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Johnny Wilmer Clark vs State of Florida

NEXT CASE ON THE COURT'S CALENDAR IS CLARK VERSUS STATE. MR. BRING MEYER.

YES, SIR.

MAY IT PLEASE THE COURT. MY NAME IS DOUGLAS BRINKMEYER, ON BEHALF OF THE STATE OF FLORIDA AND PETITIONER, MR. CLARK. HE WAS CONVICTED OF AN AGGRAVATED BATTERY OF A MOTOR VEHICLE. HIS TRUCK DROVE INTO THE BACK OF CECIL LYNN'S TRUCK, CAUSING CECIL LYNN'S TRUCK TO SPIN AROUND. THEN HE, A FEW MOMENTS LATER, BACKED INTO THE FRONT FRONT OF CECIL LYNN'S TRUCK. THE STATE PRESENTED NO EVIDENCE OF WHAT HAPPENED TO MR. LYNN, AS HE WAS SITTING IN HIS TRUCK. THE STATE PRESENTED NO EVIDENCE THAT HE WAS OR WAS NOT WEARING A SEAT BELT. THE STATE PRESENTED NO EVIDENCE WHETHER HE WAS BUMPED, JOSTLED, OR SUFFERED ANY INVASION OF HIS PERSON, THROUGH MR. CLARK'S ACTIONS. AT TRIAL, PETITIONER MOVED FOR A JUDGEMENT OF ACQUITTAL, CITING THE FOURTH DCA CASE OF WILLIAMSON.

IF HE HAD HAD A WHIPLASH, IT WOULD MAKE A DIFFERENCE.

YES, SIR.

IT WOULD BE A SUBJECTIVE TYPE OF THING THAT HE WENT IT THE CHIROPRACTOR AND SAID MY NECK HURT, AND THEN THAT WOULD BE SUFFICIENT TO TAKE IT --

YES, SIR. IF HE HAD GIVEN ANY TESTIMONY WHATSOEVER.

WOULD THAT BE SUFFICIENT, BECAUSE IT WOULD HAVE MET THE BODILY INJURY ASPECT OF AN AGGRAVATED BATTERY, OR BECAUSE OF, FOR EXAMPLE, IF HE, HIS HEAD HIT THE STEERING WHEEL, BECAUSE THERE WAS CONTACT, THAT THAT, SOMEHOW, MAKES THIS GOOD INTO AN AGGRAVATED BATTERY?

-- MAKES THIS INTO AN AGGRAVATED BATTERY?

IT WOULD HAVE BEEN EVIDENCE THAT HIS BODY WAS IMPACTED, BY THE FORCE OF PETITIONER'S TRUCK.

YOU SAID THAT THERE WAS NO TESTIMONY ABOUT WHAT ACTUALLY HAPPENED TO THE PERSON INSIDE THE CAR, AND ABOUT WHETHER THEY WERE JOSTLED OR WHETHER THEY WORRY A SEAT BELT OR WHATEVER.

YES, SIR.

WHY ISN'T IT INHERENT IN THE TESTIMONY, THAT THE VEHICLE SPUN AROUND, THAT THE BODY OF THE ALLEGED VICTIM, HERE, WAS OBVIOUSLY IMPACTED, BECAUSE THE MOTION AND DIRECTION AND MOVEMENT AND EVERYTHING OF THE BODY, OCCURRED, DID IT NOT, AS A RESULT OF THE STRIKING OF THE VEHICLE. THAT IS THAT, PRESUMABLY, IF THE VEHICLE WAS STILL, THEN THE BODY WOULD HAVE SAT THERE, IN THE DRIVER'S SEAT OR WHEREVER IT WAS, AND BEEN STILL. BUT IF A VEHICLE, NOW, IMPACTS IT AND SPINS IT AROUND, WE HAVE A BODY THAT WOULD HAVE BEEN STILL, BUT THAT, NOW, IS MOVING, SPINNING AROUND, AND WHY ISN'T

THAT PRETTY MUCH THE EQUIVALENT OF GRABBING SOMEBODY AND SPINNING THEM AROUND?

FOR TWO REASONS, YOUR HONOR. NUMBER ONE, THERE WAS NO EVIDENCE, AND CRIMINAL CASES, THE ELEMENTS OF A CRIME MUST BE PROVEN BEYOND A REASONABLE DOUBT.

I THOUGHT YOU TOLD ME, AT THE OUTSET THAT, THE EVIDENCE THAT THE STATE PRESENTED WAS THAT THE VICTIM WAS IN THE VEHICLE. THE VEHICLE WAS STRUCK, AND THEN THAT THE VEHICLE SPUN AROUND, AS A CONSEQUENCE OF BEING STRUCK. DID YOU NOT --

WE CANNOT ASSUME THAT ANYTHING HAPPENED TO MR. LYNN.

BUT THE STRIKING, IS THAT, EVEN, ASSERTED BY THE STATE? I MEAN --

IT WAS ASSERTED BY THE STATE.

IN THE DCA OPINION, IT IS -- THEY DON'T USE THAT AS A BASIS.

IT WAS ASSERTED BY THE STATE AS SUPPLEMENTAL AUTHORITY IN THE WING FIELD CASE, OUT OF THE SECOND. IN THAT CASE, A SIMILAR THING HAPPENED. A -- MR. WIN FIELD RAN INTO A POLICE CAR, AND HE MADE THE WILLIAMSON ARGUMENT THAT THERE WAS NO AGO VALTED BATTERY -- AGGRAVATED BATTERY. HERE IS WHAT THE SECOND DISTRICT SAID. A REFUSAL TO ACKNOWLEDGE THIS IMPACT WOULD DENY THE APPLICABILITY OF THE LAW OF PHYSICS, REGARDING THE TRANSFER OF ENERGY. THAT COMES BACK TO JUSTICE ANSTEAD'S OBSERVATION THAT, IF A TRUCK IS SPUN AROUND, THEN THE LAWS OF PHYSICS WOULD SAY THAT SOMETHING HAPPENED TO THE DRIVER OF THE TRUCK. BUT I WOULD GO BACK AND, WITH MY ORIGINAL ANSWER, THAT -- THERE IS NO PROOF OF THAT. WE CANNOT --

WE ARE NOT TALKING ABOUT THE LAW OF PHYSICS NOW. IN OTHER WORDS I ASSUME --

THAT IS EXACTLY WHAT THE SECOND DISTRICT HUNG THEIR HAT ON.

BUT THAT IS NOT MY QUESTION TO YOU, ABOUT THE CIRCUMSTANCES OF THIS PARTICULAR EVENT. WE DON'T HAVE TO APPLY THE LAW OF PHYSICS, DO WE, TO, IF A VEHICLE THAT IS SITTING STILL IS CAUSED TO SPIN AROUND, BY THE IMPACT OF ANOTHER VEHICLE, AS OPPOSED TO THE LAW OF PHYSICS, DOESN'T JUST GOOD COMMON SENSE TELL US THAT A PERSON IN THAT VEHICLE IS, ALSO, SPINNING AROUND AT THE SAME TIME THE VEHICLE IS SPINNING AROUND? LET'S JUST STOP WITH THAT FOR A MINT MINT.

THAT IS EXACTLY WHAT THE -- FOR A MINUTE.

THAT IS EXACTLY WHAT THE FIRST DCA DID.

