>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE.
THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.
ALL WITH CAUSE TO PLEAD, DRAW
NEAR, GIVE ATTENTION AND YOU
SHALL BE HEARD.
GOD SAVE THESE NIGHTS.
THE GREAT STATE OF FLORIDA, AND
THIS HONORABLE.
COURT.
LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA, PLEASE
BE SEATED.
>> WELCOME TO THE FLORIDA
SUPREME COURT.
FIRST CASE FOR THE DAY IS DORSEY
VERSUS REIDER. YOU MAY BEGIN.
>> MAY IT PLEASE THE COURT.
LAURI WALDMAN ROSS TOGETHER WITH
STUART WILLIAMS. WE REPRESENT
MR. DORSEY.
SINCE McCAIN WAS DECIDED --
>> CAN'T HEAR YOU AT ALL.
>> OKAY.
CAN YOU HEAR ME NOW?
>> BETTER.
>> OKAY.
SINCE McCAIN WAS DECIDED BACK
IN 1992 IT HAS BEEN CITED
APPROXIMATELY 2000 TIMES.
OVER 300 IN FLORIDA CASES AND IT
IS THE SEMINAL CASE IN
FLORIDA CONTROLLING THIS CASE
AND WHAT McCAIN STANDS FOR IS
THAT DUTY AND PROXIMATE CAUSE
ARE SEPARATE ELEMENTS.
COURTS ARE LIMITED IN TAKING
CASES AWAY FROM JURIES ON THE
LEGAL ISSUE OF DUTY. DUTY IS A
VERY NARROW, CIRCUMSCRIBED ISSUE
AND THIS COURT REFERRED TO IT AS
A NARROW ISSUE WHICH IS A
CONDITION PRECEDENT TO OPENING
THE COURTHOUSE DOOR.
AS OPPOSED TO PROXIMATE CAUSE
WHICH IS A FACTUAL DETERMINATION
FOR JURIES TO MAKE.
IN McCAIN THIS COURT WARNED
THAT THERE WAS TEMPTATION TO

MERGE THE FIRST TWO ELEMENTS OF
FORESEEABILITY WHICH WERE
DIFFERENT ELEMENTS RELATING TO
DUTY AND PROXIMATE
CAUSE AND TO BLUR THE
DISTINCTIONS BETWEEN THEM.
IF FOUND, PRECEDENT AND PUBLIC
POLICY REFLECTS SUCH BLURRING IS
INCORRECT EVEN THOUGH IT
OFTEN YIELDS THE CORRECT RESULT.
HERE THE THIRD DISTRICT
CONFLATED DUTY AND PROXIMATE
CAUSE AND FOUND EXACTLY THE
ANALYSIS THAT THIS COURT QUASHED
IN McCAIN AND FOLLOWED THE
EXACT ANALYSIS THAT THE SECOND
DISTRICT REACHED IN ITS OPINION
THAT THIS COURT QUASHED IN
McCAIN.
>> WE HAVE IN THIS CASE A, AN
INTENTIONAL ACT ON THE PART OF
IN NOORDHOEK.
>> YES.
>> THE QUESTION THAT I'VE BEEN
STRUGGLING WITH IS THAT IT
SEEMS THAT'S SOMEWHAT FACT
DEPENDENT.
>> I AGREE.
>> SO WHEN THE THIRD DISTRICT,
WHEN THEY'RE TALKING ABOUT THAT
REIDER CREATED A FORESEEABLE
ZONE OF RISK BY DELIBERATELY
BLOCKING DORSEY'S ESCAPE
EFFORT ENABLING NOORDHOEK TO
STRIKE, DOES IT MATTER FOR THE
EVALUATION OF DUTY WHETHER REIDER
HAD REASON TO BELIEVE THAT
TOMAHAWK GUY WAS GOING TO DO
WHAT HE DID?
DOES THAT MATTER? IN OTHER
WORDS, TAKE TWO DIFFERENT THINGS
THIS WOULD BE A NO-BRAINER IF
20 SECONDS BEFORE REIDER SAW THE
TOMAHAWK AND SAID GO TO IT, GO
FSU AND ON THE OTHER HAND A,
WHERE THERE IS NO EVIDENCE AT
ALL THAT HE HAD REASON TO
ANTICIPATE THE BLOW AND
BLOCKING HIS WAY.
SO HELP ME ON THAT.

>> OKAY.
THERE IS A REASON TO ANTICIPATE
BECAUSE YOU HAVE TO LOOK AT THE
OVERALL FACTS RATHER THAN THE
FACTS SINGLED OUT IN THE THIRD
DISTRICT'S OPINION.
BECAUSE WHAT THE COURT DID, IN
ADDITION TO EVERYTHING ELSE, IS
IT REWEIGHED ALL THE EVIDENCE,
LEFT OUT ALL THE FACTS IN THE
LIGHT MOST FAVORABLE TO US AND
CONSTRUED ALL THE FACTS IN THE
LIGHT MOST FAVORABLE TO MOVANT
FOR DIRECTED VERDICT.
THE TRIAL COURT DENIED A DV,
THEN THE APPELLATE COURT GRANTED
A DV ON THE COURT OF APPEALS
AFTER REWEIGHING ALL THE
EVIDENCE.
>> WHERE IS THE STATEMENT --
WE'RE NOW TALKING ABOUT GOING
BEHIND THE FOUR CORNERS?
WHERE IS THE STATEMENT, AND I
DID VOTE TO GRANT JURISDICTION.
>> YES.
>> WHERE IS THE STATEMENT IN THE
OPINION THAT SAYS THAT THEY DID
THAT?
I MEAN I UNDERSTAND.
>> OKAY.
>> I READ YOUR STATEMENT OF
FACT, I'M GOING, OH, MY GOODNESS
THERE IS VERY DIFFERENT THAN THE
FACTS, SELECTIVE FACTS THAT THE
THIRD DISTRICT USED.
>> WHAT YOU NEED TO LOOK AT IS
THE THIRD DISTRICT'S ANALYSIS
BECAUSE IT IS EXACTLY THE
ANALYSIS THAT THIS COURT
QUASHED.
>> BUT I'M ASKING YOU, THAT IS
WHY I ASKED YOU.
WE'RE TALKING ABOUT AN
INTENTIONAL ACT OF A THIRD
PARTY.
DON'T WE THEN GET INTO A
DIFFERENT MODE OF LOOKING AT
DUTY WHEN YOU'VE GOT INTENTIONAL
ACTS AS OPPOSED TO NEGLIGENT
ACTS?

>> NO, BECAUSE THAT WOULD TAKE
EVERYTHING THAT MR. REIDER DID
OUT OF THE ANALYSIS.
YOU HAVE TO LOOK AT THE FACTS
WHICH APPEAR ON THE FOUR CORNERS
OF THE, OF THE THIRD DISTRICT'S
OPINION WHICH ARE THIS.
AND WHAT THEY SAY IS, NUMBER
ONE, THAT THE TOMAHAWK IS IN
REIDER'S CAR.
REIDER AND NOORDHOEK TRAVELED
TOGETHER TO THIS BAR.
THEY CAME TOGETHER IN THE CAR.
THE TOMAHAWK'S IN THE CAR.
THE CAR IS UNLOCKED
>> WHERE IN THE CAR?
>> I'M SORRY?
>> WHERE IN THE CAR?
THAT IS ONE OF MY PROBLEMS, I
CAN'T VISUALIZE WHERE THEY WERE
EVEN SITUATED, WHERE THE
TOMAHAWK WAS IN RELATIONSHIP TO
WHERE THE PARTIES WERE.
>> BACK SEAT.
>> WAS IT IN PLAIN VIEW, ALL
THOSE THINGS?
>> THIS WAS A TRUCK, WASN'T IT?
>> YES, TRUCK.
>> NOT A TRUCK --
>> I'M REFERRING TO TRUCK AND
CAR INTERCHANGEABLY.
>> THERE'S A DIFFERENCE.
>> THERE IS THE BACK SEAT OF THE
TRUCK.
THESE TWO KNOW EACH OTHER,
TRAVELED TOGETHER, WORKED
TOGETHER, CAMPED TOGETHER.
>> ONE OF THE THINGS LOOKING AT
THIS, THE WHOLE ISSUE OF AN
INTENTIONAL TORT.
IT HAS A TENDENCY TO THROW US
AWAY FROM THE REAL FOCUS.
THE QUESTION I'M THINKING IS,
THAT THIS GUY, HIS ACTIONS WAS
SUCH THAT HE PLACED THE, YOUR
CLIENT, IN THIS CASE IN A
POSITION WHERE AN INTENTIONAL
TORT WAS COMMITTED ON HIM.
>> AND THAT'S EXACTLY MY
ANALYSIS.

