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State of Florida v. Lorenzo Smith

CHIEF JUSTICE: THE NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS STATE VERSUS SMITH.

THA.OOD. MAY IT PLEASE THE COURT. MY NAME IS MARY JOLLEY. I AM AN ASSISTANT ATTORNEY GENERAL FROM DAYTONA BEACH AND REPRESENTING FLORIDA IN THIS APPEAL. WE ARE TAKING REVIEW OUT OF A CASE OUT OF THE FIFTH DISTRICT COURT OF APPEAL IN WHICH THE FIFTH STRUCK DOWN THE DEFENDANT'S FALSE IMPRISONMENT CONVICTION, ON THE GROUNDS THAT HIS CONDUCT DID NOT MEET THIS COURT'S THREE-PRONG TEST IN FACE ONE VERSUS STATE. IT IS - IN FAISON VERSUS STATE. IT IS OUR POSITION THIS MORNING THAT THE APPLICATION OF FAISON TO FALSE IMPRISONMENT DOES NOT COMPORT WITH THE FALSE IMPRISONMENT PROVISION. IT WAS A THREE-PRONG TEST ADOPTED BY THIS COURT IN 1983, DESIGNED TO HELP DEFINE CONVICTIONS OR CONDUCT THAT OCCURS UNDER THE KIDNAPING STATUTE. KIDNAPPING CONTAINS AN ELEMENT THAT IS UNIQUE TO IT, THAT IS NOT IN FALSE IMPRISONMENT.

COULD I GO BACK, BECAUSE I HAVE FAISON IN FRONT OF ME, AND IF YOU READ THE LITERAL LANGUAGE OF THE KIDNAPING STATUTE, THERE IS NO QUESTION THERE HAS BEEN A JUDICIAL OVERVIEW PUT ON, AND I READ FAISON AS THE REASON BEING WE DON'T WANT TO TURN EVERY ROBBERY AND FORCIBLE RAPE SHOULDN'T BE THAT PLUS A KIDNAPING, AND FAISON CAME OUT IN 1983, AND THE LEGISLATURE HAS NOT CHANGED IT SINCE THAT TIME. WE HAVE GOT ALL OF, JUST ABOUT ALL OF THE DISTRICT COURTS, ASSUMING THAT FAISON APPLIED TO FALSE IMPRISONMENT. THAT HASN'T BEEN CHANGED IN THE LAST TEN, 15 YEARS. WHAT IS IT, I GUESS, I AM TAKING ISSUCT THAT FAISON WAS BASED ON SOME PARTICULAR LANGUAGE IN THE KIDNAPING STATUTE, AS OPPOSED TO THIS POLICY THAT EVERY ROBBERY SHOULDN'T TURN INTO A KIDNAPING, AND ISN'T THAT, IT IS FALSE I AM PRISMMENT, A LESS -- IT IS, FALSE IMPRISONMENT IS A LESSER-INCLUDED OFFENSE OF KIDNAPING, WOULDN'T THIS BE THE SAME THING, WE TUY ROBBERY INTO A FALSE IMPRISONMENT?

NO, BECAUSE, JUDGE, IN ORDER STATE TO GET A KIDNAPING CON, THT ONLY HAVE VE RESTRAINT, IMPRISONMENT ABDUCTION, THEY HAVE TO PROVE IT WITH THE INTENT TO FACILITATE THE COMMISSION AFTER FELONY. THAT IS WHAT MAKES IT UNIQUE TO THE KIDNAPING STATUTE, THAT IN ORDER FOR YOU TO OBTAIN A CONVICTION FOR KIDNAPING, YOU HAVE TO PROVE, UNDER THIS PARTICULAR SUBSECTION OF THE KIDNAPING STATUTE, SUBSECTION 2, YOU HAVE TO PROVE THE INTENT TO COMMIT OR FACILITATE THE COMMISSION AFTER FELONY. THAT ELEMENT IS NOT IN FALSE IMPRISONMENT. WE ARE NOT HERE QUESTIONING THE UNDERLYING RATR ADOPTION OF THE FAISON TEST.E FAISON TEST WAS ADOPTED. OBVIOUSLY WHEN YOU HAVE ROBBERY AND KIDNAPING BEING CHARGED TOGETHER THAT, KIDNAPING HAS SOME INDEPENDENT SIGNIFICANT FROM THE ROBBERY -- SIGNIFICANCE FROM THE ROBBERY, HOWEVER IT RELATES TO THAT UNIQUE SITUATION OF FALSE IMPRISONMENT, AND YOUR CONCERN AS TO THE DUAL CHARGING AND ULTIMATE CONVICTIONS DURING ONE CRIMINAL COURSE OF CONDUCT, IN TERMS OF THE KIDNAPING, KIDNAPING IS A LIFE FELONY, SO IN CERTAIN INSTANCES, PARTICULARLY IN THIS CASE, HE WAS CHARGED WITH ROBBERY WITH A WEAPON, WHICH IS A FIRST-DEGREE FELONY PUNISHABLE BY UP TO 30 YEARS. HAD HE BEEN CHARGED WITH KIDNAPING HERE AND THE KIDNAPING WAS SOME SORT OF INCIDENTAL, HE COULD HAVE GOTTEN THE LIFE FELONY, SO WE DON'T QUESTION THE APPLICABILITY OF FAISON TO KIDNAPING. WE THINK IT HAS ITS DUE COURSE.

IF YOU READ THE KIDNAPING STATUTE LITERALLY, THESE OTHER REQUIREMENTS THAT WERE PUT IN FAISON WERE NOT PUT IN THE STATUTE. IT WASN'T A STATUTORY CONSTRUCTION QUESTION.

NO. IT WAS A MEANS TO PREVENT THE POLICY WE DON'T DISAGREE WITH, TO PRO VENT THE DUAL CONVICTION OF TWO FORCIBLE FELONIES T WAS DONE TO MAKE SURE THAT KIDNAPING WAS NOT INHERENT IN THE OTHER FELONY.

IT WAS SAYING THAT THE POLICY WON'T BE TWO LIFE FELONIES. IT WILL BETEE FELONY AND ONE SMALLER FELONY?

FALSEENTS REE. THE PROBLEM BECOMES, WHEN YOUPLY FAISON TO FALSE IMPRISONMENT, THE STATE PARTICULARLY INISEDS H DIDN'TT FAISON SO HE CAN'T BE CONVICTED OF FALSE IMPRISONMENT, ANDE DN'T E HERE.BUTY WEO PROVE E IMPRISTOTA E. ESSENTIALY, BY PROVING FE IMPRI, ITS CONVERG EVERYTHING INTE HIGHER,SHE.HATSRYON FRYING TL IT OUT OF FAISON.