ISN'T THAT, I AM ASKING YOU NOW, A REASONABLE INFERENCE, FROM THE VEHICLE SPINNING AROUND, THAT THE PERSON WITHIN IT WOULD SPIN AROUND?

NO, SIR.

IT IS NOT A REASONABLE INFERENCE. ALL RIGHT.

WITHOUT PROOF, NO, SIR.

OKAY. WELL, LET'S ASSUME, NOW, THAT THEY DID SUBMIT PROOF, AND THE DRIVER, NOW, TESTIFIED THAT I WAS SITTING STILL, AND I PLANNED ON STAYING THERE FOR THE NEXT TEN MINUTES, AND THEN, ALL OF A SUDDEN, THIS VEHICLE CAME AND STRUCK MY VEHICLE, AT THE REAR, WHEREVER, AND ALL OF A SUDDEN, MY BODY, SITTING IN THE DRIVER'S SEAT, WAS SPINNING AROUND AND AROUND, AND MY BODY SPEND AROUND THREE TIMES OR WHATEVER --

SPINED AROUND THREE TIMES OR WHATEVER. NOW, WOULD THAT BE SUFFICIENT THEN?

THAT GOES TO THE NEXT QUESTION IN THIS CASE, WHICH IS THE LEGAL QUESTION OF WHETHER A PERSON SEATED IN A VEHICLE HAS AN INTIMATE CONTACT WITH THE VEHICLE. THE FOURTH DCA FOUND THAT A PERSON SEATED IN A VEHICLE THAT IS STRUCK BY ANOTHER VEHICLE DOES NOT HAVE A IBT MATT CONTACT WITH THAT -- INTIMATE CONTACT WITH THAT VEHICLE, SUCH THAT, IF THE OUTER PART OF THE VEHICLE IS TOUCHED, THEN THAT MEANS THAT THE PERSON SEATED INSIDE HAS, ALSO, BEEN TOUCHED, BECAUSE THE VEHICLE --

ISN'T THAT A DIFFERENT ISSUE, REALLY, THAT IS THAT, FOR INSTANCE, IF YOU GO UP TO A VEHICLE AND YOU SEE THAT YOU HAVE GOT TWO FRIENDS INSIDE THE VEHICLE THAT ARE TALKING TO ONE ANOTHER, AND IT IS PARKED, AND YOU ARE SORT OF SAYING, WELL, I AM GOING TO SHAKE THEM OUT OF THAT TO GET THEIR ATTENTION, SO YOU SLAPT ON THE HOOD OF THE CAR -- YOU SLAP.

THE HOOD OF THE CAR, JUST TO GET THEIR ATTENTION.

YES, SIR.

NOW, I AM NOT SURE, BUT AT LEAST IN MY MIND, YOU HAVE MADE CONTACT WITH THE VEHICLE, ALL RIGHT, BUT YOU, REALLY, HAVEN'T CAUSED ANY -- IN OTHER WORDS THEY HAVEN'T BEEN PUSHED IN SOME DIRECTION THAT THEY DIDN'T WANT TO GO OR WHATEVER, AND WOULDN'T THAT BE A DIFFERENT SITUATION THAN A SITUATION WHERE YOU HAVE ACTUALLY, YOU KNOW, PUSHED THEM? YOU HAVE MOVED THEM.

NO, SIR. BECAUSE, UNDER THE FIRST DISTRICT'S HOLDING IN THIS CASE, IF WE ASSUME THAT A VEHICLE IS THE EXTENSION OF THE PERSON, IF YOU ARE SITTING IN THE CAR OUTSIDE PUBLIX, READING A NEWSPAPER, AND I COME UP AND SLAP ON THE HOOD OF THE CAR AND YOU JUMP, AND YOU HIT YOUR HEAD ON THE REARVIEW MIRROR, I HAVE COMMITTED A RAG VATED BATTERY.

IS IT -- AN AGGRAVATED BATTERY.

IS IT THE AGGRAVATED BATTERY, BECAUSE I THOUGHT THAT IT IS THAT THE DEFENDANT IS USING A VEHICLE TO STRIKE THE VEHICLE, NOT THAT THE PERSON -- THE -- ISN'T THAT WHAT CREATES THE -- BECAUSE THE VEHICLE IS DEEMED TO BE --

YES, MA'AM.

BUT UNDER --

IF I GO AHEAD AND SPIN SOMEONE AROUND, AND THAT IS UNWANTED, THAT IS A BATTERY, RIGHT?

YES, MA'AM.

OKAY. AND IT COULD BE THAT, IF I GO AHEAD AND I, SOMEHOW, SPIN -- HAVE A SUPER ENERGY AND I AM ABLE TO SPIN A VEHICLE AROUND, I SPIN THE PERSON AROUND, THAT, ALSO, COULD BE A BATTERY.

YES, MA'AM.

IT IS WHAT WE HAVE GOT TO BE LOOKING AT, HERE, IS WHAT IS THE EFFECT THAT THIS HAPPENS BECAUSE A DEFENDANT USES A VEHICLE TO DO THE STRIKING, WHETHER THE LEGISLATURE INTENDS FOR THAT TO BE, EVEN ABS INJURY -- EVEN ABSENT INJURY, A HIGHER LEVEL OF A

CRIME. ISN'T THAT THE POLICY, WHAT WE ARE, REALLY, LOOKING AT, RATHER THAN -- THAT IT IS BECAUSE THIS IS BEING DONE WITH A MOTOR VEHICLE, WHICH HAS DEADLY POTENTIAL, THAT THE QUESTION IS DOES THAT, AND THE DEFENDANT AND THE VICTIMS IN THE MOTOR VEHICLE, BUT IT IS THE TWO, TOGETHER, ISN'T IT?

YES, MA'AM. BUT WE HAVE TO REMEMBER THAT YOU CAN NOT HAVE AN AGGRAVATED BATTERY, UNLESS YOU HAVE A SIMPLE BATTERY AS WELL.

WELL, YOU DISAGREE, I MEAN, WHAT YOUR POSITION ON THIS, WHAT YOU HAVE DESCRIBED AS THE LEGAL ISSUE, IS THAT THE FIRST DISTRICT WAS IN ERROR, WHERE IT DISAGREED WITH THE FOURTH DISTRICT ON THE BASIC PROPOSITION THAT, AS MATTER OF LAW, A MOTOR VEHICLE CANNOT HAVE SUCH A SUFFICIENTLY-CLOSE CONNECTION WITH AN OCCUPANT THAT INTENTIONALLY STRIKING THE VEHICLE MAY NEVER CONSTITUTE A BATTERY.

YES, SIR.

YOUR POSITION IS THAT THIS COURT OUGHT TO ADOPT.

YES, SIR.

SO THAT, UNDER NO CIRCUMSTANCES --

UNLESS YOU HAVE BODILY INJURY.

BUT IF YOU JUST HAVE A TRUCK THAT COMES, RAMMING DOWN, AT 35 MILES AN HOUR, AS THE EXAMPLE IS GIVEN, AND HITS THE SHIED OF THE PASSENGER SIDE, AND -- THE SIDE OF THE PASSENGER SIDE, AND THERE IS A PASSENGER SITTING IN THAT VEHICLE, AND DOES IT INTENTIONALLY, THEN THAT WOULD NOT BE A BATTERY.