>> WE HAVE DEALT WITH THAT IN
UNITED STATES VERSUS STEVENS.
>> YES.
>> BACK IN 2008, AND SCHWARTZ
AND WE ALSO DEALT WITH IT IN
VINING WHERE WE HELD A PARTY IS
REQUIRED TO PROTECT AGAINST
INTENTIONAL ACTS OF THIRD
PARTIES WHEN HIS OWN ACTIONS,
WHEN HIS OWN ACTIONS, EXPOSE THE
THIRD PARTY TO HARM.
SO IT SEEMS TO ME, I JUST
MENTIONED THAT THESE CASES ARE
FACTUALLY INTENSIVE AND IN THIS
CASE IT SEEMS, FROM WHAT I SEE
OF IT, HIS ACTIONS PLACED YOUR
CLIENT IN A POSITION WHERE AN
INTENTIONAL TORT WAS COMMITTED.
>> WAS COMMITTED.
>> AND ACTUALLY BLOCKED HIS PATH
TO GET AWAY FROM THE INTENTIONAL
TORT.
I THINK THERE, IT IS IMPORTANT
NOT TO GET CAUGHT UP OR BLINDED
BY THE FACT THAT SOMEBODY STRUCK
THIS GUY IN THE HEAD WITH A
TOMAHAWK.
A TOMAHAWK IS NOT ONE OF THESE
FSU --
>> NO, IT IS NOT SPORTS
MEMORABILIA.
IT IS NOT PLASTIC.
IT WAS A LONG OBJECT WITH A
METAL HEAD.
THIS IS A DANGEROUS TOMAHAWK.
IT WAS SEATED EITHER IN THE BACK
SEAT --
>> IT WAS A HATCHET, WASN'T IT?
>> IT IS CALLED A TOMAHAWK.
IT'S A HATCHET.
IT IS 17.5 INCHES LONG.
>> I SAW THE PICTURE.
>> OKAY.
>> LET'S GO BACK TO THIS FACT
THOUGH, AND IF I'M HUNG UP ON IT
SO BE IT.
IT IS, IT SEEMS JUST FROM THE
FACE OF THIS, FOLLOWING ON WHAT
JUSTICE LABARGA SAID,
I'M NOT AS, THE FACT THAT

WHETHER HE KNEW NOORDHOEK WAS
GOING TO GET THE TOMAHAWK, I
THINK THAT IS HARDER, BUT WHERE
DORSEY IS POSITIONED AND FROM
THIS, EVEN FROM THE RECORD HERE,
WHEN THEY SAY THERE'S NO
EVIDENCE THAT HE KNEW THAT
NOORDHOEK HAD THE TOMAHAWK
BEFORE THE STRIKE THEY GO TO A
FOOTNOTE THAT SAYS HE COULDN'T
REMEMBER, WHICH IS VERY DUBIOUS,
RIGHT?
WHEN DORSEY TESTIFIED HE
PERMITTED HIM TO TESTIFY THAT HE
REIDER SEEN NOORDHOEK WITH THE
TOMAHAWK SEEMS TO ME THEY
DISCREDITED THIS.
SEEMS LIKELY FROM THE FACTS THAT
REIDER IS THE INSTIGATING PARTY.
I APPRECIATE AGAIN EVERYTHING
THAT YOU SAID IN YOUR BRIEF.
I WAS JUST CONCERNED THAT WITHIN
THE OCCUR CORNERS IT SEEMS THAT
WHEN THEY GET TO THE FACT OF
BLOCKING THE PATH, THAT IS THE,
THAT REALLY BECOMES THE
PRECIPITATING FACTOR FOR
CREATING THE ZONE OF RISK.
>> I AGREE WITH THAT AND, NO,
BUT IN MY REPLY BRIEF HERE'S
WHAT THE THIRD DISTRICT SAID.
IT SAID, IT MIGHT BE, INDEED IT
IS PROBABLE THAT REIDER'S
RESISTANCE TO DORSEY'S EFFORT TO
ESCAPE NOORDHOEK'S BLOW ENABLED
HIM TO STRIKE.
WHAT MORE DO YOU NEED ON THE
FOUR CORNERS OF THE OPINION --
>> YOU WOULD SAY THE FOCUS ON AS
FAR AS FROM THE THIRD DISTRICT IS --
>> YES.
MY PROBLEM IN THIS CASE, AND
THERE ARE MANY, NUMBER ONE, THE
THIRD DISTRICT, OF NOORDHOEK'S
ARE THEORIES OF NEGLIGENCE.
THE FIRST ONE BEING THAT REIDER
CREATED THE ZONE OF RISK.
>> DID THE JURY GET BOTH
INSTRUCTIONS, OBVIOUSLY THE
STANDARD NEGLIGENCE AND AS WELL

AS INTERVENING CAUSE?
>> THAT I'M NOT SURE ABOUT INTERVENING CAUSE AT THE MOMENT.
I THINK, BUT I'M NOT SURE, SO I CAN'T, I KNOW THAT THEY DID GET THE STANDARD NEGLIGENCE INSTRUCTIONS.
>> IT SEEMS TO ME, LIKE, I UNDERSTAND HIM BLOCKING YOUR CLIENTS ABILITY TO ESCAPE BUT GIVEN THE HOLDING IN THE THREE CASES THAT I CITED TO YOU EARLIER, SEEMS TO ME ONCE HE SAW THE TOMAHAWK, IN THE HANDS OF A THIRD PARTY HE ACTUALLY HAD A DUTY, GIVEN THOSE CASES TO DO SOMETHING TO STOP HIM.
BECAUSE HE PLACED YOUR CLIENT IN THAT POSITION.
IF WE'RE TO HOLD TO THOSE CASES.
>> JUDGE LABARGA, JUSTICE LABARGA IN THOSE CASES --
>> THAT'S OKAY.
I'VE BEEN CALLED WORSE.
>> I DON'T CARE WHICH THEORY.
WE HAVE THREE THEORIES OBVIOUSLY.
I DON'T CARE WHICH THEORY WE WON ON, THE JURY FOUND NEGLIGENCE AND THE THIRD DISTRICT FOUND NO DUTY.
IT DOES NOT MATTER BECAUSE THAT IS WHY I RAISE THE STEVENS, VINING AND SCHWARTZ.
BECAUSE THE SCHWARTZ CASE WHICH FOLLOWS VINING IS NOT EVEN KEYS IN THE IGNITION.
IT WAS A UNLOCKED CAR IN FRONT OF A BAR WHERE THE KEYS WERE LEFT IN AN UNLOCKED GLOVE COMPARTMENT.
>> DON'T YOU THINK THOSE CASES, YOU TALKED ABOUT McCAIN IS A GOOD STATEMENT OF THE LAW NOT CONFLATING DUTY AND PROXIMATE CAUSE.
WE'RE TALKING ABOUT AN INTENTIONAL ACT -- CAN BE AN INTERVENING CAUSE.
IT IS IMPORTANT THEN TO GET BACK TO THE THIRD LINE OF CASES THAT