WHY ISN'T THE CRIME, IN OTHER WORDS THE ACT THAT WE ARE TALKING ABOUT HERE, GIVE ME YOUR MONEY, YOUR MONEY OR YOUR LIFE, AND WITH A GUN IN YOUR FACE, WHY ISN'T THAT ACT, THEN, COVERED BY THE ARMED ROBBERY STATUTE, THAT IS IF YOU PUT THE GUN IN SOMEBODY'S FACE AND SAY, YOU KNOW, YOUR MONEY OR YOUR LIFE, AND OF COURSE THAT PERSON ISLY IMPRISONED, YOU KNOW, DURING THAT TIME, THAT, BUT, WHY ISN'T THE ANSWER TO THAT, THEY HAVE COMMITTED THE CRIME OF ARMED ROBBERY, WHICH CARRIES, WHAT, THAT IS A LIFE FELONY, IS IT NOT?

DEPENDING UPON THE WEAPON, YES.

BUT THE, THIS UNDERLYING FACT THAT IT IS GOING TO BE PRESENT IN VIRTUALLY EVERY ARMED ROBBERY OF COURSE SOMEBODY IS ILLEGALLY DETAINED WHILE THEY ARE BEING, BUT THAT DOESN'T MAKE IT TWO SEPARATE CRIMES, AS OPPOSED TO THERE BEING AN ADEQUATE ANSWER TO THAT FOR THE ARMED ROBBERY. I AM ASKING YOU THAT, IN RELATION TO WHAT JUSTICE PARIENTE READ TO YOU, THAT THE REASON FOR THE HOLDING IN FAISON WAS THAT WE DON'T CONVERT EVERY ARMED ROBBERY INTO EITHER AN UNLAWFUL DETENTION OR A KIDNAPING. THAT IS THAT, IF YOU DON'T INTERPRET TE G STATUTE NARROWLY, YOU WILL DO THAT.

WELL, FIRST OF ALL, AS IT APPLIES TO FALSE IMPRISONMENT, BECAUSE THAT IS WHAT WE ARE GOING TO LIMIT OURSELVES TO HERE RESTRAINT ABDUCTION CONFINED, IS NOT AN ELEMENT OF ROBBERY. THE LEGISLATURE CREATED FALSE IMPRISONMENT AS ITS, NDEND 770.501-4, CONSTRUCTION FOR THE PURPOSE OF THE CRIMINAL RULES, A DEFENDANT IS TO BE CONVICTED AND SENTENCED FOR EVERY COURSE OF CRIMINAL CONDUCT.

WHATUALT HERE, THAT WAS A FALSE IMPRISONMENT, BECAUSE I KNOW HE TOLD THEM TO GET DOWN ON YOUR KNEES AND DO SOMETHING ELSE, BUT DIDN'T HE, ALSO, CONFINE THEM IN THE BATHROOM OR SOMETHING, SO WHAT DID THE STATE ALLEGE IS THE FALSE I AM PRIMPMENT HERE? -- IMPRISONMENT HERE?

THE STATE ALLEGED PROBABLY THE ENTIRE CONFINEMENT. IT IS OUR POSITION THIS MORNING, YOU CAN LOOK THAT THE FALSE IMPRISONMENT OCCURRED, AS SOON AS HE CAME INTO THAT HOTEL ROOM AND KEPT THEM IN THERE.

BUT THE PROBLEM THE TWO PRIOR JUSTICES JUST, YOU WOULD ALWAYS HAVE A FALSE IMPRISONMENT IMPRISONMENT. I THOUGHT THE FALSE IMPRISONMENT HERE, WAS THE CONFINEMENT IN THE BATHROOM.

IT COULD BE THAT, TOO, BUT OUR POINT IS YOU HAVE TO BREAKDOWN THESE FACTS AS THEY OCCUR. YOU HAVE DIFFERENT CRIMINAL SCENARIOS HAPPENING CONTEMPORANEOUSLY OR

SIMULTANEOUSLY, BUT IF WE BREAKDOWN THE QUESTION HERE, JUSTICE QUINCE, WE HAVE A MAN BARGING INTO A HOTEL ROOM WITH A GUN. THE FALSE IMPRISONMENT HAS STARTED. THE ROBBERY HASN'T STARTED YET.

DID HE ACTUALLY HAVE A GUN ON HIM? I THOUGHT THERE WAS A FINDING THAT THERE WAS NO GUN.

HE WAS CHARGED WITH A GUN. THE WITNESSES -- OFF THE TOP OF MY HEAD, THE JURY FOUND THAT HE WAS CONVICTED OF FALSE IMPRISONMENT WITH A WEAPON. NEEDLESS TO SAY HE COMES IN AND HOLDS THEM IN THERE AND TELLS THEM GET DOWN ON THE FLOOR AND TOLDZ HOELDZ THEM ON THE BED. ROBBERY HASN'T OCCURRED YET, BUT WE HAVE GOT THE CONFINEMENT, HOLDING AGAINST HIS OR HER WILL. SO WE HAVE GOT THE FALSE IMPRISONMENT ALREADY, THEN HE PROCEEDS TO TAKE THEIR JEWELRY, THEIR MONEY, SO YOU HAVE GOT DIFFERENT ELEMENTS THERE, SO IT IS OUR CONTENTION THAT THE FALSE IMPRISONMENT OCCURS AS SOON AS HE RESTRAINS THEM IN THAT ROOM, AGAINST THEIR WILL.

BUT YOU ARE ARGUING FOR A POSITION THAT, INDEED, EVERY ARMED ROBBERY WOULD BE, ALSO, A FALSE IMPRISONMENT, ARE YOU NOT? THAT IS THE POSITION YOU ARE ADVOCATING. IT DOESN'T REALLY MATTER, YOU KNOW, WHETHER THEY WERE DETAINED BEFORE OR PUT IN, YOU ARE ASKING US TO TO RULE THAT, YES, THAT, AND THAT THAT IS IRRELEVANT TO THE ANALYSIS, BUT IT WASN'T IRRELEVANT TO THE ANALYSIS, IN FAISON, AS READ TO YOU BY JUSTICE PARIENTE, SO HOW, UNLESS WE RECEDE FROM FAISON, WOULD YOU AGREE?