IT WOULD NOT AND AGGRAVATED BATTERY OR BATTERY WITH A DEADLY WEAPON. IT MIGHT BE AN AGGRAVATED BATTERY, WITH GREAT BODILY HARM, IF THE VICTIM SUFFERED INJURIES CONSTITUTING GREAT BODILY HARM.

WHAT IF YOU HAD A PASSENGER THAT IS STANDING IN THE BACK OF A PICKUP TRUCK, AND THE SAME SCENARIO OCCURS, AND THE PASSENGER IS KNOCKED OUT OF THE BACK OF THE PICKUP TRUCK AND SUSTAINS NO BODILY INJURY? WE HAVE GOT SOMEBODY THAT WAS A HIGH SCHOOL CHEERLEADER OR A TUMBLER OR SOMETHING, AND THEY WERE, WHEN THEY ARE KNOCKED OUT OF THE BACK OF THE TRUCK, TO, REALLY, CONSIDER THAT VERY WELL, SO THEY -- TO COUNTERTHAT VERY WELL, SO THEY ARE NOT HURT, BUT THEY ARE KNOCKED OUT OF THE BACK OF THE PICKUP TRUCK. DOES THAT --

IT IS A LEGAL DETERMINATION WHETHER THEY WERE KNOCKED OUT OF THE BACK OF THE TRUCK.

I AM GIVING YOU A HYPOTHETICAL. YOU ARE SAYING ON THAT ONE, YOU ARE KNOCKED OUT OF THE BACK OF THE TRUCK, BUT THERE IS NO INJURY THAT OCCURRED.

NO. I AM SAYING IF YOU COME IN CONTACT WITH THE VEHICLE.

WHAT I AM UNDERSTANDING YOU ARE SAYING, AND CORRECT ME, PLEASE, THAT AN INTIMATE CONNECTION IS A DETERMINATION THAT IS MADE ON THE BASIS OF WHAT, WHETHER THE PERSON WAS INJURED OR NOT.

NO, SIR. IT IS BASED UPON THE CIRCUMSTANCES SURROUNDING WHAT KIND OF OBIT IS. IF YOU LOOK --

BUT IF IT IS A VEHICLE, IF IT IS A VEHICLE --

YES. THERE IS NO INTIMATE CONNECTION WITH THE VEHICLE.

THERE IS NO INTIMATE CONNECTION, UNLESS THERE IS AN INJURY.

YES, SIR.

BUT DOES IT MAKE A DIFFERENCE ON THE TYPE OF VEHICLE? HOW ABOUT A MOTORCYCLE?

I DON'T THINK IT WOULD MAKE A BIT OF DIFFERENCE.

IF SOMEONE COMES UP AND PUSHES A MOTORCYCLE ALONG, THEN THERE IS NO BATTERY, THERE, ACCORDING TO YOUR LEGAL POSITION.

THAT'S CORRECT.

YOU SAID -- OKAY. YOU SAID THAT THERE -- IN ORDER TO BE THE AGGRAVATED BATTERY, THERE HAS GOT TO BE A BATTERY.

YES, MA'AM.

BUT YET YOU ARE SAYING THAT THERE CAN BE AN AGGRAVATED BATTERY, IF SOMEONE IS INJURED.

CORRECT.

NO ONE -- I AM -- THEN I AM NOT FOLLOWING SOMETHING.

THERE ARE TWO KINDS OF AGGRAVATED BATTERY. BATTERY WITH A DEADLY WEAPON OR BATTERY WITH GREAT BODILY HARM. NOW, IF I, GOING BACK TO MY PREVIOUS EXAMPLE, AND JUSTICE ANSTEAD'S, IF I SLAP THE HOOD OF YOUR CAR WHILE YOU ARE SITTING THERE, READING A NEWSPAPER, AND YOU JUMP UP, THAT IS NOT A BATTERY. BECAUSE I HAVE NOT TOUCHED YOUR PERSON. AND BECAUSE THE CAR IS NOT INTIMATELY CONNECTED WITH YOUR PERSON. SO IF I RUN INTO YOUR TRUCK, YOU ARE SITTING IN YOUR TRUCK AND I RUN INTO IT, YOUR TRUCK IS NOT INTIMATELY CONNECTED WITH YOUR PERSON, EITHER.

THAT IS WHAT I AM SAYING. BUT I DON'T UNDERSTAND, THEN, WHAT DOES THE INJURY -- HOW DOES THE INJURY TURN SOMETHING THAT ISN'T A BATTERY INTO AN AGGRAVATED BATTERY?

IT IS AN ALTERNATIVE METHOD OF AGGRAVATED BATTERY, WHICH WAS NOTAL EDGED AND NOT PROVEN IN THIS CASE.

JUSTICE SHAW.

YES.

AN EXAMPLE OF WHERE THERE WOULD BE AN INTIMATE RELATIONSHIP WITH A TRUCK, HOW WOULD THAT, BECAUSE EVERY EXAMPLE WE HAVE TALKED ABOUT, YOUY IS YOU DON'T HAVE IT. GIVE US -- YOU SAY YOU DON'T HAVE IT. GIVE US AN EXAMPLE OF WHERE YOU WOULD HAVE THAT RELATIONSHIP.

I DON'T THINK YOU CAN WITH A MOTOR VEHICLE, EVEN THOUGH AMERICANS HAVE LOVE AFFAIRS WITH THEIR VEHICLES. THERE IS NO INTIMATE CONNECTION. YOU HAVE TO LOOK AT THE CASE LAW, TO SEE WHAT AN INTIMATE CONNECTION IS, AND THE BEST EXAMPLE WE HAVE IS THE CASE OUT OF SECOND, WHICH BOTH PARTIES HAVE CITED IN THEIR BRIEFS AND IN WHICH BOTH

THE FIRST AND THE FOURTH HAVE RELIED UPON. THE MALAZUSKI CASE. THERE A PUBLIC CLERK WAS CARRYING A MONEY BAG TO THE NIGHT DROP OF A BANK. HE WAS CLUTCHING THE MONEY BAG UP TO HIS CHEST. THE DEFENDANT CAME UP AND STABBED THE MONEY BAG WITH SUCH FORCE AS TO GO THROUGHOUT MONEY BAG AND HIT SOME OF THE CHECKS AND DEPOSIT SLIPS INSIDE. NOW, I HAVE NO PROBLEM SAYING THAT THE MONEY BAG WAS AN INTIMATE CONNECTION WITH THE CLERK. BECAUSE HE WAS USING IT TO PROTECT HIMSELF. AND THE ACTION OF THE DEFENDANT, ACTUALLY, PENETRATED THE MONEY BAG THAT HE WAS CLUTCHING TO HIS CHEST. SO IN THAT SITUATION, THERE IS NO PROBLEM. THE SECOND DISTRICT RELIED ON PROSSER'S LAW OF TORTS AND A.M. JURY -- AND AM JUR SECOND, AND SUPPLEMENTAL AUTHORITY, AND ALL OF THOSE SAY THAT IF THERE IS AN OBJECT THAT IS HELD IN THE HAND OR IT IS CLOSE ENOUGH TO THE BODY OF THE VICTIM, IF YOU TOUCH THAT OBJECT, YOU HAVE COMMITTED A BATTERY, BECAUSE IT IS INTIMATELY CONNECTED WITH THE PERSON. IT IS AN EXTENSION OF THE PERSON. IT IS LIKE THE OLD CASES, WHERE A MAN IS WALKING DOWN THE STREET. SOMEONE COMES UP AND KICKS HIS CANE OUT OF HIS -- HIS CANE OUT OF HIS HAND. HE DOESN'T FALL DOWN. HE DOESN'T SUFFER AN INJURY, BUT HE IS CONVICTED OF AN AGGRAVATED BATTERY, BECAUSE HE IS TOUCHED SOMETHING THAT IS INTIMATELY CONNECTED WITH THE VICTIM.