THIS IS APPROPRIATELY CITED.
>> ABSOLUTELY.
>> GOING BACK TO JUSTICE
LABARGA'S QUESTION TO, YOU SAID,
AND REIDER SAW THE TOMAHAWK.
>> CORRECT.
>> SO NOW THE QUESTION IS ON
THAT, IS THAT, IS THAT A DISPUTED
FACT?
IS THAT, THE THIRD DISTRICT SAYS
NO, NO, THERE IS NO EVIDENCE, NO
COMPETENT EVIDENCE.
>> THAT WAS A DISPUTED FACT AND
YOU HAVE TO LOOK AT ALL OF THE
INFERENCES FROM THE FACTS IN OUR
FAVOR AS WELL AS THE FACTS.
REIDER --
>> DIDN'T THE THIRD DISTRICT
THOUGH SAY AS TO THAT FACT OF
THE VICTIM TESTIFIED, THE VICTIM
WAS ALLOWED TO OPINE THAT THE
DEFENDANT SAW THAT?
>> RIGHT.
>> BUT THE THIRD DISTRICT SAYS
IT WAS ERROR TO ALLOW HIM TO DO
THAT.
WHAT'S WRONG WITH THAT ANALYSIS?
>> NUMBER ONE, THEY DIDN'T USE
USE OF DISCRETION.
THEY USED A DENOVO REVIEW.
NUMBER TWO, THE REASON THEY SAY
IT WAS ERROR TO ALLOW THE VICTIM TO
TESTIFY THAT TO THAT, PEOPLE
FOUND INCOMPETENT CAN NOT
TESTIFY.
MR. DORSEY TESTIFIED AND WAS
NEVER FOUND INCOMPETENT BY
ANYBODY.
>> HE WAS REFERRING TO THE
DEFENDANT THAT KEPT SAYING I
EITHER DON'T REMEMBER OR
WHATEVER, HIS TESTIMONY WAS
VERY RIDDLED WITH THAT KIND OF,
SO WAS HE FOUND TO BE
INCOMPETENT.
>> THE TESTIMONY CAME FROM
DORSEY.
>> DORSEY GAVE THE TESTIMONY
THAT THE THIRD PARTY SAW THE
DEFENDANT WITH THE TOMAHAWK.

>> CORRECT.
>> BUT MR. REIDER HIMSELF COULD NOT REMEMBER THAT.
>> CORRECT.
>> I ASSUMED WHEN THEY WERE TALKING ABOUT SOMETHING BE INCOMPETENT THEY WERE TALKING ABOUT MR. REITER.
>> OH, NO.
THEY WERE TALKING ABOUT, IT WAS ERROR TO ALLOW REIDER, ERROR TO ALLOW DORSEY TO GET THE TESTIMONY AND THEN WITH NO EXPLANATION, THEY SAID BECAUSE, ONCE SOMEBODY IS FOUND TO BE INCOMPETENT BY A COURT.
WELL MR. DORSEY WAS THE PERSON GIVING THE TESTIMONY.
HE WASN'T FOUND TO BE INCOMPETENT.
>> WAS THERE ANY DISPUTE AT ALL AS TO THE FACT THAT HE WAS HIT IN THE HEAD WITH THIS TOMAHAWK?
>> NONE.
>> SO COULD THE REASONABLE JURY HAVE DETERMINED FROM THE FACTS THAT, THE TOTALITY OF THE FACTS THAT WHEN HE GRABBED THAT PARTICULAR TOMAHAWK OUT OF THE PICKUP TRUCK AND SWUNG IT THAT A REASONABLE PERSON PRESENT MIGHT HAVE SEEN IT?
>> YES.
AND LET ME GIVE YOU JUST A COUPLE OF FACTS.
THERE WERE FIVE TO SIX FEET BETWEEN WHERE NOORDHOEK STANDING BEHIND DORSEY AND REIDER WHO WAS IN FRONT OF HIM.
ONLY FIVE TO SIX FEET IN A WELL-LIT PARKING LOT WITH A 17 1/2 INCH TOMAHAWK WITH MR. DORSEY WHO STOOD AT 6 FOOT 2.
IN ADDITION TO THAT, HERE IS WHAT THE FACTS ARE.
MR. DORSEY SAYS, I TURNED AROUND WHEN I HEARD A NOISE OF THE TRUCK OPENING WHICH IS REIDER'S TRUCK.

I TURNED.
I SAW MR. REIDER --
MR. NOORDHOEK WAS
HOLDING THE TOMAHAWK.
I TURNED BACK.
NOW REMEMBER, ONLY FIVE TO SIX
FEET AWAY.
I TURNED BACK.
I SAID TO REIDER, BOBBY, WHAT'S
THIS?
BOBBY DOES NOT RESPOND BUT WHAT
WAS HIS REACTION?
HE COMES FORWARD TOWARDS
MR. DORSEY.
HE COMES FORWARD AND HOLDS HIM.
HE GRAPPLES WITH HIM WHILE
THEY DISPUTE WHO DID THE
GRABBING, HE WOULDN'T LET HIM
OUT OF HIS WAY.
>> ACTUALLY I FORGOT.
WHAT IS IN THE FACTS THAT THE
THIRD DISTRICT SETS FORTH?
>> WHAT IS THIS, OKAY.
FROM ALL OF THOSE FACTS, YES, A
REASONABLE PERSON CAN CONCLUDE
IT WAS WELL-LIT, THEY WERE IN
CLOSE PROXIMITY, THE TWO GUYS
KNEW EACH OTHER, THEY HAD --,
REMEMBER THEY SURROUNDED HIM.
WE HAVE ONE AT THE BACK, ONE AT
THE FRONT AND HE IS TRAPPED
BETWEEN THE TWO OF THEM AND THEN
THEY WON'T LET HIM ESCAPE.
HE IS TRYING TO GET OUT.
AND THE ONLY PATH OF, THE ONLY
PATH OUT IS THROUGH REIDER WITH
NOORDHOEK STANDING BEHIND HIM
WITH A TOMAHAWK.
SO HE IS TRYING TO FLEE FROM
DANGER.
WHAT DOES REIDER DO?
HOLDS HIM THERE WHILE THE OTHER
GUY STRIKES.
THE TWO OF THEM LEAVE TOGETHER.
THEY FLEE TOGETHER.
THEN YOU'VE GOT THE EVIDENCE OF
FLIGHT, LYING TO THE COPS WHICH
IS OF COURSE, INDICIA OF GUILT,
LYING TO THE COPS AND FLIGHT AND
THEN FINALLY, AND REIDER DENIES

IT HIS KNIFE IN THE PARKING LOT.
SO YOU HAVE ALL THESE FACTS THAT SHOWING REIDER NOT ONLY PARTICIPATED BUT IN FACT HE WAS NEGLIGENT AND HE CREATED A GENERALIZED RISK.
SO WHETHER IT IS DONE ON THE BASIS OF THE TOMAHAWK LYING IN THE OPEN VEHICLE IN SCHWARTZ OR WHETHER IT'S DONE ON THE BASIS THAT REIDER CREATED THE RISK BY PREVENTING THE ESCAPE, THIS IS A CASE IN WHICH THE ZONE OF DANGER WAS CREATED BY THIS PARTICULAR DEFENDANT AND THERE IS NO INDEPENDENT INTERVENING CAUSE WHERE THE ORIGINAL ACT FLOWS FROM THE ORIGINAL --
>> I WANT TO MAKE SURE, I SEE NOW AT THE VERY END OF YOUR REPLY BRIEF A PHOTOGRAPH.
>> YES.
>> -- THIRD DISTRICT WHICH IS CLEARLY NOT, NOT AN FSU, IF I SAID THAT, I APOLOGIZE.
SOMEHOW I THOUGHT THERE WAS SOME REFERENCE --
>> THERE IS A REFERENCE IN THE BRIEF, AND I'LL TELL YOU WHERE IT COMES FROM BECAUSE IT WAS, IT REALLY IS SHOCKING.
IT SAYS SPORTS MEMORABILIA.
IT IS AN FSU TOMAHAWK WHICH IMPLIES IT IS ONE OF THOSE RUBBER THINGS YOU WAVE AT THE STADIUM.
AT PAGE 99 OF THE TRANSCRIPT YOU WILL SEE THERE IS A REFERENCE TO THE FACT THAT THE TOMAHAWK WAS PURCHASED IN TALLAHASSEE.
THAT IS THE ONLY REFERENCE AND FROM THAT THEY CONVERTED IT INTO SPORTS MEMORABILIA.
SO FOR ALL OF THE REASONS --
>> REALLY DOESN'T MATTER, HOW IT WAS GOTTEN.
IT IS AN INSTRUMENT OF --
>> OF COURSE.
>> OF CAUSING HARM.
>> OF COURSE.