I THINK BECAUSE THERE IS A POLICY DIFFERENCE, AND I MAY NOT BE ADVOCATING IT AS WELL AS I WOULD LIKE, THAT WE ARE TALKING ABOUT A LIFE FELONY HERE, AND YOU ARE TALKING ABOUT A THIRD-DEGREE FELONY HERE, AND IF YOU APPLY FAISON TO FALSE IMPRISONMENT, PROSECUTORS ARE SAYING, WELL, I HAVE GOT TO MEET THE PROOF FOR KIDNAPING. I WILL CHARGE KIDNAPING. THEY EXERCISE THEIR DISCRETION HERE AND THEY DID NOT, SO IT BECOMES, AS PROSECUTORS, WE HAVE THE DISCRETION TO CHARGE THESE KRICHLS THE LEGISLATURE CREATED FALSE IMPRISONMENT. IT HAS AN ELEMENT UNIQUE TO IT, SO THESE CONVICTION KS OCCUR. WE HAVE THE SAME COURSE OF CONDUCT, AND WE CAN HAVE MULTIPLE CONVICTSS ARISING FROM IT, IF THE STATE MEETS ITS BURDEN OF PROOF.

THAT IS TRUE ABOUT KIDNAPING. KIDNAPING AND ROBBERY HAVE DIFFERENT ELEMENTS, SO IT WOULD NOT BE A CORE DOUBLE JEOPARDY VIOLATION. MY CONCERN GOES BACK TO, THAT, WHERE REALLY, IMPLICITLY, WE ARE RECEDING FROM FAISON TO ADOPT YOUR POSITION, BECAUSE, AGAIN, YOU HAVE GOT FALSE IMPRISONMENT IS A LESSER-INCLUDED OFFENSE OF KIDNAPING, SO IN THE CASE WHERE THE STATE DOES CHARGE KIDNAPING AND ROBBERY CAN'T PROVE THE KIDNAPING, BECAUSE OF THE FAISON TEST. THEY CAN GET, THEN, ON THE LESSER-INCLUDED, BY SAYING YOU DON'T NEED ANYTHING ELSE, OTHER THAN THE ROBBERY OCCURRED, IN ORDER IT TO GET FALSE IMPRISONMENT. CORRECT?

YES, BUT WE ARE HAVING TO MEET FACE ONE TO GET FALSE IMPRISONMENT, AND WE ARE STILL TALKING ABOUT FACE ONE --ON ISPLAIN THAT ELEMENT, THE ATTEMPT TO COMMIT OR THE COMMISSION AFTER FELONY. IT CAN BE ABSENT FALSE IMPRISONMENT.

DO YOU HAVE ANYTHING ALONG THE LINES THAT JUSTICE QUINCE INDICATED, THAT WOULD BE SOME ADDITIONAL ACT, MAYBE NOT THE FAISON TEST BUT SOME ADDITIONAL ACT, SOME CONFINEMENT THAT WASN'T NECESSARY FOR THE COMMISSION OF THE ROBBERY, IN ORDER TO ESTABLISH THAT?

THE STATUTORY LANGUAGE DOESN'T REQUIRE IT. IT SIMPLY REQUIRES RESTRAINT, ABDUCT, IMPRISON AGAINST HIS OR HER OBJECTION OR AGAINST THEIR WILL. THE ADDITIONAL FELONY IS ONLY IN KIDNAPING. THAT WHERE WE STAND, ON THE DIFFERING STATUTORY LANGUAGE. I CAN'T DISAGREE THAT THERE CAN BE A ROBBERY WHERE YOU ARE APPROACHED AND YOU KNOW,

HAND ME OVER YOUR STUFF. THERE IS RESTRAINT THERE, BUT LET THE STATE MEET ITS BURDEN, MEET THE ELEMENTS OF FALSE IMPRISONMENT, AND THEN THEY CAN GET A CONVICTION FOR THAT. I THINK THEY COULD CHARGE G HERE. THEY DIDN'T DO. THAT THEY USED THEIR DISCRETION AND CHARGED THE LESSER CRIME. THEIR POLICY WAS LET'S GET A CONVICTION FOR KIDNAPING, UNLESS YOU MEET THIS FAISON TEST. WHICH IS RELATIVELY WORKABLE, FACTS AND CASE-SPECIFIC, AS IT WAS APPLIED IN FAISON TSEERS ALTERY, AND IN THAT INSTANCE THE ASSAILANT NTOA R'S OFFICED K THIS OVED HER, IN ORDER TO COMMIT THE SEXUAL BATTERY, AND THEY FOUND THAT HE MOVED HER AWAY FROM THE WINDOW BACK OF A ROOM WHERE THEN FROM A RESTROOM, AND THEN DID IT AGAIN TO ANOTHER WOMAN IN A RESIDENTIAL HOME, AND THEY FOUND THAT THE KIDNAPING WAS NOT INHERENT TO THE BATTERY, BUT ALL OF IT WAS INTENT AS TO THE KIDNAPING, ITSELF.

WOULD IT BATE A FALSE IMPRISONMENT? I CAN'T CONCEIVE, UNDER WHAT YOU ARE JUST SAYING THAT THERE WOULD BE A SEXUAL BATTERY THAT WOULDN'T, ALSO, BE FALLS IMPRISONMENT.

IF THE JURY RE WAS RESTRAINT, IMPRISONMENT OR CONDUCT AGAINST HIS OR HER WILL, THERE WOULD BE. IT, ALSO, BOILS DOWN TO 772.5014 IN TERMS OF WE CAN CHARGE AND WE CAN CONVICT, AND WE ARE NOT LIMITED TO WHAT WE CAN CHARGE, IF WE CAN PROVE THE STATUTORY ELEMENTS. IF YOU CAN PROVE SEVERAL STATUTORY CRIMES DURING ONE COURSE OF CONDUCT, YOU CAN BE CONVICTED OF THOSE CRIMES OCCURRING SIMULTANEOUSLY OR CONCURRENTLY. FOR FAISON, FOR PURPOSES OF FALSE IMPRISONMENT, WE CAN CERTAINLY CHARGE THAT.

SO WE ARE BACK TO, BASICALLY, ANY FORCIBLE CRIME, ALSO, IT WOULD INCLUDE FALSE, YOU COULD, ALSO, CHARGE FALSE IMPRISONMENT.

QUITE POSSIBLY, YES, JUSTICE QUINCE.

HOW WOULD YOU INTERPRET OUR CASE OF STATE V LINDSEY?