IF A PERSON IS SITTING ON HIS MOTORCYCLE AND YOU CAME UP AND HIT HIS MOTORCYCLE, WOULD THAT BE AN INTIMATE CONNECTION?

THAT WOULD BE A DIFFERENT SITUATION THAN A FULL-SIZED PICK UP.

SO THE BARRIER AROUND AS OPPOSED TO THE NATURE OF THE VEHICLE, DOESN'T IT?

IT, ALSO, GOES TO THE QUESTION OF HOW FAR DO WE WANT TO EXTEND THE CRIMINAL STATUTES.

IT IS A QUESTION. IT IS NOT REALLY AN EXTENSION. IT IS THAT WE ARE DRAWING SOME BOUNDARY LINES, AND IF THE MOTORCYCLE, BOTH OF THEM ARE MOTORIZED, THE ONLY DIFFERENCE IS THE MOTOR VEHICLE HAS SOME SIDES ON IT, WHEREAS A MOTORCYCLE DOES NOT, SO NOW WE MUST SAY THAT THE DIFFERENCE BETWEEN THOSE TWO, IF IT DOES, YOU CAN HAVE A BATTERY ON A MOTORCYCLE BUT YOU CAN ON A SMALL CAR, HAS SOMETHING TO DO WITH COMPARTMENTALIZATION, THEN.

IT IS THE EXTENT OF THE LAW, TO THE EXTENT THAT THE LEGISLATURE HAS NOT SPECIFICALLY SAID, IN REGARD TO THE AGGRAVATED BATTERY STATUTE, IF I HAVE RUN INTO YOUR MOTORCYCLE, I HAVE COMMITTED AN AGGRAVATED BATTERY. AT COMMON LAW, WE DIDN'T HAVE MOTORCYCLES. WE DIDN'T HAVE AUTOMOBILES.

BUT WE DID HAVE WAGONS. DOES THERE HAVE TO BE A PER SE RULE? THAT IS IF YOU CAN SHOW THAT THE DRIVER OF THE CAR WASN'T IMPACTED, WHEN YOU SLAPPED THE SIDE OF THE CAR, THAT THAT MIGHT BE ONE SITUATION, WHERE NO BATTERY THERE, BECAUSE THERE WAS NO IMPACT ON THE --

THE PER SE RULE IS THAT A VEHICLE IS NOT AN EXTENSION OF THE PERSON. BUT EVEN SO, WE COULD GO SO FAR AS TO SAY THAT, BY THE ALTERNATIVE METHOD OF COMMITTING AGGRAVATED BATTERY, IF THE PERSON IS INJURED, THEN A CRIME HAS BEEN COMMITTED. HOWEVER, THE STATE, IN THIS CASE, DID NOT RELY ON BODILY INJURY.

WHY NOT IF THE PERSON IS IMPACTED, THAT THAT WOULD BE -- THAT WOULDN'T BE A PER SE RULE.

I WOULD SAY THE RESULT REACHED IN WILLIAMSON WOULD COVER THAT SITUATION. WHERE THE JURY, IN THAT CASE, WAS INSTRUCTED ON AGGRAVATED ASSAULT AS A LESSER OFFENSE OF

AGGRAVATED BATTERY, BECAUSE THE VICTIM HAD BEEN PLACED IN FEAR. HOWEVER, IN THIS CASE, THE STATE MADE NO ALLEGATION OF AGGRAVATED ASSAULT AS A LESSER. THE JURY WAS NEVER INSTRUCTED ON IT, AND EVEN THOUGH MR. LYNN TESTIFIED THAT HE WAS A FRAYED, WHEN HE WAS SITTING IN HIS -- AFRAID, WHEN HE WAS SITTING IN HIS TRUCK, AND THE EVIDENCE MIGHT HAVE SUPPORTED AGGRAVATED ASSAULT, THAT WAS NOT AN OPTION FOR THE JURY.

YOU ARE INTO YOUR REBUTTAL TIME, IF YOU WANT TO SAVE SOME.

SO I WOULD SAY THAT THE ONLY REMEDY IN THIS CASE IS TO REMAND FOR DISCHARGE, BECAUSE THERE WOULD BE NO AGGRAVATED ASSAULT, LESSER OFFENSE AVAILABLE, AND NO SIMPLE BATTERY LESSER OFFENSE AVAILABLE, AND TO REMAND FOR DISCHARGE.

THANK YOU.

SHIRLEY ROBINSON ON BEHALF OF THE STATE. IN THIS CASE YOU HAVE A PETITIONER, WHO WAS IN A TRUCK, AND HE CHARGED AT THE VICTIM, WHO WAS ALSO IN A TRUCK, AND HE HIT HIM WITH SUCH FORCE THAT IT PUT -- PUSHED THE RADIATOR GRILL ALL THE WAY UP. IT TORE OFF THE TAILGATE. THE RIGHT QUARTER PANEL WAS WIPED OUT. BOTH BUMPERS. WIPED OUT.

THOSE ARE ALL SEPARATE CRIMES, ARE THEY NOT? IN OTHER WORDS I ASSUME THAT THE MALICIOUS DESTRUCTION OF PROPERTY OR DOING THAT TO SOMEBODY WOULD BE A CRIME, BUT WAS THERE EVIDENCE, HERE, THAT THE TRUCK, THE PERCH INSIDE SPUN AROUND?

-- THE PERSON INSIDE SPUN AROUND?

YES. LET ME GIVE YOU AN EXACT QUOTE. I GOT BACK IN MY TRUCK. I LOOKED, AND HE, THE PETITIONER, WAS COMING AT US, PROBABLY, A TO 30 MILES AN HOUR, AND HE WASN'T LETTING UP, AND I SAID OH, LORD. HERE WE GO. HE HIT THE RIGHT REAR OF THE TRUCK ON AN ANGLE AND SPUN ME.

LET'S TAKE THE FACTS OF THIS CASE, THOUGH. IS THE STATE ARGUING FOR A PER SE RULE THAT, ANY TIME YOU TOUCH A VEHICLE WITHOUT PERMISSION, THAT THAT IS GOING TO BE A BATTERY AGAINST A PERSON THAT IS INSIDE THE VEHICLE?

NO. THAT IS WHY WE FEEL IT SHOULD BE WITH THE FIRST DCA, A JURY QUESTION, JUST BASED ON THE HYPOTHETICALS THAT YOU ALL ASKED. IT HAS TO BE A JURY QUESTION. BUT IN THIS CASE, YOU HAD A FORCE, AND THAT WAS THE REASON I POINTED OUT THE DAMAGE, NOT FOR OTHER OFFENSES, BUT TO SHOW YOU THE AMOUNT OF FORCE. IT DOESN'T MATTER THAT HE WAS IN A TRUCK OR A CONTAINER. IT WAS THAT THERE WAS AN IMPACT, AND IT WAS FELT, AND HE DIDN'T SAY IT SPUN THE TRUCK. HE SAID IT SPUN ME.