AND IT IS DANGEROUS BUT THIS
PARTICULAR TOMAHAWK WOULD NEVER
BE ALLOWED INTO ANY SPORTS
STADIUM.
SO WITH THAT, I ASK THIS
COURT --
>> LET ME ASK.
ON THE TOMAHAWK, DIDN'T I READ
SOMEWHERE THAT IT WAS AN
INSTRUMENT THAT HE USED IN THIS,
TO CLEAN THE FIELDS OR THE YARDS
OR SOMETHING?
>> THAT'S WHAT HE TESTIFIED.
THAT IS WHAT REIDER TESTIFIED.
IT WAS ONE OF THE TOOLS THAT HE
USED.
>> IT WAS A TOOL, NOT SOMETHING
YOU --
>> HE SAID IT WAS A TOOL.
LIKE I DETAILED ALL OF HIS
OTHER TESTIMONY, THAT WAS
IMPROBABLE. IT COULD BE
DISBELIEVED BY THE JURY AS WELL
AND COULD HAVE BEEN USED AS A
WEAPON OF DEFENSE IN HIS CAB
BECAUSE HE SAID HE HAD ALL THESE
TOOLS IN HIS TRUCK.
OF COURSE THERE ARE NO TOOLS
ANYWHERE EXCEPT THE TOMAHAWK.
THANK YOU VERY MUCH.
>> MAY IT PLEASE THE COURT.
MARK TINKER OF BANKER, LOPEZ,
AND GASSLER ON
BEHALF OF ROBERT REIDER.
I LIKE TO TALK ABOUT WHAT AT THE
END, WHETHER SPORTS MEMORABILIA,
A TOOL, WHATEVER IT WAS. WHEN
WE'RE TALKING ABOUT THE SCOPE OF
THIS COURT'S REVIEW, ONE OF THE
THINGS THE THIRD DISTRICT
POINTED OUT IN ITS OPINION.
DOESN'T MATTER WHAT IT WAS. IT
COULD HAVE BEEN A TIRE IRON
EVERY SINGLE ONE OF US HAS IN
THE CAR.
THE QUESTION WE'RE LOOKING AT
THIRD PARTY CRIMINAL CONDUCT AND
TO WHAT EXTENT SOMEONE HAS AN
DUTY TO PREVENT THAT HAPPENING
WHETHER HE GRABBED AN UMBRELLA,

TIRE IRON OR TOMAHAWK.
>> LET ME ASK THIS QUESTION AND I WILL ASK THE QUESTION I ASKED BEFORE.
SEEMS THE HOLDING IN THE THREE CASES CITED EARLIER IN THIS COURT, DOESN'T YOUR CLIENT'S DUTY BEGIN AT THE POINT WHERE THE TOMAHAWK WAS LIFTED, WAS TAKEN OUT OF THE PICKUP TRUCK?
I MEAN ACCORDING TO THOSE CASES, IT WAS HIS ACTIONS THAT BASICALLY PLACED HER CLIENT IN THAT POSITION.
MY UNDERSTANDING OF THE FACTS IS THESE THREE GUYS ARE AT A BAR, THEY'RE DRINKING AND APPARENTLY YOUR CLIENT GOT BOISTEROUS AND HER CLIENT SAID SOMETHING LIKE, CALLED HIM A NAME HE DIDN'T LIKE AND THE OTHER TWO GUYS FOLLOW HIM.
HE WAS TRYING TO GET OUT OF THERE.
>> THE KEY I THINK TO THAT ISSUE, THIS IS WHAT THE THIRD DISTRICT RECOGNIZED, IS THERE IS NO FACTUAL SUPPORT FOR THAT.
I UNDERSTAND THE THEORY AND THAT IS THE LEGAL THEORY BUT WHAT THEY SAID THERE WAS NO COMPETENT EVIDENCE MR. REIDER KNEW THAT NOORDHOEK HAD THE TOMAHAWK.
WHAT WAS TALKED ABOUT HERE, COUNSEL SAID THERE WAS NO FINDING THAT DORSEY WAS INCOMPETENT.
THAT IS IN THE FOOTNOTE YOU REFERENCED.
A WITNESS IS NOT COMPETENT TO TESTIFY, I CAN'T STAND HERE UNDER OATH AND TESTIFY TO YOU ALL THAT JUSTICE CANADY IS WEARING A RED TIE.
>> DO I HAVE THE FACTS INCORRECT?
MY UNDERSTANDING IS ONCE THE TOMAHAWK CAME OUT OF THE PICKUP TRUCK, MR. DORSEY TURNED AROUND AND SAID, WHAT IS THIS?
>> YES.

>> AND TRIED TO WALK AWAY AND
THAT'S WHEN YOUR CLIENT TRIED TO
BLOCK HIM.
>> THAT IS THE KEY.
>> SEEMS TO ME A REASONABLE JURY
CAN CONCLUDE FROM THOSE FACTS
THAT YOUR CLIENT WAS AWARE OF
THE FACT THAT THE OTHER GUY HAD
A TOMAHAWK.
>> THAT'S THE KEY.
I DON'T BELIEVE WHAT THE THIRD
DISTRICT SAID IS THAT A WITNESS
IS NOT COMPETENT TO TESTIFY
ABOUT WHAT, I CAN'T SIT HERE AND
SAY I KNOW THAT YOU KNOW THAT
I'VE GOT A BLACK BRIEFCASE
RIGHT HERE.
YOU MIGHT HAVE SEEN IT.
PROBABLY HAVE THE ABILITY TO SEE
IT BUT I CAN'T TESTIFY UNDER
OATH THAT YOU KNOW THAT.
THAT IS WHAT MR. DORSEY TRIED TO
DO.
HE SAID, OH, REIDER KNEW HE HAD
THE TOMAHAWK.
>> THAT'S NOT WHAT I'M SAYING.
WHAT I'M SAYING IS PUT ASIDE
WHAT REIDER SAID THE FACT THE HE
SAW THE TOMAHAWK.
PUT THAT ASIDE.
GIVEN THE FACTS I SAID EARLIER,
COULDN'T A REASONABLE JURY
CONCLUDE FROM THOSE FACTS YOU
MUST HAVE KNOWN THE TOMAHAWK WAS
COMING OUT?
BECAUSE HE SAID, WHAT IS THIS, AND
THEN HE TRIED TO BLOCK HIM?
A JURY CAN CONCLUDE TO THAT,
CAN'T THEY?
>> I DON'T BELIEVE THEY CAN
BECAUSE THERE IS NO EVIDENCE
THAT MR. REIDER KNEW THAT
NOORDHOEK HAD THE TOMAHAWK.
THERE'S --
>> THAT IS, I THINK THE TOMAHAWK
GETS US A LITTLE BIT ASTRAY IN
TERMS OF, AND THIS IS WHAT I
THINK THE PLAINTIFF, THE
APPELLANT'S POSITIONS ARE SAYING.
I DON'T THINK IN ORDER TO FIND