LINDSEY WAS THE FIRST CASE OUT OF THIS COURT TO APPLY FALSE FAISON CAME OUT IN 1983. LINDSEY CAME OUT IN 1984. IT WAS THE FIRST CASE WHERE FAISON WAS APPLIED TO FALSE IMPRISONMENT WITH JUSTICE SEA SIDE. IT IS OUR POSITION THAT THIS STATUTORY ANALYSIS WASN'T DONE IN LINDSEY, WHICH MEANS THAT WE CAN TAKE A LOOK AT IT. THEY DIDN'T ADDRESS THE ISSUE THAT WE ARE ADDING HERE THIS MORNING, IN TERMS OF YOU HAVE THIS ELEMENT THAT IS UNIQUE TO KIDNAPING ONLY THAT, FAISON HELPS DEFINE THIS, INTENT OR THE COMMISSION AFTER FELONY, AND IT JUST DIDN'T GET THERE.

DID IT REcede FROM LINDSEY?

I DON'T THINK SO. LINDSEY MEET, SUPPORT THE TEST, SO I THINK IT IS NOT TO SAY IT WAS IMPROPER, JUST THAT YOU NEVER REACHED THIS PARTICULAR ISSUE THAT WE HAVE THIS MORNING, SO I THINK YOU CAN MAKE A NEW LAW ABOUT THE APPLICABILITY OF FALSE IMPRISONMENT, AS IT RELATES TO THESE FACTS, AND AT THIS POINT, UNLESS THE COURT HAS ANY FURTHER QUESTIONS, I AM GOING TO USE THE REMAINDER OF MY TIME FOR RE-- THE REMAINDER OF MY TIME FOR REBUTTAL. THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS BARBARA DAVIS. I AM THE PUBLIC DEFENDER. I REPRESENT MR. LORENZO SMITH, AND I THINK ONE THING THAT THIS STATE IS NOT QUITE -- ONE THING THAT ISN'T QUITE GRASPING IS THAT THE STATE CAN CONVICT OF FALSE IMPRISONMENT, IF IT IS A SEPARATE CRIME. THEY ARE FOCUSING ON THE FACT THAT THIS EVENING THEY HAVE TO PROVE KIDNAPING, IN ORDER TO PROVE FALSE IMPRISONMENT. YOU CAN HAVE FALSE IMPRISONMENT DENTLY. YOU CAN TIE SOMEBODY UP AND LEAVE THEM TIED THERE. YOU CAN PUT THEM IN A CLOSET AND LOCK THEM UP. YOU CAN LOCK THEM IN AN AT O'CLOCK.

SO IN THIS CASE, WOULDN'TT, -- IN AATIC.

SO IN THIS CASE, ALTHOUGH THE STATE IS ARGUING FOR A BROADER RULE, WEREN'T THEY PUT INTO THE BATHROOM?

THEY WERE PUT INTO THE BATHROOM. THE ONEY WASY, REALLY NERVOUS, AND WHEN HE TOLD THEM TO LIE ON THE BED SO HED ROB THEM, SHE COULDN'T EVEN LIE ON THE BED. SHE KNELT ON THE BED AND TRIED TO KEEP HER EYES ON THE GUN, SHE WAS SO AFRAID. HE PUT THEM IN THE UNLOCKED BATHROOM AND SAID STAY THERE WHILE I RIFLE THROUGH YOUR BELONGINGS AND HE TURNED THE TV ON, AND AS SOON AS THEY HEARD HIM LEAVE, THEY JUST CAME OUT.

WHAT MORE WOULD YOU NEED FOR FALSE IMPRISONMENT, OTHER THAN PUTTING THEM IN THE BATHROOM?

WELL, IF THAT WERE FALSE IMPRISONMENT ALONE, THAT WOULD BE FALSE IMPRISONMENT, BUT THIS WAS, HE WAS TRYING TO COMMIT A ROBBERY, AND THAT WAS THE FORCE AND THE THREAT HE WAS USING TO COMMIT THE ROBBERY.

BUT AREN'T, WE ARE NOT, WOULD YOU AGREE THAT THIS IS NOT A DOUBLE JEOPARDY.

I WOULD AGREE.

AND SO THERE ARE DIFFERENT ELEMENTS IN THE TWO CRIMES.

YES.

THE LEGISLATURE HAS CLEARLY SAID THAT YOU, THAT IT INTENDS FOR BOTH CRIMES TO BE PROSECUTED.

YES.

CORRECT?

OKAY. NOW, THE SITUATION, THEN, IS WITH, IN THE FAISON CASE, WHICH DIDN'T REALLY TALK ABOUT FALSE IMPRISONMENT, YOU ARE DEALING WITH A VERY SPECIFIC ELEMENT OF THE STATUTE, WHICH SAYS THAT IT, THAT YOU ARE GETTING KIDNAPING, BECAUSE IT IS THESSIFTHE. AND THEREFORE, IF YOU ARE USING THAT PORTION OF THE KIDNAPING STATUTE, THEN KIDNAPING AND THE ROBBERY WOULD BE IDENTICAL, SO YOU REALLY DO HAVE, IN THAT TYPE OF CONTEXT, AONNH YOU DE AN INDEPENDENT ELEMENT OF THE TWO. BECAUSE YOU ARE USING IT.IF YE USING THE INTENT TO TERRORIZE, RATHER THAN THE INTENT TO COMMIT A FELONY,N FAISON WOULDN'T APPLY AT ALL. WOULDN'T YOU AGREE?

AND I THINK THAT FAISON TALKED ABOUT SEPARATE CONDUCT. YOU HAVE TO HAVE SEPARATE CONDUCT. WHEN YOU HAVEE FELONY, SO WHEN YOU HAVE A FORCIBLE FELONY AND THAT, INHERENTLY INVOLVES SOME KIND OF FORCE OR RESTRAINT OR CONFINEMENT, THEN THE KIDNAPING IS INHERENT IN THE FORCE YOU MUST HAVE FOR THE ROBBERY.

BUT THE PROBLEM I AM HAVING IS, S I READ,E SAME PROBLEM THAT JUDGE ALLEN HAD IN SHALE, OVER IN THE FIRST DISTRICT CASE, AND THAT IS PUTTING THIS OVERLAY OF THE FACE OF REASONING ON FALSE IMPRISONMENT, BECAUSE FALSE IMPRISONMENT DOES NOT HAVE THAT PROVISION IN THE STATUTE.

AND, SEE, THAT IS A DISTINCTION THE STATE IS MAKING, BUT FAISON DID NOT MAKE SUCH A DISTINCTION.