SO THE ACTUALLY, THE STATE'S THEORY, THEN, IS THAT, SO LONG AS THEY CAN PROVE THAT THERE WAS AN IMPACT ON THE PERSON, THAT THEY CAN PROVE A BATTERY.

YES. IT WAS, IN THIS CASE AS, AS YOU SAID, EVEN BEFORE AUTOMOBILES, IN PEOPLE VERSUS MOORE, WHERE THERE WAS A CASE OF A HORSE AND BUGY -- BUGGY, IT DIDN'T HAVE TO BE THAT THERE WAS HARM TO THE BODY, AND OUR STATUTE DOESN'T SAY THAT THERE HAS TO BE HARM TO THE BODY. THEY ARE READING OUT TOUCHING OR STRIKING. THIS IS TOUCHING OR STRIKING ARE BODILY INJURY. HERE YOU HAVE A TOUCHING AT WHICH TIME IS NOT WHETHER IT AN EXTENSION OF THE PERSON, REALLY. IT IS WHETHER --

WHAT IS TOUCHING? WHAT IS TOUCHING?

WELL, YOU KNOW, IF YOU LOOK IT UP IN THE AMERICAN HERITAGE DICTIONARY.

WHAT WAS THE TOUCHING HERE?

THE TOUCHING WAS THAT IT SPUN AND THERE WAS A FORCE. THERE WAS AN IMPACT. THAT IS TOUCHING, AND THAT IS WHAT THE AMERICAN HERITAGE DICTIONARY SAYS, IS THAT IT IS A CONTACT THAT CAN BE FELT. THAT CAN BE FELT. IF YOU ARE SITTING IN YOUR CHAIR, THIS IS AS IF YOU ARE SITTING IN A CAR SEAT, AND SOME CRAZY PERSON COMES THROUGH THAT CURTAIN AND HITS YOU WITH SOMETHING THAT SPINS YOU AROUND, YOU ARE GOING TO FEEL THAT. THAT IS FELT. NOW, JUST BECAUSE IT IS NOT HITTING YOUR PERSON, DOESN'T MEAN THAT YOU CAN'T FEEL IT. IF YOU PULL THE TRIGGER OF A GUN AND YOU PULL THAT TRIGGER, IT IS NOT ONE HAND HITTING YOU AND THEN THAT TRIGGER PROJECTS THAT BULLET, AND THAT BULLET HITS YOU. MAYBE IT JUST BOUNCES OFF OF YOU, FOR SOME REASON, AND YOU ARE NOT HURT. YOU ARE GOING TO FEEL THAT IMPACT. THAT IS GOING TO AND BATTERY.

IS THIS GOING TO ALWAYS BE A QUESTION OF FACT, OR WOULD IT, SOMETIMES, BE A QUESTION OF FACT AND LAW?

BOTH QUESTION -- SOMETIMES IT IS GOING TO BE A QUESTION OF FACT AND LAW, BUT I THINK THAT, AS A MATTER OF LAW, YOU HAVE TO SAY THAT NOT ALWAYS WILL A CARB AN EXTENSION OF THE PERSON. THE -- WHERE YOU SLAP THE HOOD. WELL, IT IS NOT SO MUCH THE IMPACT THAT CAUSES THAT PERSON TO JUMP AS THE NOISE.

BUT YOU SAY IT IS A MIXED QUESTION. WHAT PART OF IT IS THE QUESTION OF FACT?

BUT THE QUESTION OF FACT IS --

AND THEN WHERE DOES IT GO? WHAT PART IS THE QUESTION OF LAW?

WHETHER IT IS AN OFFENSIVE, HOSTILE TOUCHING. WHETHER IT IS INTENTIONAL. THAT, ALL, HAS TO GO TO WHETHER YOU ARE LOOKING AT A SIMPLE BATTERY. ALL OF THOSE ELEMENTS HAVE TO BE PUT IN THERE. WAS IT INTENTIONAL. YOU KNOW, EVEN IN TERMS OF BODIES. LET'S SAY YOU ARE WALKING DOWN THE STREET OF NEW YORK CITY AND YOU DON'T EVEN HAVE CARS, AND SOMEBODY ACCIDENTALLY RUNS INTO ANOTHER PERSON. IT IS THE SAME THING, THERE, AS IF YOU HAVE TWO CARS. IT IS WAS THERE THE INTENTION. WAS IT HOSTILE. DID IT IMPACT THE PERSON, TO THE POINT WHERE IT WAS OFFENSIVE AND UNWANTED.

HAVE ANY JURISDICTIONS SPECIFICALLY ADDRESSED THIS, IN THEIR ACTUAL STATUTORY CRIMES? BECAUSE IT SEEMS THAT, WITH MOTOR VEHICLES, AND NOW YOU MENTION THINGS LIKE ROAD RAGE, THAT IT IS ALMOST A SPECIAL KIND OF CIRCUMSTANCE, AND IT, CERTAINLY, IS A MATTER OF PUBLIC POLICY. WE WANT TO DISCOURAGE PEOPLE INTENTIONALLY USING THEIR MOWING TO -- THEIR MOTOR VEHICLE TO STRIKE ANOTHER MOTOR VEHICLE, IF SOMEONE IS INSIDE. IT SEEMS LIKE WE ARE TRYING TO GET AROUND SOMETHING THAT SEEMS LIKE IT MAY BE, JUST LIKE WE HAVE THINGS ABOUT FIRE ALWAYS, THAT MOTOR VEHICLES, THERE SHOULD BE A SPECIFIC STATUTORY CRIME THAT DEALS WITH THE SITUATION INVOLVING A MOTOR VEHICLE, SO THAT WE DON'T HAVE TO CREATE THESE ARTIFICIAL --

I THINK IT JUST COMES DOWN TO TOUCHING. YOU KNOW, I DON'T THINK THAT IT -- WE ARE, MAYBE, MAKING IT TOO COMPLICATED, THAT ARE YOU TOUCHED? IS IT IMPACT? IT IS A SIMPLE DICTIONARY DEFINITION, AND IT IS COMMON SENSE. IT IS COMMON SENSE. YOU CAN'T HAVE THIS KIND OF DAMAGE TO A CAR. WE ALL DRIVE CARS. YOU CAN'T HAVE THIS KIND OF DAMAGE TO A CAR AND NOT HAVE THE PERSON INSIDE IMPACTED, AND IT WAS KENKS AL -- IT WAS INTENTIONAL DAMAGE IN THIS CASE. HE CHARGED AT HIM. HE HIT HIM TWICE. IT COMES DOWN TO JUST COMMON SENSE, AND PRETTY MUCH WAS IT, YOU KNOW, THERE MIGHT BE A CASE THAT GOES TO THE JURY, WHERE YOU DON'T HAVE THE INTENT. IT WAS AN ACCIDENT. BUT HERE YOU HAVE THE INTENT.

SO IT DOESN'T MATTER IF THE BODY STRIKES SOMETHING WITHIN THE VEHICLE, IN ORDER FOR THIS TO BE AN AGGRAVATED BATTERY.