THERE'S A DUTY YOU NEED TO KNOW
THE EXACT WAY SOMEBODY IS GOING
TO BE INJURED.
THE FACTS THAT ARE ELABORATED ON
OF COURSE IN THE BRIEF IS THAT
HERE IS A PERSON, AND I'M GOING
TO TAKE THE FACTS FROM THE THIRD
DISTRICT OPINION.
REIDER BECAME BOISTEROUS AND
BELLIGERENT STAYING HE WANTED TO
FIGHT EVERYONE.
THAT'S A FACT STATED BY THE
THIRD DISTRICT.
DORSEY FINALLY TOLD REIDER, HE
WAS ACTING LIKE AN A-HOLE, STOOD
UP AND WALKED OUT OF THE BAR.
REIDER AND NOORDHOEK FOLLOWED.
SO AT THIS POINT, WE GET A LOT
OF CRIMINAL CASE, SEEMS TO ME
THE INSTIGATOR OF THIS IS THIS
DRUNK, BOISTEROUS, BELLIGERENT
DEFENDANT WHO SAYS HE WANTS
TO FIGHT EVERYBODY.
THEN THEY WALK OUT OF THE BAR.
HE WALKS OUT OF THE BAR.
THEY FOLLOW AND REIDER IS
DEMANDING TO KNOW WHY DORSEY
CALLED HIM THAT.
DORSEY IS IGNORING.
HE IS WALKING AWAY.
HE DOESN'T WANT THE FIGHT.
IT WOULD BE PRETTY DIFFERENT IF
DORSEY HAD TURNED AROUND, LET'S,
YOU WANT TO FIGHT, AND NOW A
FIGHT STARTS BUT HE DOESN'T DO
THAT. HE WALKS AWAY.
DORSEY'S PATH TOOK HIM BETWEEN
THE PARKED CARS AS HE WALKED,
REIDER HUSTLED AROUND THE OTHER
SIDE OF THE TRUCK AND MANAGED TO
TRAP DORSEY BETWEEN THE TRUCK
BED AND THE TRUCK. OKAY.
SO HE IS TELLING NOORDHOEK HE
WANTS TO FIGHT.
THEY'RE DRUNK AND NOORDHOEK IS
THEN, ALSO BETWEEN HIM.
I DON'T KNOW THAT IT MATTERS,
ALTHOUGH I THINK THERE'S
EVIDENCE TO SUPPORT THAT HE ALSO
KNEW THE TOMAHAWK HAD COME OUT,

BUT THAT, AS, WHETHER IT WAS IN
THE, IN THIS OPINION, I MEAN
NOORDHOEK COULD HAVE LIKE
PUNCHED HIM OUT AND COULD HAVE
FALLEN TO THE GROUND.
ARE YOU SAYING THEN IT WOULDN'T
BE FORESEEABLE?
I MEAN IT LOOKS TO ME LIKE THIS
GUY SET IT UP BUT EVERYTHING
THAT HAPPENED BOTH BEFORE AND
DURING.
SO TELL ME WHY IT MATTERS.
LET'S SAY WE ACCEPT THAT MAYBE
THERE'S NOT EVIDENCE THAT HE SAW
THE TOMAHAWK IN TIME TO STOP IT
BUT ISN'T THE DUTY MUCH BROADER
THAN THAT, ABOUT CREATING THE
FORESEEABLE ZONE OF RISK WHICH,
I MEAN I WAS, AS I WENT BACK AND
LOOKED AT THAT, I SAID THIS IS
MUCH BROADER THAN JUST, YOU
KNOW, NOORDHOEK IS SOMEHOW
ACTING ON HIS OWN.
SO WHAT'S THE ANSWER TO THAT
WHOLE SERIES?
AGAIN I WANT TO MAKE SURE WE
STAY WITHIN THE THIRD DISTRICT
OPINION.
>> AND I THINK THE ANSWER TO
THAT IS THE LAST PART YOU SAID,
IS THAT THE DUTY TO ANTICIPATE
THAT SOMEONE IS GOING TO ACT ON
THEIR OWN AND THAT'S THE KEY.
IT IS A THIRD PARTY CRIMINAL
CONDUCT CASE.
WE'RE TALKING ABOUT IMPOSING
DUTY ON ONE PERSON TO PREVENT
SOMEONE ELSE FROM COMMITTING A
CRIME.
>> THAT'S WHY IT IS IMPORTANT
THE FACTS OF WHAT PRECEDED THIS
BEING TRAPPED.
IT IS NOT LIKE DORSEY, I'M
SORRY, REIDER IS THIS INNOCENT
TORTFEASOR, YOU KNOW, A FRIEND
THAT JUST HAPPENED TO BE GOING
ALONG AND IT WAS REALLY -- IT
WOULD BE VERY DIFFERENT IF IT
WAS NOORDHOEK THAT HAD BEEN
ACTING BELLIGERENT TELLING

EVERYBODY HE WANTED TO FIGHT.
THAT WOULD BE THE FLIPSIDE.
NOORDHOEK IS THE GUY SAYING IT.
NOORDHOEK IS WANTING TO FIGHT,
BEING BELLIGERENT.
HE IS WALKS OUT, DORSEY HIS
FRIEND JUST GOING ALONG.
I SEE, NO, YOU DON'T HAVE A DUTY
TO STOP SOME PERSON WHO IS
SAYING HE WANTS TO FIGHT
EVERYBODY FROM RESTRAINING HIM
BUT I THINK THE DIFFERENCE IS,
THAT NOORDHOEK IS NOT THE
PRIMARY ACTOR THAT CREATED THE
DANGEROUS SITUATION.
>> I WOULD LIKE TO SAY TWO
THINGS ON THAT --
>> YOU SEE YOU WOULD HAVE A VERY
EASY CASE IF IT WAS, I THINK, IF
NOORDHOEK WAS THE PERSON THAT
HAD BECOME BELLIGERENT AND TOLD
EVERYBODY HE WANTED TO FIGHT AND
BLOCKED THE WAY.
>> YOU SAID YOU WANT TO STAY
WITHIN THE THIRD DISTRICT'S
OPINION.
ONE THING THAT THE COURT NOTES,
THIS WAS ACTUALLY DORSEY'S OWN
TESTIMONY, THEY WERE, DORSEY AND
REIDER WERE STANDING THERE
ARGUING AND DORSEY SAID REIDER
SEEMED TO BE CALMING DOWN A BIT.
EVERYTHING WAS DEESCALATING.
THAT IS WHEN NOORDHOEK ACTED ON
HIS OWN.
LOOKING AT WHAT THE THIRD
DISTRICT LOOKED AT --
>> DO YOU THINK THERE IS ANY
CHANCE FROM THESE FACTS THAT
NOORDHOEK WOULD HAVE, IT WAS THE
PERSON THAT WAS CALLED THE NAME,
WAS NOT NOORDHOEK.
IT WAS, IT WAS DORSEY.
IT IS PRETTY CLEAR THERE
NOORDHOEK IS HELPING HIS
BELLIGERENT FRIEND, YOU KNOW,
GET THIS GUY.
THAT IS HOW I, AS I LOOKED AT
THIS, I LOOKED AT THIS A LOT.
THAT'S WHY I, YOU KNOW, I THINK

YOUR CASE IS HARDER EVEN BASED
ON THE FACTS OF THE THIRD
DISTRICT.
I DON'T THINK IT MATTERS THAT
THE, REIDER WAS, THAT REIDER
WAS START TO CALM DOWN.
HE CREATED THE FORESEEABLE ZONE
OF RISK IS WHAT, YOU KNOW, THE
DUTY PART IS.
>> I THINK, AS FAR AS I THINK
THAT IS TAKING DUTY TOO FAR TO
SAY JUST BECAUSE PEOPLE GET IN
AN ARGUMENT YOU HAVE A DUTY TO
ANTICIPATE THAT YOUR FRIEND IS
GOING TO COMMIT A CRIME AND I
THINK THAT'S WHAT THE THIRD
DISTRICT SAID.
>> I MEAN, I DON'T KNOW, THERE
COULD HAVE BEEN ENOUGH TO
CHARGE, TO CHARGE REIDER AS A
CODEFENDANT IN THIS.
I MEAN WE SEE A LOT OF CASES
INVOLVING, YOU KNOW, WHERE
SOMEONE, SOMEBODY DOES SOMETHING
BUT SOMEONE ELSE SAID IN EMOTION
AND, YOU KNOW, FORTUNATE FOR
EVERYBODY THAT THIS MAN WAS NOT
WORSE.
WAS THERE AN INTENTIONAL,
INTERVENING CAUSE INSTRUCTION
THAT --
>> I DON'T BELIEVE SO.
I'M NOT -- I KNOW COUNSEL WASN'T
SURE BUT I DON'T BELIEVE SO.
>> JUSTICE PARIENTE ASKED
YOU A NUMBER OF
QUESTIONS I'M NOT SURE YOU HAD
THE OPPORTUNITY TO RESPOND TO.
COULD YOU RESPOND TO SOME OF THE
QUESTIONS SHE ASKED?
>> ONE THING, I DON'T WANT TO GET
OFF OF THE DUTY ISSUE BUT GIVEN
THE QUESTIONING YOU ASKED I DO
WANT TO MAKE SURE ONE THING IS
CLEAR FOR THE COURT. THAT IS ONE
OF THE OTHER ISSUES WE RAISED
THE THIRD DISTRICT NEVER GOT TO IT.
IF THIS COURT BELIEVES THE THIRD
DISTRICT ERRED IT COULD SEND IT
BACK FOR ANALYSIS OR MAKE THE