BUT IT DIDN'T DEAL WITH FALSE IMPRISONMENT.

BUT FAISON WAS NOT DEALING WITH THE FACT THAT YOU HAVE TO HAVE A FELONY, IN ORDER TO APPLY FAISON. FAISON WAS LOOKING AT THE CONFINEMENT AS BEING SEPARATE, A SEPARATE CRIMINAL CONDUCT. IN OTHER WORDS, IF YOU HAVE TO CONFINESOMEbody FOR ROBBERY OR SEXUAL BATTERY OR AGGRAVATED BATTERY, IN ORDER TO COMPLETE THAT CRIME, YOU HAVE TO CONFINESOMEbody. IT IS INHERENT IN THE OFFENSE. BUT IF YOU LEAVE THEM CONFINED, AND THAT IS WHAT BERRY TALKED ABOUT. THIS COURT, IN, GAVE SPECIFIC EXAMP-- IN BARRY, AS FAR AS F C THAT FIND THIS OFFENSE, AS FAR AS IT IS INHERENT --

ISN'T THE CONDUCT, REALLY, CONTRARY TO WHAT WE SEE AS LEGISLATIVE INTENT? THAT IS THAT WE HAVE A VERY SPECIFIC EXPRESSIOE LEGISLATURE, THAT THEY INTEND FOR AS MANY CRIMES AS MAY BE ESTABLISHED BY A PARTICULAR ACTION OF A DEFENDANT, TO BE CHARGED, AND THEY HAVE EXPRESSED THAT VERY EXPRESSLY, HAVE THEY NOT, SO YOU HAVE AGREED THAT YOU DON'T HAVE A DOUBLE JEOPARDY PROBLEM HERE, SO ISN'T THAT WHAT THE LEGISLATURE, REALLY, HAS VERY POINTEDLY EXPRESSED, AND THAT IS THAT, IF, IN THE COURSE OF THE ARMED ROBBERY, THAT, ALSO HAPPENS TO BE A FALSE IMPRISONMENT, WE WANT BOTH OF THOSE CRIMES TO BE CHARGED. HAVEN'T THEY VERY POINTEDLY EXPRESSED THAT, THAT, UNLESS IT MEETS SOME OF THESE EXCEPTIONS AND, OF COURSE, DOUBLE JEOPARDY OR A LESSER OFFENSE, YOU KNOW, THE EXCEPTIONS IN THAT SCHEME, SO HOW CAN WE AVOID, NOW, THIS RATHER CLEAR EXPRESSION OF LEGISLATIVE INTENT, THAT THAT IS TOUGH, THAT WHAT YOU DID HAPPENS TO VIOLATE TWO STATUTES. THAT IS THE WAY WE WANT IT.

WELL, IT WOULD BE KIND OF LIKE IF I HAVE KIDNAPING AND FALSE IMPRISONMENT IS A LESSER, WELL, THIS CONDUCT IS INHERENT IN THIS, SO I GET TO PUNISH YOU FOR BOTH.

NOW YOU ARE TALKING ABOUT --

LESSER OFFENSES. BUT THAT IS AN ANALOGY, BECAUSE IN FAISON, IN BARRY AND IN LINDSEY THERE, IS NO SEPARATE CONDUCT, AND THAT IS VERY SPECIFIC EXAMPLES.

ARE YOU CLAIMING THAT FALLS IMPRISONMENT IS A LESSER-INCLUDED OFFENSE OF ARMED ROBBERY?

OF KIDNAPING.

I AM TALKING NOW, ARE YOU CLAIMING THAT FALLS IMPRISONMENT IS NECESSARILY A LESSER-INCLUDED OFFENSE?

NOT NECESSARILY, BUT IT CAN BE THE SAME CONDUCTDE ROBBERY AND FALSE IMPRISONMENT, AND THE LEGISLATURE HAS SAID, FOR EACH CRIMINAL ACT. IT IS THE SAME CRIMINAL ACT. IODY AT GUNPOINT, AND I SAY STAY RIGHT THERE, I HAVE CONFINED THEM. THAT IS, ALSO, I HAVE TO CONFINESOMEbody TO ROB THEM.

BUT IF YOU ARE NOT MAKING A DOUBLE JEOPARDY, LET'S GO BACK TO, FAISON REALLY WASN'T A DOUBLE JEOPARDY CASE, AND REALLY IF YOU LOOK AT FAISON AND BLOCKBERGER AND THE STATUTE, IT IS REALLY HARD TO UNDERSTAND HOW WE CAME TO FAISON, EXCEPT TO SAY IT DOESN'T SEEM FAIR FOR SOMEONE TO BE STUCK WITH TWO LIKE FELONIES, AND THAT WAS IN 1993, AND IN 2002, THE LEGISLATURE IN THAT SITUATION, AGREED, BUT IF WE WEREO WRITEON A CLEAN SLATE, FAISON, IF THERE IS NO DOUBLEDYT, WHAT IS, KIDNAPING HAS DIFFERENT ELEMENTS THAN ARMED ROBBERY, WHAT WOULD BE THE PROBLEM WITH HAVING SOMEONE CONVICTED OF KIDNAPING AND ARMED ROBBERY?

AND THAT IS THE PURPOSE OF FAISON.

I AM ASKING YOU, KNOW -- I AM ASKING YOU, THOUGH, WHERE DOES FAISON DERIVE ITS AUTHORITY TO SAY IT IS NOT FAIR TO HAVE SOMEONE STUCK WITH TWO LIFE FELONIES? WHAT LEGAL PRINCIPLE IS THAT?

BECAUSE, IN ORDER TO COMMIT THESE FORCIBLE FELONIES, AND THERE, IT IS A CONFINEMENT CRIME. THE KIDNAPING AND FALSE IMPRISONMENT ARE CONFINEMENT CRIMES, AND SO FAISON BUT THERE ARE CERTAIN FORCIBLE FELONIES THAT INCLUDE THIS, THAT YOU CAN'T DO, UNLESS YOU CONFINES SOMEBODY. SEXUAL BATTERY.

BUT THAT SOUNDS, TO ME, LIKE DOUBLE JEOPARDY ARGUMENT. USUALLY THAT IS HOW WE, WHAT WE ARE SAYING WHEN WE ARE SAYING THAT WE ARE CONCERNED THAT EVERYTHING, WHEN YOU DO THIS, IT WILL BE, ALSO, THAT, BUT WE DON'T, UNDER BLOCKBERGER, WE LOOK AT WHETHER THE ELEMENTS ARE DIFFERENT.