RIGHT. LET'S SAY YOU HAVE TWO KIDS AND THEY ARE PRY PLAYING HIDE AND GO SEEK, AND ONE GETS INSIDE A TRASH CAN, AND ANOTHER A BULLY COMES ALONG AND HITS THE TRASH CAN WITH A BASEBALL BAT AND KNOCKS IT AROUND AND IT ROLLS DOWNHILL. WHAT IS THE DIFFERENCE? THAT IS A SIMPLE BATTERY. WHAT IS THE DIFFERENCE, WHETHER YOU ARE INSIDE A CAR AND YOU ARE RAMMED WITH THE FORCE OF ANOTHER TRUCK. THAT IS A SIMPLE BATTERY. IT SHOULDN'T BE REAL COMPLICATED. YOU SHOULD KNOW THAT THERE IS THIS FORCE, AND IT IS PROJECTED, AND SINCE --

IF THAT IS THE CASE, WHY WOULDN'T IT BE EASY TO ASK THE OCCUPANT OF THE CAR IF HE WERE IMPACTED?

WELL, THAT IS PROBABLY WHAT YOU CAN DO. YOU HAVE VICTIMS THAT TESTIFY, WERE YOU IMPACTED, AND IN THIS CASE, HE SAID IT SPUN ME. NOW, ALSO --

I THINK WHAT I AM -- IF YOU ARE SAYING IT IS LOGICAL AND COMMON SENSE AND TOUCHING IS ALL THAT IS NEEDED, WHY CAN'T THAT JUST BE ASKED, AND BE DETERMINATIVE OF WE DON'T HAVE TO GO THROUGH ALL OF THIS?

WELL, BECAUSE YOU ARE NOT ALWAYS GOING TO HAVE THE ASKING. YOU MAY HAVE A VICTIM THAT CAN'T BE ASKED, MAYBE SOMEBODY, FOR WHATEVER REASON, IS IN A COMA, AT THE TIME OF TRIAL. MAYBE NOT EVEN FROM THIS INCIDENT. BUT SOMETIMES YOU ARE ONLY GOING TO HAVE THE FACTS OF THE CASE.

BUT IF A PERSON IS INJURED THAT COMA AND IS IN A COMA AS THE RESULT OF THIS --

NO. NO. NOT AS A RESULT. WE THREW IN THE COMA, AS A RESULT OF SOMETHING ELSE. YOU ARE NOT ALWAYS GOING TO HAVE THE VICTIM TO TESTIFY, IS MY POINT, BUT YOU ARE GOING TO HAVE THE FACTS OF THE CASE, SO YOU CAN'T ALWAYS ASK THEM ON THE STAND WERE THEY IMPACTED. THAT IS NOT ALWAYS GOING TO HAPPEN.

WERE THERE OTHER WITNESSES THIS THIS TRIAL, OTHER THAN THE DRIVER?

THERE WASN'T ANYONE ELSE TO SAY, IN THE TRUCK WITH HIM, NO. HE WAS THE ONLY ONE IN THAT TRUCK, BUT, AGAIN, I DON'T THINK -- I THINK YOU DO, TO A CERTAIN EXTENT, HAVE TO LOOK AT COMMON SENSE AND THE LAWS OF PHYSICS, THAT ENERGY IS NEITHER CREATED NOR DESTROYED. YOU ARE GOING TO HIT A TRUCK WITH THAT MUCH ENERGY, IT IS GOING TO BE TRANSFER, AND -- TRANSFERRED, AND I THINK THAT IS WHY YOU CALL UPON A JURY AND LOOK AT PERSONAL EXPERIENCE. I THINK IT HAS TO BE A JURY QUESTION.

DID THE STATE MAKE THAT ARGUMENT TO THE JURY?

YES. I MEAN, THEY WERE ABLE TO GO IN AND SAY A TOUCHING. IN FACT, THE PERSONAL INJURY ARGUMENT WASN'T EVEN GIVEN TO THE JURY. THE JUDGE SAID WE WON'T EVEN GET INTO. THAT IT IS GOING TO BE WAS THERE INTENT. THEY WENT THROUGH THE ELEMENTS OF BATTERY, AND THEN THEY ADD THE AGGRAVATED PART, AND THEN IT IS, ALSO, A JURY QUESTION, WHETHER OR NOT SOMETHING IS A DEADLY WEAPON IS, ALSO, A JURY QUESTION, BECAUSE A PEN CAN BE A DEADLY WEAPON IN A CASE AND NOT IN ANOTHER CASE.

IS THE STATE SAYING, THAT AS A PER SE RULE, THE TOUCHING OF THE VEHICLE IS THE TOUCHING OF THE VICTIM INSIDE?

THERE IS, ALSO, NEVER A PER SE RULE THAT SAYS IT CAN NEVER BE, BECAUSE WITH THE

MOTORCYCLE AND ALL OF THAT, THAT IS LUDICROUS. YOU ALL SAW THAT, BASED ON YOUR HYPOTHETICALS.

AND I, STILL, HAVE TROUBLE, IF IT IS COMMON SENSE, AND IT IS JUST LOGICAL, WHAT IS WRONG WITH ASKING THE PERSON IF -- AND THAT -- I ASSUME IT HAS BEEN ACKNOWLEDGED BY THE DEFENDANTS, IF THERE WAS ANY EVIDENCE THAT THERE WAS ANY TOUCHING OR JOSTLING OF THAT NATURE, THAT THAT WOULD GET THIS MATTER TO A JURY?

WELL, I THINK THAT THAT MIGHT, BUT I THINK IT CAN, ALSO, GET THE MATTER TO THE JURY, BASED ON OTHER EVIDENCE. IN OTHER WORDS, AS I SAID BEFORE, THAT IS GREAT, IF YOU HAVE THAT EVIDENCE, BUT I THINK THAT YOU CAN GET TO A JURY WITHOUT THAT EVIDENCE. I MEAN, I THINK THAT IF YOU HAD A REALLY GOOD PROSECUTOR AND YOU HAD ALL THINGS WONDERFUL, THAT THAT WOULD BE A GREAT QUESTION. I HAVE BEEN A PROSECUTOR, AND I THINK THAT QUESTION SHOULD HAVE BEEN ASKED, BUT I DON'T THINK THAT THAT NEGATES THE CRIME, JUST BECAUSE THE QUESTION WASN'T ASKED.

IF THIS PERSON WERE WALKING DOWN THE STREET AND WERE TOUCHED, WITHOUT CONSENT, BY SOMEONE ELSE, THAT WOULD BE A BATTERY?

YES.

BUT --

IF IT WAS INTENTION TO BE --

BUT IT WOULD NOT CONSTITUTE A BATTERY, IF THERE WAS NO EVIDENCE THAT THAT PERSON WAS TOUCHED.

BUT THERE IS EVIDENCE THAT THIS PERSON WAS TOUCHED IN THIS CASE. THERE IS A LOT OF EVIDENCE THAT THIS PERSON WAS TOUCHED. AND THAT IS WHY WE GO TO JURIES, AND WE TELL JURIES USE YOUR OWN PERSONAL EXPERIENCE THAT IS ONE OF THE THINGS THAT A JUDGE, ALWAYS, WILL TELL A JURY, THAT SOMETIMES YOU HAVE TO USE YOUR OWN PERSONAL EXPERIENCE IN MATTERS, AND IF A PERSON DRIVES OR THEY HAVE EVER BEEN HIT BY A CAR AND THEY HAVE BEEN ANYWHERE WHERE A CAR HAS HAD TO STEP ON THE BREAKS -- THE BRAKES, THEY HAVE BEEN IMPACTED BEFORE, AND IN THIS CASE, YOU HEAR THAT HE IS HIT 30 MILES PER HOUR. YOU HEAR THAT IT SPUN ME. THAT IS EVIDENCE. IT MAY NOT BE, YOU KNOW, TANTAMOUNT TO THAT I WAS HURT, BUT YOU DON'T HAVE TO BE HURT. YOU HAVE TO BE TOUCHED. THAT IS TOUCHING. IT SPUN ME.