DECISION ON ITS OWN BUT THERE
WAS A COMPARATIVE NEGLIGENCE
DEFENSE THAT WAS RAISED AND THAT
WAS, THE TRIAL JUDGE GRANTED A
DIRECTED VERDICT ON THAT ISSUE,
A PARTIAL DIRECTED VERDICT.
THE FACTS THAT YOU'RE BRINGING
UP, THERE WAS A DISPUTE OF FACT
BECAUSE MR. REIDER TESTIFIED, WE
WERE STANDING THERE ARGUING.
DORSEY ALL OF A SUDDEN GRABBED
ME BY MY SHIRT, RIPPED MY SHIRT
OFF, THREW ME AGAINST THE TRUCK
AND PUNCHED ME IN THE MOUTH.
THERE WAS A DISPUTE OF FACT WHO
ACTUALLY STARTED CONFRONTATION.
THERE WAS A LOT OF TALK, OH,
MR. REIDER BLOCKING OR GRABBING.
THERE IS DISPUTED FACT.
MR. REIDER SAID, NO, HE ALL OF
SUDDEN PUNCHED ME AND THREW ME
AGAINST THE TRUCK.
WE'RE LOOKING, IF THERE IS A
DUTY HERE I THINK THE DUTY HAS
TO FLOW BOTH WAYS.
IT HAS TO GO TOWARD MR. DORSEY
AS WELL.
>> MR. REIDER COULDN'T REMEMBER
ANYTHING ELSE BUT REMEMBERED THAT.
>> THAT WOULD BE A JURY
QUESTION.
I MEAN HE SAID IT.
HE TESTIFIED UNDER OATH THAT'S
WHAT HAPPENED.
SO I MEAN, WE CAN ALL SIT HERE,
WELL MAYBE WE WOULDN'T BELIEVE
HIM BUT THAT, THE JURY WAS NOT
ALLOWED TO MAKE THAT ANALYSIS ON
ITS OWN AND THAT IS THE JURY'S
QUESTION.
>> WHAT DID THE DEFENSE ARGUE?
JUST, I MEAN, DID THEY ARGUE
THAT MR. DORSEY WAS, STARTED
THIS ALTERCATION?
HOW WAS THAT ARGUED?
>> WE WEREN'T ALLOWED TO BECAUSE
THE JUDGE GRANT AD PARTIAL
DIRECTED VERDICT SO THERE --
>> WHAT WAS ARGUED?
IF THAT PART WAS NOT ARGUED,

WHAT WAS ARGUED AT THE DEFENSE
CASE?
SIMPLY THAT I --
>> IT WAS RAISED --
>> THE THIRD PARTY DID ALL OF
THIS?
>> YES.
THAT THERE'S NO DISPUTE THAT
MR. REIDER DIDN'T HARM DORSEY AT
ALL.
HE DIDN'T CAUSE ANY OF THE
DAMAGES.
IT WAS CAUSED BY NOORDHOEK, A
THIRD PARTY AND THERE WAS NO
DUTY TO ANTICIPATE HE WAS GOING
TO DO WHAT HE DID AND --
>> AND THAT'S THE, AND IF THE
JURY HAD FOUND NO NEGLIGENCE, NO
PROXIMATE CAUSE BETWEEN THE DUTY
TO EXERCISE REASONABLE CARE, WE
MIGHT BE HERE ON DIFFERENT
ISSUES BUT I MEAN THAT'S WHAT,
THEY'RE SAYING THAT IS THE JURY
ISSUE.
EVERYTHING THAT YOU'RE ARGUING
WAS ARGUED TO THE JURY, RIGHT?
ABOUT THE FACT THAT MR. REEDER
HAD NO -- REIDER HAD NO REASON
TO ANTICIPATE WHAT WAS JUST AN
ARGUMENT WOULD ESCALATE
SOMETHING WHERE THERE WOULD BE
HARM CAUSED TO MR. DORSEY.
>> AND I THINK THAT IS THE
FORESEEABILITY CAUSATION
ANALYSIS AND THAT IS
APPROPRIATELY A JURY QUESTION.
UNDER McCAIN WE GO BACK TO THE
FORESEEABILITY UNDER DUTY.
DO PEOPLE HAVE THE DUTY TO
FORESEE SIMPLY BECAUSE I HAVE
THIS THING IN MY TRUCK, I HAVE A
TIRE IRON, I HAVE A TOMAHAWK,
WHATEVER IS IN THERE, AN
UMBRELLA, SOMEBODY OF AN
ACQUAINTANCE OF MINE WILL TAKE
IT AND STRIKE SOMEBODY IN THE
BACK OF THE HEAD WITH IT?
THAT IS WHERE THE THIRD DISTRICT
SAID, THERE IS FACTUALLY
UNSUPPORTED OR UNSUPPORTABLE BUT

MR. REIDER KNEW NOORDHOEK HAD
THE TOMAHAWK WHETHER INTENTIONAL
BLOCKING OR WHAT WAS TALKED
ABOUT, PREVENTED ESCAPE, THERE
IS NO EVIDENCE TO SUPPORT THAT.
NO COMPETENT EVIDENCE.
>> DID YOU PRESENT THE ARGUMENT
TO THE THIRD THAT THE
COMPARATIVE NEGLIGENCE COULD BE
INSTRUCTED ON?
>> ABSOLUTELY.
>> THE THIRD DIDN'T ADDRESS IT?
>> THEY NEVER REACHED IT.
THEY RESOLVED IT ON DUTY SO
COMPARATIVE NEGLIGENCE NEVER
CAME --
>> OUR ARGUMENT IS THAT THE
JURY, SHOULD HAVE BEEN
INSTRUCTED THAT -- ON THE
COMPARATIVE NEGLIGENCE THAT
BECAUSE OF MR. REIDER'S
TESTIMONY, THERE WAS A QUESTION
AS TO WHAT, WHO WAS REALLY THE
INSTIGATOR?
>> YES.
MY ARGUMENT IS TWOFOLD.
ONE, I DON'T BELIEVE THERE IS
ANY DUTY.
I BELIEVE THE THIRD DISTRICT GOT
IT RIGHT.
IF THE COURT DISAGREES WITH ME
AND THINK THERE IS DUTY IT
APPLIES BOTH WAYS, TO BOTH
DORSEY AND REIDER AND THE JURY
SHOULD BE CONSIDERING THAT FACT
AS AN ISSUE.
>> I ASKED A SERIES OF QUESTION
THAT THE FACTS, IF THERE IS
ANYTHING ELSE ON HOW I
INTERPRETED THE FACTS THAT YOU
WANT TO ELABORATE ON, PLEASE DO.
>> THAT'S, I BELIEVE THAT YOU'VE
ADEQUATELY STATED WHAT THE THIRD
DISTRICT'S OUTLINED AS I SAID.
I THINK THEY WERE OPPOSING FACTS
THAT ARE NOT STATED IN THE
OPINION GO TO THE COMPARATIVE
NEGLIGENCE ISSUE.
I THINK THAT IS THE REAL KEY TO
THIS CASE, THE THIRD DISTRICT