YOU, AND YOU, ANT IS ONE STEP IN THE DOUBLE JEOPARDY ANALYSIS. DO WE HAVE DIFFERENT ELEMENTS. BT FAISON WAS, IT JUST CARVED OUT THIS EXCEPTION FOR CONFINEMENT CRIMES THAT, IF I AM GOING TO ROB SOMEBODY, I HAVE TO CONFINES THEM. CAN THEY CONVICT ME DOUBLY. NOW, IN THIS CASE --

THE LEGISLATURE COME ALONG, AFTER 1983, AND PUT THIS PROVISION IN ABOUT ITS INTENT THAT EVERY CRIME BE CHARGED?

YES.

SO IT WAS POST-FAISON.

YES.

ALL RIGHT. AND SO THIS LEGISLATIVE INTENT THAT IS EVIDENCED BY THE LEGISLATURE, MAY, IN FACT, HAVE UNDONE FAISON. IT CERTAINLY SHOULDN'T EXPAND FAISON IN THE FACE OF IT, SHOULD IT?

AND I DON'T THINK IT UNDOED FAISON AT ALL. I THINK THAT YOU NEED TO FOCUS ON THE SEPARATE CRIMINAL CONDUCT AND IF YOU LOOK AT YOUR CASE OF BARRY, IN --

YOU FOCUS ON THAT WHY?

BECAUSE EVERY CASE THAT THIS COURT HAS EVER WRITTEN, FAISON, LINDSEY AND BARRY IN 1996, SAYS IF CONFINEMENT ACCOMPANIES ANY UNDERLYING FELONY, THEN IT IS PART AND PARCEL OF THAT FELONY. IT IS NOT A SEPARATE ACT.

WHAT PREVENTS, THEN, THE DOUBLE, THE CHARGING?

BECAUSE IT IS THE SAME ACT. YOU DON'T HAVE TWO SEPARATE ACTS.

BUT DOES DOUBLE JEOPARDY PREVENT THE SAME CHARGES?

SEE, IF YOU DO A STRICT ANALYSIS ON IT, YOU ARE GOING TO HAVE DOUBLE JEOPARDY IN THERE, AND WHICH ONE, RECENTLY IN, K, THE KROLER CASE THAT I THINK IT WAS IN, N WHICH HE CARJACKED THEM WHEN HE TOOK THE CAR AND TOOK HER PURSE BUT THEN HE ROBBED HER SEPARATE FROM THE CAR, O HERE WE HAVE DOUBLE ACTS, SO IF THERE ARE ELEMENTS TO BE DONE UNDER STRICT DOUBLE JEOPARDY, THE ELEMENT, THEN THERE ARE SEPARATE ELEMENTS, BUT YOU LOOK AT THE ACTS, AND THERE SEPARATE ACTS. BARRY WAS A STRICT 1996 CASE AND USN ALL FOURS. YOU TELL THEM TO GET INTO THE BATHROOM AT GUNPOINT SO YOU CAN ROB THEM. WELL THAT, IS INHERENT IN THE ROBBERY, BUT IF YOU TIE THEM UP AND LEAVE THEM IN

THE BATHROOM AFTEHAT, IS A PROBLEM. AND THAT IS ALWAYS A PROBLEM. THAT IS A SEPARATE ACT, AND THAT IS TO EASE YOUR ESCAPE FROM THE ROBBERY. IT IS NOT INHERENT IN THE ROBBERY.

THAT WAS IN A KIDNAPING CHARGE, CORRECT?

YES.

AND THAT WAS APPLYING FAISON TO THE KIDNAPING.

YES. THE KIDNAPING, AND THAT IS TALKING ABOUT ACTIONS INHERENTN THE KIDNAPING. FALSE IMPRISONMENT IS ASER-IENSE OF , BUT WHAT THE STATE DOESN'T RECOGNIZE IS THAT THEY ARE SAYING THAT FALSE IMPRISONMENTD SERVE NO P, IF TEN TEST WERE APPLIED. IT DOES. IF IT MPANYING ANOTHER FELONY, SEE, YOU CAN'T HAVE KIDNAPING, UNLESS YOU ARE TRYING TO, INTENDING TO COMMIT ELSE HAEISONMENT, IN AND BYLF, SO ITSTILLES A PURPOS ITS SL A VIABLE CRIME.

HOW WOULD THE JURY BE INSTRUCTED THEN, AND THIS IS WHERE, BECAUSE THE FAISON TEST, I MEAN, IF SOMEBODY IS LOCKED UP IN THE BATHROOM DURING THE ROBBERY, YOUGWYE BG CONFINED SEPARATELY FROM THE ROBBERY, SO, BUT THE FAISON TEST TALKS ABOUT YOU HAVE TO BE MOVED SOMEPLACE ELSE. HERE YOU ARE AGREEING THAT, IF THEY HAD TIED SOMEBODY UP AND LEFT THE PERSON TIED UP AFTER THEY LEFT, THAT THAT COULD BE FALSE IMPRISONMENT. IT WOULDN'T BE KIDNAPING. SO IT SEEMS THAT THE FAISON TEST MAYBE THAT IS REALLY WHAT IS TOO SEVERE FOR FALSE I AM PRISON PRISONMENT. -- FOR FALSE IMPRISONMENT.

IT COULD BE, BUT I THINK IT IS A FACTUAL DETERMINATION, AND EVEN THOUGH THE --

WHAT WOULD THE INSTRUCTION BE THOUGH? UNDER YOUR, YOU KNOW, WHAT YOU ARE ASKING, IF THIS CASE IS AFFIRMED, WHAT WOULD BE THE INSTRUCTION THAT, ON RETRIAL, THAT THE JURY WOULD ?>HE INSTRUCTION THAT THEY HAD BEFORE, WHERE IT HAD TO BE A SEPARATE ACT FROM ANY OTHER CRIME THAT WAS COMMITTED. THAT SHOULD BE SOMETHING THAT THE JURY HAS ALWAYS INSTRUCTED, THAT IF, YOU KNOW, SO THAT THEY DON'T GET CONFUSED WITH LESSER-INCLUDED OFFENSES, BUT IF YOU HAVE GOT A ROBBERY, AND THIS CONFINEMENT IS PART AND PARCEL OF THE ROBBERY, THE STATE, NUMBER ONE, SHOULDN'T BE CHARGING FALSE IMPRISONMENT. NUMBER TWO, IT SHOULDN'T GET PAST A JOA, AND NUMBER THREE, THE JURY SHOULD BE TOLD IF THE FORCE IS INHERENT IN THE ROBBERY THERE SHOULD BE, IT IS NOT A SEPARATE CRIME.

