS DONE THIS BY
LIMITING THE CASES IN WHICH
ADJUDICATION MAY BE WITHHELD,
AND I WOULD FURTHER POINT OUT
THAT IT WAS COMPLETELY
REASONABLE FOR THE LEGISLATURE
TO BELIEVE THAT PROMOTING
REHABILITATION-- WHICH IS THE
UNDERLYING PURPOSE OF 948.01--
ALSO SERVES AN IMPORTANT
INTEREST IN PROTECTING THE
PUBLIC SAFETY.

THE LAW IS WELL ESTABLISHED.
THERE IS NO CONFLICT AMONG THE
DISTRICT COURTS OF APPEAL, AND
SO IF THERE ARE NO FURTHER
QUESTIONS, WE WOULD ASK THE
COURT TO ANSWER THE CERTIFIED
QUESTION IN THE NEGATIVE AND
REAFFIRM THAT A PERSON WHO HAS
ENTERED A GUILTY PLEA FOR WHICH
ADJUDICATION IS WITHHELD IS NOT
A CONVICTED PERSON UNDER
FLORIDA LAW.

>> THANK YOU FOR YOUR ARGUMENTS.