SAID OUT OF ALL THOSE FACTS
THERE WAS NO COMPETENT EVIDENCE
THAT REIDER DID ANY INTENTIONAL
BLOCKING.
THAT HE WAS INVOLVED IN SOME
GRAND CONSPIRACY OR THEY
COLLABORATED TO DO THIS.
THAT IT WAS SIMPLY TWO MEN
ARGUING.
DORSEY EVEN ADMITTED IT WAS
DEESCALATING.
HE WAS CALMING DOWN A BIT AND
ALL OF SUDDEN NOORDHOEK ACTED ON
HIS OWN.
THE QUESTION WHETHER THERE IS A
DUTY ON BEHALF OF ONE PERSON TO
ANTICIPATE A CRIME AND TRY TO
PREVENT A CRIME SOMEONE ELSE IS
GOING TO COMMIT.
AND THE THIRD DISTRICT SAID NO,
THAT IS NOT FORESEEABLE.
THERE IS NO DUTY THERE AND I
THINK THAT ACTUALLY GOES --
>> IS THERE ANY EVIDENCE ABOUT
NOORDHOEK BEING KNOWN TO BE
SOMEONE WHO DID VIOLENCE TO
OTHERS OR WHAT'S --
>> THERE WAS DIRECT EVIDENCE TO
THE CONTRARY.
HE NEVER HAD COMMITTED ANY
CRIMES BEFORE.
MR. REIDER SAID I NEVER SEEN HIM
VIOLENT BEFORE.
I NEVER SEEN HIM IN A FIGHT
BEFORE.
HE DIDN'T HAVE MY PERMISSION TO
TAKE THE TOMAHAWK.
I DIDN'T SEE HIM WITH IT.
THIS IS JUST A RANDOM ACT OF
VIOLENCE AS FAR AS WHAT THE
EVIDENCE SHOWED.
>> BUT MY PROBLEM IS, I CAN GO
ALONG WITH THAT EXCEPT HE WAS
BLOCKED IN BETWEEN THE TRUCK AND
THE CAR, SIX FEET SEPARATING
THEM.
REIDER RUNS AROUND THE FRONT AND
BLOCKS FROM THE FRONT.
NOORDHOEK IS IN THE BACK.
HE HEARS THE DOOR OPEN AND LOOKS

BACK AT THE TOMAHAWK AND SAYS, WHAT
IS THIS?
THEN HE COMES FORWARD, I MEAN
HOW DO YOU -- THAT'S NOT
COMPETENT EVIDENCE TO SHOW THAT
THE JURY COULDN'T INFER THAT
THIS IN FACT HAPPENED THE WAY
THE PETITIONER STATED IT DID?
>> I DON'T BELIEVE IT IS BECAUSE
THAT'S WHERE IT GOES TO DORSEY
SAYING, WELL, YEAH, HE KNEW THAT
NOORDHOEK HAD THE TOMAHAWK.
>> WHAT ABOUT MOVING FORWARD AND
GRABBING?
>> THAT'S, IF THERE IS WRESTLING
OR ALTERCATION BETWEEN DORSEY
AND REIDER, THAT'S ONE THING BUT
IT WAS A DISPUTED THAT THAT
DIDN'T CAUSE ANY HARM TO ANYONE.
THERE WAS NO DAMAGE DONE THERE.
>> BUT MEAN, IF YOU PREVENT HIM
FROM ESCAPING THE TOMAHAWK THE
ATTACK?
>> THAT IS WHERE IT TAKES THE
NEXT LEAP.
THERE IS DIFFERENCE BETWEEN THEM
WRESTLING AMONGST THEMSELVES AND
PREVENTING AN ESCAPE.
TO PREVENT AN ESCAPE --
>> CAN YOU INFER THEY WERE
ACTING IN TANDEM, IN FACT THERE
WAS A PLAN?
I UNDERSTAND HE WAS AN
ALL-AMERICAN SOCCER PLAYER.
HE KNEW HOW TO BOX SOMEBODY IN.
THIS GUY WAS BOXED N HE LOOKED
BACK AND HE PREVENTED HIM FROM
GETTING OUT.
>> THAT IS WHERE IT IS TAKING
THAT LEAP THE THIRD DISTRICT
SAID YOU CAN'T DO, TALKING ABOUT
PREVENTING AN ESCAPE.
ESCAPE IMPLIES I KNOW YOU NEED
TO BE ESCAPING FROM SOMEBODY.
>> IF SOMEBODY IS ABOUT TO HIT
WITH YOU A TOMAHAWK DON'T YOU
THINK YOU WOULD WANT TO ESCAPE?
>> THERE IS NO EVIDENCE HE KNEW
ABOUT THE TOMAHAWK.
HE DIDN'T SEE HIM WITH IT.

>> WHO?
>> REIDER.
>> I'M TALKING ABOUT VICTIM IN
THIS CASE.
>> HE SAW THE TOMAHAWK BUT HE IS
THE ONLY ONE --
>> SAW THE TOMAHAWK, AND TURNED
TO REIDER AND SAID, WHAT IS THIS
ABOUT, BOBBY?
WHAT DO YOU THINK HE WAS TALKING
ABOUT?
>> THEY WERE STANDING THERE
ARGUING FOR SEVERAL MINUTES.
I DON'T KNOW THE CONTEXT OF WHAT
THEY WERE TALKING ABOUT.
>> OKAY.
>> WHAT THE THIRD DISTRICT
RECOGNIZED IS THERE IS NO
EVIDENCE THAT REIDER KNEW
NOORDHOEK HAD THE TOMAHAWK.
THAT IS WHERE HE IS PREVENTING
AN ESCAPE FROM DOING SOMETHING
IS THAT THE VIEW OF THE FACTS
THAT THE JURY TOOK, IT WOULD
HAVE TO KNOW HE KNEW THERE WAS A
CRIME ABOUT TO BE COMMITTED AND
DID SOMETHING TO KIND OF ASSIST
WITH THE CRIME.
THERE IS NO EVIDENCE OF THAT.
I THINK THIS IS --
>> I WANT TO GET BACK TO A
QUESTION OF LAW AND I FORGOTTEN
TO ASK THIS.
THE THIRD DISTRICT TALKS ABOUT,
AND THIS IS, WHEN I WAS FIRST
ASKING MISS WALDMAN -- MISS ROSS,
UNDER FLORIDA LAW THERE IS
GENERALLY NO DUTY TO CONTROL THE
CONDUCT OF A THIRD PARTY TO
PREVENT HIM OR HER FROM CAUSING
PHYSICAL INJURY.
AND THEN THEY GO TO, BUT THERE
ARE THREE EXCEPTIONS.
NOW WHAT JUSTICE LABARGA WAS
CITING, AND GOING BACK TO
McCAIN, IT SEEMS THAT, THAT
THAT IDEA THAT THERE ARE ONLY
THREE EXCEPTIONS IS NOT REALLY
IN ACCORD WITH OUR LAW THAT
STILL LOOKS AT, HAS THE CONDUCT