SO IN THIS CASE, THOUGH, DON'T YOU, WOULDN'T YOU HAVE TO AGREE THAT, UNDER THE FACTS OF THIS CASE, YOU DO, IN FACT, HAVE SEPARATE CRIMES?

NO, BECAUSE --

WAIT A MINUTE. WELL, LET'S LOOK AT THE FACTS HERE. HE CAME IN, GUNEST, WEAPON, WHATEVER. HE HAD A -- GUN OR WEAPON OR WHATEVER. HAD HE A WEAPON, AND HE BEGAN THIS ROBBERY WITH THEM THERE, ON THE BED, OR SHE ON THE FLOOR, WHICHEVER THE CASE MIGHT BE, AND THE ROBBERY WAS ACTUALLY TAKING PLACE UNDER THAT SCENARIO. WASN'T THE MOVEMENT OF THE VICTIMS TO THE BATHROOM, SOMETHING SEPARATE?

NO. THAT WAS, HE WAS RIFLING THROUGH EVERYTHING, AND SHE WAS VERY NERVOUS, AND FOR SOME REASON, HE SAID JUSTGET INE BATHROOM. HE DIDN'T LOCK THE DOOR.

BUT HE COULD HAVE CONTINUED TO RIFLE THROUGH THERE WITH THE VICTIMS THERE ON THE BED, COULDN'T HE? I MEAN, WHILE I APPRECIATE THE POINT THAT YOU ARE TRYING TO MAKE UNDER THE FACT OF THIS CASE HOWEVER, IT WOULD SEEM TO ME THAT YOU DO, IN FACT, HAVE A

FALSE IMPRISONMENT.

NO, AND IF YOU LOOK AT ALL OF THE CASES THAT WE CITED AND EVEN THE BARRY CASE, IT THAT ACT IS INHERENT IN THE ROBBERY, BECAUSE THAT ACT IS NECESSARY FOR HIM TO BE ABLE TO RIFLE.

SO UNDER YOUR SCENARIO, YOU R HAVE A FALSE TCOND A ROBBERY CONVICTION AT THE SAME TIME.

OH, YEAH. IF HE TIED THEM UP IN THE BATHROOM AND LEFT THEM THERE, FORE HE BARRED THE DOOR UP.

WHAT IS THE DIFFERENCE IN PUTTING THEM IN THERE AND THEY DIDN'T COME OUT BECAUSE HE TOLD THEM NOT TO, AND TYING THEM UP? THAT, WELL HAD, THAT IS THE DIFFERENCE THAT THIS COURT WROTE IN BARRY. IT IS EXACTLY THE DIFFERENCE, AND IT IS EXACTLY DIFFERENCE IN ALL OF THE CASES. YOU HAVE TO DRAW A LINE SOMEWHERE, AND THE LINE IS DRAWN IF IT IS INCIDENTAL. IF IT IS PART AND PARCEL OF THE ACT.

SO YOU ARE SAYING FALSE IMPRISONMENT, WHAT IT WOULD REQUIRE IS AN ADDITIONAL ELEMENT THAT THEY COULDN'T GET AWAY.

WELL, AND THAT IS SOMETHING THAT THE, IS A FACTUAL DETERMINATION.

WELL, IN BARRY, WE SAID THAT THAT IS WHAT WOULD ESTABLISH A KIDNAPING, DIDN'T WE?

YES.

SO THAT IS NOT FALSE IMPRISONMENT. IN OTHER WORDS, IN BARRY, WE SAID TYING THEM UP WAS THE EXTRA THING THAT PROVED THE KIDNAPING.

YES.

BUT NOW WE ARE NOT TALKING ABOUT KIDNAPING.

ALSO IN McKITCHEN, AND THAT IS A DISTRICT COURT CASE, AND -- McKUTCHEN, AND THAT IS A DISTRICT COURT CASE, AND THE OTHER FALSE IMPRISONMENT CASES, IF YOU LOOK AT THE CASES, THAT WHERE THEY DRAW THE LINE IS USUALLY TYING THEM UP. IN BARRY, TYING THEM UP, THAT WAS THE BRIGHT LINE. AS SOON AS YOU REALLY, REALLY RESTRAIN THEM. NOW, PUTTING SOMEBODY IN THE BATHROOM WHERE THEY CAN LOCK THEMSELVES IN AND AWAY FROM THE ASSAILANT, THAT IS NOT EXACTLY RESTRAINT.

BUT IF YOU HAVE TO PROVE KIDNAPING IN ORDER TO GET FALSE IMPRISONMENT, AGAIN, IT SEEMS LIKE YOU ARE BOTH TAKING THESE, MAYBE, AND I DON'T MEAN THIS IN A PER JOURTIVE SENSE BUT EXTREME -- IN A PEJORATIVE SENSE BUT EXTREME POSITIONS, SO IF SOMEONE COULD HAVE FALSE IMPRISONMENT, BECAUSE IT SEEMS CLOSE TO DOUBLERDE, D ONRTTHAT WAY BECAUSE SAY -- DOING IT THAT WAY BUT SAYING I AM GOING TO PUT YOU IN THE BATHROOM. GO IN AND CLOSE THE DOOR. THAT CONSTITUTES AN ACT AND FALSE IMPRISONMENT. YOU DON'T SEE THAT AS BEING A DIFFERENCE. THAT IS ONE IS NOT REALLY INHERENT. OT THE SAME EXACT ACT. IT IS AN ADDITIONAL ACT THAT IS BEING DONE IN THE COURSE OF THE ROBBERY, AND THAT THAT, THERE FOR THEY WERE FALSELY IMPRISONED IMPRISONED.