BUT YOU SAY THAT THE STATE IS NOT ASKING FOR A PER SE RULE, BUT IF IT IS NOT ASKING FOR ONE, IF THE PERSON IN THE CAR, IN THIS INSTANCE, HAD NOT SAID "I WAS SPUN AROUND", WOULD THERE HAVE BEEN AN AGGRAVATED BATTERY?

YES. BECAUSE, AS JUSTICE ANSTEAD SAID, THE TRUCK WAS SPUN. AGAIN, YOU HEARD THE DAMAGES. PEOPLE CAN LISTEN TO THOSE DAMAGES. YOU WOULD HAVE TO RULE OTHERWISE. YOU WOULD HAVE TO RULE AGAINST THE LAWS OF PHYSICS. YOU HAVE TO SAY THE LAWS OF PHYSICS DON'T EXIST.

LET ME SEE IF I CAN PHRASE IT DIFFERENTLY.

OKAY.

WHAT IS THE RULE THAT THE STATE IS ASKING FOR?

THE STATE IS ASKING, JUST AS THE FIRST DCA RULED, THAT IT BE A FACTUAL QUESTION FOR THE

JURY. ONCE YOU HAVE SOME EVIDENCE OF TOUCHING, EVIDENCE OF INTENT, THAT THIS BECOMES A FACTUAL QUESTION THAT GOES TO THE JURY. JUST AS WHETHER OR NOT, I USE IT BY ANALOGY, SOMETHING AS A DEADLY WEAPON. THAT IS A FACTUAL QUESTION THAT GOES TO A JURY, BECAUSE IT CAN'T ALWAYS BE A BATTERY, JUST BECAUSE IT IS A CAR OR A MOTORCYCLE OR A BICYCLE, BUT BY THE SAME TOKEN, IT CAN NEVER -- YOU KNOW, WE CAN'T RULE THE OPPOSITE WAY, THAT A CAR CAN NEVER BE IF.

BUT -- CAN NEVER BE.

BUT THAT READS A TOUCHING. THAT IS THE PROBLEM. YOU ARE EXTRAPOLATING FROM THE STATUTE, TO GET WHERE YOU WANT TO GO.

NO. WHY IS IT -- MY -- I GUESS I WOULD SAY, IF I AM STANDING IN FRONT OF A GLASS WINDOW, WHAT IS THE DIFFERENCE? OR YOU ARE IN YOUR CHAIR, AND SOMEBODY COMES UP AND SPINS YOUR CHAIR, IS THAT NOT TOUCHING YOU? IF THEY BEAT YOUR CHAIR WITH A BASEBALL BAT, IS THAT NOT TOUCHING YOU? IS IT NOT IMPACTING YOU?

SO ANY TIME A PERSON HITS THE BACK OF A CAR, AND THE CAR SPINS OR MOVES --
OF COURSE.

-- THAT WOULD AND AGGRAVATED BATTERY.

THAT WOULD AND BATTERY, A SIMPLE BATTERY. WHETHER OR NOT IT IS A DEADLY WEAPON, THAT IS ANOTHER TOPIC, AND THAT IS NOT WHAT IS BEFORE US HERE. IN THIS CASE, EVERYBODY AGREED THAT IT HAPPENED TO BE AN AGGRAVATED --

IF THE CAR WAS PUSHED FORWARD, IT WOULD BE AN AGGRAVATED BATTERY?

IT WOULD BE A SIMPLE BATTERY.

IS THIS AN ASSAULT?

YES. BECAUSE THE TESTIMONY SHOWS THAT HE WAS AFRAID FOR, FEAR FOR HIS LIFE.

IN A SITUATION LIKE THIS, THERE IS NO DISTINCTION BETWEEN AN AGGRAVATED AT AULT AND AN AGGRAVATED BATTERY -- ASSAULT AND AN AGGRAVATED BATTERY?

YES. BECAUSE THE AGGRAVATED ASSAULT WOULD BE -- YES. YOU ARE RIGHT. BECAUSE AT ONE HAND, UNTIL YOU HAVE THE IMPACT, YOU HAVE THE AGGRAVATED ASSAULT, AND UPON IMPACT, YOU HAVE ASSAULT AND A BATTERY.

DO YOU THINK THAT THIS CASE CONFLICTS WITH WILLIAMSON?

NOT REALLY, BECAUSE IN WILLIAMSON, I DON'T KNOW ALL THE FACTS. THEY PRETTY MUCH DEALT WITH THIS ISSUE IN ABOUT TWO PARAGRAPHS, AND IT JUST SAID HE WAS NOT JOSTLED ABOUT. THERE IS NO EVIDENCE OF ANY CAR DAMAGE THERE. THERE IS NO EVIDENCE THAT THE PERSON WAS SPUN. THERE IS NO EVIDENCE THAT ANYTHING HAPPENED, OTHER THAN THAT THERE WAS AN IMPACT, AND, AGAIN, I THINK THAT THAT SHOULD HAVE GONE TO THE JURY, TO DECIDE, BASED ON THE FACTS OF THAT PARTICULAR CASE.

DOESN'T WILLIAMSON -- I MEAN, WILLIAMSON, IT READS, TO ME, THAT A BATTERY MAY BE FOUND, AS A RESULT OF THE TOUCHING OR THE STRIKING OF ANOTHER, THAT OBMUST HAVE SUCH AN INTIMATE -- THAT OBJECT MUST HAVE SUCH AN INTIMATE CONNECTION WITH THE PERSON, TO BE REGARDED AS PART OR EXTENSION OF THE PERSON, SUCH AS CLOTHING OR AN

OBJECT HELD BY THE PERSON, BY THE VICTIM, AND THEREFORE THE VEHICLE, STRIKING THE VEHICLE, IS INSUFFICIENT, AS A MATTER OF LAW. ISN'T THAT WHAT WILLIAMSON STANDS FOR?

WELL, THAT IS WHAT WILLIAMSON STANDS FOR, BUT WILLIAMSON WAS DECIDED WRONGLY, BECAUSE THEIR RULING, AS A MATTER OF LAW, THAT A CAR CAN'T BE AN EXTENSION OF A PERSON, AND I DON'T KNOW IF THAT IS THE ISSUE.

IF IS IN -- IT IS IN CONFLICT, THOUGH, WITH --

I DON'T KNOW IF THAT IS THE ISSUE. IT SHOULD BE DOWN TO TOUCHING. WAS IT IMPACTED? BECAUSE YOU CAN HAVE A MONEY BAG THAT IS STABBED, AND IT MAY NOT IMPACT THE PERSON, OR THEY MAY NOT ACTUALLY FEEL -- THE MONEY BAG WOULD COULD HAVE A KNIFE IN IT, BUT THEY MAY NOT HAVE ACTUALLY FELT ANY PHYSICAL FORCE, BUT HAS BEEN RULED TO BE AN EXTENSION OF THE PERSON. I THINK THAT IS LESS IN DIRECT. I THINK THIS IS DIRECTLY IF A PERSON, DO THEY FEEL, DO THEY FEEL THE IMPACT?