OF THE DEFENDANT CREATED A
FORESEEABLE ZONE OF RISK TO
CAUSE THE HARM?
SO, CAN YOU ADDRESS HOW, THAT
STATEMENT OF THE LAW SORT OF
MESHES WITH OUR JURISPRUDENCE IN
STEVENS AND THE OTHER CASES THAT
JUSTICE LABARGA CITED?
>> I THINK THOSE THREE CASES ARE
VERY UNIQUE AND IF YOU LOOK AT
VINING AND, I FORGET THE ONE
FOLLOWED IT WAS.
>> SCHWARTZ.
>> SCHWARTZ.
BOTH OF THOSE CASES, ACTUALLY
VINING, THIS COURT EXPRESSLY
RECOGNIZED THERE IS NO DUTY TO
PREVENT PEOPLE ORDINARILY, THERE
IS NO DUTY UNDER THE COMMON LAW
TO PREVENT PEOPLE FROM STEALING
YOUR CAR BUT THAT THE
LEGISLATURE HAD ENACTED A
STATUTE AND SECTION 316.097
WHICH SAYS YOU CAN NOT LEAVE
YOUR KEYS IN AN UNLOCKED CAR.
THE LEGISLATURE DID THAT BECAUSE
IT RECOGNIZED THAT CARS ARE
ATTRACTIVE TO THIEVES AND THEY
OFTEN CAUSE DAMAGE WHEN THEY
STEAL THEM.
THIS COURT LOOKED AT IT
BECAUSE THAT IS THE PURPOSE OF
THE STATUTE IT IS NEGLIGENCE
PER SE TO LEAVE YOUR KEYS IN AN
UNLOCKED CAR.
>> WE'VE GONE WAY BEYOND WHETHER
THERE IS A STATUTE.
STEVENS DIDN'T HAVE A STATUTE,
DID IT?
>> NO, STEVENS WAS THE
GOVERNMENT MANUFACTURING ANTHRAX
AND THE COURT LOOKED AT THAT AND
SAID THAT IS ACTIVE MALFEASANCE,
ESSENTIALLY A WEAPON OF MASS
DESTRUCTION NOT PROTECTING IT IF
YOU'RE MANUFACTURING IT.
THE COURT LOOKED AT SCOPE OF
HARM THAT COULD BE CREATED BY
THAT THERE IS ENHANCED DUTY.
ACTUALLY THAT IS WHAT McCAIN

RECOGNIZED WITH POWER CABLES IT MADE THE EXPRESS REFERENCE BECAUSE OF THE IMMENSE HARM ELECTRICITY COULD CAUSE THERE IS ENHANCED DUTY THERE BUT THE THIRD DISTRICT RECOGNIZED IN THIS CASE WE'VE BEEN TALKING A LOT ABOUT, IS IT A TOMAHAWK, IS IT A TIRE IRON, IS IT AN UMBRELLA, JUST BECAUSE YOU OWN SOMETHING AND HAVE IT IN YOUR CAR THERE IS NO DUTY TO PREVENT THIRD PARTIES GOING INTO THE CAR AND TAKING IT WITHOUT YOUR PERMISSION AND COMMITTING A CRIME.
AS I SAID AT THE OUTSET EVERY SINGLE ONE OF US HAS A TIRE IRON IN OUR CAR AND THAT IS NOT A CRIME.
>> HE JUST TOOK HIS FIST AND BEAT HIM UPSIDE THE HEAD AND CAUSED THE SAME DAMAGE, WOULD THAT SUIT, THE FACT THAT --
[INAUDIBLE]
>> I BELIEVE THAT IS EXACTLY THE POINT.
HOW DOES THAT MAKE HIM LIABLE FOR IT?
BECAUSE A THIRD PARTY DECIDE TO COMMIT A CRIME?
>> HOLD HIM UP, SEE HIM COME AND HOLD HIM UP, KEEP HIM FROM ESCAPING.
>> YOU SAY YOU SEE HIM COMING AT HIM AGAIN.
THE THIRD DISTRICT SAID THERE WAS NO COMPETENT EVIDENCE OF THAT.
THE ONLY THING WAS MR. DORSEY TESTIFYING ABOUT WHAT I THINK SOMEBODY SAW GOING ON BEHIND ME.
YOU CAN'T TESTIFY ABOUT SOMETHING LIKE THAT.
I KNOW MY TIME IS UP.
UNLESS THE COURT HAS ANY QUESTIONS.
>> THANK YOU FOR YOUR ARGUMENTS.
REBUTTAL.
>> YES, SIR, TO ANSWER JUSTICE

QUINCE'S QUESTION, 300 TO 301 OF
THE TRANSCRIPT IS THAT WE'RE NOT
SAYING THAT DORSEY DIDN'T SUFFER
AN INJURY.
HE SUFFERED AN INJURY AS A
RESULT OF RUSSELL NOORDHOEK'S
ACTION, NOTHING TO DO WITH
MR. REIDER.
OKAY.
>> YOU ADDRESSED COMPARATIVE
NEGLIGENCE?
>> THE COMPARATIVE NEGLIGENCE
ISSUE, I INVITE YOU TO READ THE
TRANSCRIPT BECAUSE THE
TRANSCRIPT IS NOT AS PORTRAYED.
THE TRANSCRIPT IS, THAT
MR. REIDER SPECIFICALLY
TESTIFIED HE DID NOT KNOW
WHETHER OR NOT MR. DORSEY WAS IN
THE PROCESS OF TRYING TO ESCAPE.
HE ADMITTED AT PAGE 121 TO 22
THAT IT WAS UNREASONABLE TO
BLOCK DORSEY'S PATH IF HE WAS
TRYING TO ESCAPE.
HE JUST COULDN'T REMEMBER WHAT
OCCURRED.
THE ONLY THING HE REMEMBERED WAS
BEING HIT.
THAT'S WHAT REIDER SAID.
AND THE OTHER CONVENIENT THING
HE REMEMBERED IS THAT, THAT
NOORDHOEK DIDN'T HAVE
PERMISSION.
THOSE WERE THE TWO THINGS HE
REMEMBERED.
PLEASE READ THE TRANSCRIPT.
IT'S THERE.
SO THE FACTS ARE NOT AS
PORTRAYED WITH REGARD TO THIS
COMPARATIVE NEGLIGENCE DEFENSE
THAT -- AND WHAT ELSE COULD
DORSEY HAVE DONE?
HE HAD ONE WAY OUT.
HE WAS SURROUNDED BY TWO MEN WHO
CHASED HIM.
HE HAD ONE WAY OUT OF THIS
DILEMMA.
AND THAT WAS THE PATH THROUGH
REIDER BECAUSE HYPED HIM WAS A
DANGEROUS TOMAHAWK.

AND THAT PATH REIDER BLOCKED HIS ACCESS.
AND LAST THING I WANTED TO SAY IS, THERE'S A DIFFERENCE BETWEEN THE FOUR CORNERS OF THE OPINION FOR PURPOSES OF JURISDICTION WHICH THIS COURT HAS, JUST ON THE FOUR CORNERS OF THE THIRD DISTRICT OPINION BECAUSE WHEN YOU LOOK AT WHAT THEY SAY ABOUT McCAIN, AND APPLYING THE FORESEEABLE ZONE OF RISK, TEST WE EVALUATE WHETHER THE TYPE OF NEGLIGENT ACT INVOLVED IN A PARTICULAR CASE HAS SO FREQUENTLY PREVIOUSLY RESULTED IN THE SAME TYPE OF INJURY OR HARM THAT IN THE FIELD OF HUMAN EXPERIENCE, IT MAY BE EXPECTED AGAIN.
THAT'S PROXIMATE CAUSE.
THAT IS NOT DUTY.
THAT'S THE CONFLICT, IS RIGHT THERE ON THE FACE OF THE THIRD DISTRICT'S APPLICATION OF McCAIN.
THEY ANALYZED IT THE EXACT SAME WAY THIS COURT DISAPPROVED.
ONCE YOU DO THAT, YOU WILL SEE, YOU REVIEW THE RECORD, AND THE RECORD SHOWS THAT THE THIRD DISTRICT DID THE THREE THINGS FORBIDDEN IN HELMAN.
THEY REWEIGHED THE EVIDENCE, CONSTRUED IT IN THE LIGHT MOST FAVORABLE TO THE DEFENDANT.
THEY DID NOT FIND WHETHER THERE WAS COMPETENT EVIDENCE TO SUPPORT THE VERDICT.
THEY CONSTRUED EVERYTHING IN THE FAVOR OF THE MOVANT INSTEAD OF THE NON-MOVANT.
FOR ALL OF THE REASONS I SUBMITTED TO YOU, COMPARATIVE NEGLIGENCE DEFENSE, LOOK AT BROWARD COUNTY VERSUS RUIZ.
ONLY CASE SOMEBODY TRYING TO ESCAPE, HIT ON THE HEAD TRYING TO ESCAPE.
NO COMPARATIVE NEGLIGENCE.

THANK YOU VERY MUCH.
>> THANK YOU FOR YOUR ARGUMENTS.