AND THAT IS, I THINK, IF YOU JUST LOOK AT THE EVOLUTION OF THE CASE LAW, AND WHERE THEY DRAW THE LINE, I MEAN, IT IS A QUESTION OF WHERE YOU DRAW THE LINE, AND SO FAR, THE CASES, IF THERE IS AN ONGOING ROBBERY AND YOU HAVE GOT THE PEOPLE AT GUNPOINT, WHETHER YOU MAKEM GET ON THE GROUND OR YOU PUT THEM IN THE BATHROOM, WITHOUT

TYING THEM UP AND LOCKING THEM AND BARRING THEM IN AND IMPEDING ACCESS THAT, IS STILL INHERENT IN THE ROBBERY, BUT AS SOON AS YOU HAVE AN ADDITIONAL CONFINEMENT OR A TIME LAPSE OR IN THE TAYLOR CASE --

BUT ALL THOSE LANGUAGE -- THAT IS ALL TO DO WITH DOUBLE JEOPARDY, AND I GUESS I AM GOING BACK TO WHETHER, WE ARE ASSUMING FAISON IS STAYING BECAUSE NO ONE IS ASKING US TO RECEDE FROM IT, BUT IF THERE IS NOT A DOUBLE JEOPARDY PROBLEM, AND CONTROLLER WAS NOT A -- AND KROELER WAS NOT A QUESTION OF SEPARATE ACTS MUCH THE COURT HELD, IN KROHLER THERE WERE TWO SEPARATE CRIMES. HERE YOU ARE NOT ARGUING THAT FALLS IMPRISONMENT AND ROBBERY MEET THE SAME TEST OR A LESSER-INCLUDED, SO I GUESS I AM STARTING TO HAVE TROUBLE UNDERSTANDING WHAT THE BASIS FOR US TO CHANGE THE LANGUAGE OF THE STATUTE WOULD BE.

WELL, WE ARE SAYING THAT FAISON SHOULD BE APPLIED TO FALSE IMPRISONMENT, AS IT HALLS HAS BEEN, BECAUSE IT IS A CONFINEMENT CRIME FARNTION A CONFINEMENT CRIME IS INSIDE DEN TO A -- CRIME, AND IF A CONFINEMENT CRIME IS INCIDENTAL TO A SEPARATE FELONY, THEN IT IS NOT A SEPARATE ACT.

THE PRINCIPLE YOU JUST ENUNCIATED, IS IT A LEGAL PRINCIPLE, STATUTORY CONSTRUCTION PRINCIPLE, CONSTITUTIONAL PRINCIPLE, IT IS NOT FAIR PRINCIPLE?

NO. IN BARRY AND DOWN THROUGH THE YEARS THERE ARE THREE CASES WHERE THE COURT HAS APPLIED FAISON AS A SMALL EXCEPTION TO WHEN CRIMES ARE NOT SEPARATE ACTS, AND IT IS NOT THAT YOU HAVE TWO ACTS AND ARE THOSE TWO ACTS DOUBLE JEOPARDY. IS IT THE SAME CRIME. BUT IT IS THAT THERE IS NOT EVEN A SEPARATE CRIME. IT IS THE SAME EXACT CRIME. SO THE STATE --

BUT YOU DON'T SEE FAISON, YOU DON'T BELIEVE THE COURT, IN FAISON, CAME TO THAT TEST, BASED ON THE FACT THAT, UNDER THE KIDNAPING STATUTE, YOU HAD TO PROVE THAT IT WAS BASED ON THE FACT THAT, UNDER KIDNAPING, AND THAT SITUATION, THE KIDNAPING WAS TO FACILITATE A FELONY, AND SO IN ORDER TO FACILITATE THE FELONY, YOU NEEDED TO SHOW THESE ELEMENTS? YOU DON'T THINK THAT IS WHAT THE COURT WAS SAY SOMETHING.

I THINK THAT IS EXACTLY WHAT THE COURT WAS SAYING -- YOU DON'T THINK THAT IS WHAT THE COURT WAS SAY SOMETHING.

I THINK THAT IS EXACTLY WHAT THE COURT WAS SAYING, BUT TO EXTEND THAT, SINCE YOU DON'T HAVE TO PROVE A FELONY IN FALSE IMPRISONMENT, IT DOESN'T APPLY TO FALSE IMPRISONMENT, AND I DON'T THINK THAT IS LOGICAL REASONING, BECAUSE THE COURT IN FAISON WAS LOOKING AT THE TWO CONFINEMENT CRIMES, AND THE COURT EXTENDED IT IN LINDSEY, AND FALSE IMPRISONMENT IS A CONFINEMENT CRIME, JUST LIKE KIDNAPING.

CHIEF JUSTICE: THANK YOU. YOUR TIME IS UP. REBUTTAL?

JUST BRIEFLY, YOUR HONOR. I JUST WANT TO POINT THE COURT'S ATTENTION TO SOME LANGUAGE IN STATE VERSUS LINDSEY, REGARDING JUSTICE ANSTEAD'S CONCERN ABOUT CHARGING AN ENTIRE CRIMINAL SCHEME, AND WE, AND YOU SAY, IN LINDSEY, EVEN IF THERE WERE ELEMENTS OF FACTUAL COMMON PROOF TO TWO OR MORE OF THE CRIMES, IT IS NOT CLEAR THE RESPONDENTS WOULD BE ENTITLED TO RF UNDER THEIR CLAIM, SINCE THE MATTER OFCTS WERE COMMITTED IS ONE OF PURELY LEGISLATIVE INTENT, AND THAT IS WHERE I WANT TO LEAVE IT WILL HERE THIS MORNING, THAT FAISON IS NOW INCREASED. I THINK WE HAVE TO PROVE KIDNAPING, TO GET A FALSE IMPRISONMENT CONVICTION, BY APPLICATION OF FAISO AS TO THE FALSE IMPRISONMENT ELEMENT. AND IT IS OUR OPINION --

BUT YOU WOULD AGREE THAT YOU COULD ARGUE ALTERNATIVELY, THAT IN THIS CASE HERE,

THERE WAS A SEPARATE ACT BY THE DEFENDANT HAVING CONFINED THEM IN THE BATHROOM.

ABSOLUTELY. I BELIEVE THE CONFINEMENT STARTED AS SOON AS HE GOT THEM IN THERE. HE CONFINED THEM AND THEN STARTED THE ROBBERY. HOWEVER, THE BARRY CASE IS INTERESTING. JUSTICE PARIENTE, I THINK WE CAN MEET FAISON HERE. HE COULD HAVE COMPLETED THE ROBBERY WITHOUT PUTTING THEM IN THE BATHROOM, AS JUSTICE QUINCE POINTED OUT. THEY STAYED IN THERE FOR TEN MINUTES AND HE TURNED UP THE TELEVISION REALLY LOUD AND FACILITATED HIS ESCAPE, SO AT THE MINIMUM, WE THINK THAT THE FALSE IMPRISONMENT MET FAISON HERE, AT A MINIMUM, SO WE ASK FOR YOU TO AFFIRM.

CHIEF JUSTICE: THANK YOU VERY MUCH AND THANK YOU, COUNSEL, FOR YOUR ASSISTANCE. THE COURT WILL BE IN RECESS.