SO IS THE INQUIRY ABOUT THE INTIMATE CONNECTION, ARE YOU SAYING THAT IS NOT, REALLY, THE RELEVANT INQUIRY? IT IS THE FEELING OF THE IMPACT?

YES. I AM SAYING -- AND THIS IS REALLY, IF YOU REALLY THINK ABOUT IT, MUCH MORE DIRECT THAN WHETHER A MONEY BAG THAUR HOLDING ON TO IS -- HAS A KNIFE PUT INTO IT. THIS IS THE PERSON, THEMSELVES. FEELING MUCH MORE IMPACT THIS THAT CASE, SO IN THAT CASE, IF A SIMPLE MONEY BAG THAT SOMEBODY IS HOLDING ON TO, SOMEBODY STABS IT WITH A KNIFE AND RUNS ON, IF THAT CAN BE A BATTERY, THEN SURELY SOMETHING THAT YOU ARE, IN A VEHICLE, YOU DON'T REALLY HAVE SENSE OF MOVEMENT. YOU ARE IN A VEHICLE. YOU ARE STRAPPED TO IT, IN MOST CASES, BY LAW, YOU ARE SUPPOSED TO BE, AND YOU ARE HIT IN THIS LITTLE CAB OF A TRUCK, AT 30 MILES PER HOUR, YOU ARE GOING TO FEEL A LOT MORE THAN YOU ARE GOING TO FEEL, IF SOMEBODY COMES ALONG AND STABS A MONEY BAG. NOW, THAT IS AN EXTENSION OF THE PERSON. YOU ARE SAYING THAT HAS SUCH AN INTIMATE CONNECTION NEXUS.

THIS IS, REALLY, A BATTERY CREATED BY THE LAW OF PHYSICS.

IT IS WHETHER THERE IS A FORCE AND WHETHER THERE IS AN IMPACT, WHETHER THERE IS A TOUCHING.

AS PROPOSEED -- AS OPPOSED TO ANY EVIDENCE.

NO. THERE IS EVIDENCE, AND THAT IS WHETHER OR NOT, IN THIS CASE, YOU LOOK AT THE FORCE WITH WHICH HE WAS RAMMED, AND YOU HAVE TO, AND HE TESTIFIES THAT HE WAS SPUN, I MEAN, SOMETHING MOVED HIM. SOMETHING SPUN HIM. AND IT WAS THE PETITIONER'S FORCE THAT SPUN HIM. THAT WAS A CONTINUATION OF THAT FORCE THAT HE FELT. HE WAS MOVED, AND IT WAS AN UNWANTED MOVEMENT. HIS WHOLE BODY WAS MOVED. JUST BECAUSE YOU ARE IN SIDE SOMETHING, AND SOMEBODY MOVES THAT CONTAINER, WITH THE INTENT OF GETTING YOU OUT OF THE WAY, YOU AND THE CONTAINER, YOU CAN'T SAY, JUST BECAUSE YOU ARE IN A CONTAINER, THAT IT DIDN'T AFFECT YOU OR DIDN'T HAVE IMPACT ON YOU. SO I WOULD ASK THAT, BASED ON THE SIMPLE WORDING OF THE STATUTE, THAT HE WAS INDEED, TOUCHED, AND, IN THIS CASE, HE WAS STRUCK. IT MOVED HIM. HE WAS STRUCK WITH SUCH FORCE THAT IT MOVED HIS WHOLE BODY AROUND. HE SAID IT SPUN ME, AND I WOULD ASK YOU TO AFFIRM THE FIRST DCA'S HOLDING THAT EACH CASE SHOULD BE A MATTER FOR THE JURY TO DECIDE.

THANK YOU.

JUST BRIEFLY, IN RESPONSE TO SOME OF THE THINGS THE STATE SAID, YOUR HONORS, THE STATE SAID TO USE COMMON SENSE. WELL, THAT IS EXACTLY WHAT THE STATE DID AT THE TRIAL BELOW, REGARDING THE COUNT OF CRIMINAL MISCHIEF, A FELONY COUNT, WHERE THE STATE

SIMPLY SAID, OKAY, JURY, USE YOUR COMMON SENSE, TO SEE HOW MUCH DAMAGE WAS DONE TO THIS TRUCK. WELL, THE FIRST DCA PROPERLY SAID, NO, YOU CAN'T DO THAT, BECAUSE THE AMOUNT OF DAMAGE TO THE TRUCK IS AN ELEMENT OF THE CRIME, MAKING IT A FELONY, AS OPPOSED TO A MISDEMEANOR. SO WE CANNOT RELY ON COMMON SENSE TO PROVE EVERY ELEMENT OF EVERY CRIME.

DO YOU AGREE, THOUGH, WITH THE STATE'S CONCEPT THAT, IF -- A TOUCHING OCCURS, IF THERE -- SOMEBODY FELT AN UNWANTED MOVEMENT, ARE YOU AGREEING WITH THAT?

ALL THEY HAD TO DO WAS ASK THE VICTIM WHAT HAPPENED TO YOU?

IF THE VICTIM SAYS "I WAS MOVED. I WAS JOSTLED" THAT WOULD BE ENOUGH?

YES, MA'AM.

SO THE INTIMATE CONNECTION, ISN'T, REALLY, THE ISSUE.

AS A PRELIMINARY MATTER, YES, BECAUSE HERE WE HAVE NO EVIDENCE THAT, OF WHAT HAPPENED TO THE VICTIM. NOW, IF THE VICTIM --

WHY IS IT "I WAS SPUN"? WHAT IS THE DIFFERENCE BETWEEN "I WAS MOVED" OR "I WAS SPUN"? WHAT IS THE DIFFERENCE?

THE DIFFERENCE IS WE HAVE TO ASSUME THAT SOMETHING HAPPENED TO THE VICTIM. AND AS WE DISCUSSED EARLIER, THE LAW OF PHYSICS. I DON'T KNOW ANYTHING ABOUT THE LAW OF PHYSICS, BUT CRIMES MUST BE PROVED BEYOND A REASONABLE DOUBT, AND THERE IS NO EVIDENCE THAT THE VICTIM TESTIFIED THAT ANYTHING HAPPENED TO HIS PERSON.

I, JUST AGAIN, AS A LAST, AND, REALLY, YOUR POSITION, NOW, IS THAT, IF THEY HAD PROVED SOMETHING HAPPENED TO THE VICTIM, THEN THAT THEY WOULD HAVE MET, AT LEAST THE ELEMENTS OF PROOF TO GO TO A JURY.

YES, SIR, BUT AS --

SO IT IS NOT -- YOU ARE NOT ARGUING FOR A PER SE RULE, EITHER.

I AM SAYING, THAT, UNDER THE FACTS OF THIS CASE, IF YOU APPLY A PER SE RULE, THERE WAS NO TOUCHING. BECAUSE THERE WAS NO TESTIMONY OF TOUCHING.

THANK YOU VERY MUCH. THE COURT WILL BE IN RECESS UNTIL TOMORROW MORNING. THE MARSHAL: PLEASE RISE.