Sun State Ford, Inc. V. Laverica Burch

MARSHAL: HEAR YE.HEAR YE.HEAR YE.THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW IN SESSION. ALL WHO HA VE CAUSE TO PLEA , DRAW NEAR , G IVE ATTENTION AND YOU SHALL BE HEARD. GOD SAV E THE UNITED STATES , THE GREAT STATE OF FLORIDAAND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SE ATED.

CHIEF JUSTIC E: GOOD MORNING LADIES AND GENTLEMEN, AND WELC OME TO THE SUPREME COURT THE FIRST CASE ON THIS MORNING'S DOCK ET BE IN G SUN STATE F ORD VERSUS LAVERICA BURCH. IS COUN SEL READY?

YE S. BEFORE I BE GIN, I WANT TO THANK THE COURT FOR GR ANTING ME THE PRIVILEGE OF ARGUING HERE THIS M ORNING ON A PRO HAC V IC E BA SIS. I REPRESENT THE PETITIONER SUN STATE FORD. OUR L EAD APPELLATE ATTORNEY FOR OUR FI RM HE RE IN FL ORIDA , GENA CARUSO , FORMERLY A CLERK IN THE COUR T, WAS SERIOUSLY INJU RED NO T LONG AFTER THIS CASE WAS RESOLVED IN THE FI FTH DISTRICT AND THE O THER APPELLATE SPECIALIVITY FOR OUR FIRM IN F LORIDA SPECIALIST FOR OUR FIRM IN FLORIDA, MOVED TO MASSACHUSETTS THREE WEEKS A GO, SO, AG AIN, I DID WANT TO TH ANK YOU FOR M Y FIRM'S PRESSURE YEAS FOR APPEARINGPRO HAC VI CE. THIS IS W HERE STRICT VICARIOUS LIABILITY I S SOUGHT TO BE I AM POSED ON SUN STATE IMPOSED ON SUN STATE FORD FOR THE USE OF A RENTAL VEHICLE BY A MAN NAMED BUFORD , WHO USED IT FOR A HIGH SP EED CH ASE THAT RESULTED IN THE DEATH OF AARYON MILES . THE JUDGE FO UND THAT MR . B UFORD 'S CONDUCT WAS CLEARLY INTENTIONAL , AND THAT THE DANGEROUS MATERIALALITY DOCTRINE DID N OT APPLY IN THIS SITUATION. THERE ARE TWO , I THINK , S ALIENT POINTS ABOUT THE FIFTH DIST RICT'S OPINION.

HAVEN'T WE , S INCE THE SOUTHERN CO TTON OIL CASE , REALLY , OUT OF THIS COURT, THERE HAS BEEN , MORE OR LESS , DEVELOPED A BRIGHT LINE T YPE OF HOLDINGS THAT , IF YOU OWN THE VE HICLE AND YOU ENTRUST IT TO SOMEONE EL SE, THEN YOU ARE RESPONSI BLE FOR HOW THAT VEHICLE IS OPERATED. ISN'T THAT ESSENTIALLY WHAT WE HAVE DONE ?

YES , FOR PROBABLY ABOUT 80-SOME YEARS, YES, THAT IS T RUE, ALTHOUGH EVERY ONE OF THOSE CASES WERE NEGLIGENCE CASES.

BUT SOME O F THEM ARE RECKLESS CASES , I MEAN , WE HAVE HAD SOME D RUNK DRIVINGCASES OUT OF THIS COURT , IN W HICH THERE HAVE BEEN VICARIOUS LIABILITY , BECAUSEWE HAVE RECOGNIZED THAT WHAT FLORIDA HAS , AND HAS HAD SINCE THAT TIME , IS A R ATHER UNIQUE , IN A UL T STATES

YES, IT IS THE ONLY STATEIN THE COUNTRY THAT HAS A COMMON LAW DANGEROUS INSTRUMENTALITY DOCTRINE .

WHAT YOU ARE ADVOCATING IS THAT WE START GE TTING INT O, OUT OF THIS COURT , SOME VARI ATION S ON THE THEME THAT , IF YOU YOU PROVE CONSENT , YOU ARE RESPONSIBLE.

WELL , YOUR HONOR , T HEREIS NO QUESTION THAT THE COURT HAS BEEN A STRONG ADHERENT TO THIS DOCTRINE , AND THIS IS NO QUESTION THAT AND THER E IS NO QUESTIONTHAT THIS COURT HAS BEEN VERY RELUCTANT TO GRANT EXCEPTIONS ON THE DOCT RINE, BUT I THINK IF

YOU LO OK VERY CLOSELY AT THE SOUTHERN COTTON OIL DECI SION , IT WASCLEARLY A MAT TER OF PUBLIC POLICY THAT THE COURT DECIDED , AT LEAST WITH RES PECT TO NEGLIGENCE, ANDTHERE IS NO QUESTION THAT THAT CASE WH ICH STARTED THIS BALL ROLLING WAS A CASE OF SIMPLE NEGLIGENCE , AND THAT UNDER THOSE CIRCUMSTANCES , THE COURT FOUND AS A POLICY MATTER THAT NEGLIG ENCE , BECAUSE OF THE H IGH INCIDENTS THE HIGH INCIDENCE OF AC CIDENTS AND THE FREQUENCY WITH WHICH THEY OCCURRED WAS SOMETHING THAT WAS READ IL Y FORESEEABLE. ON THAT BASIS , AS A MATT EROF FAIRNESS , PU BLIC POLICY , BECAUSE IT WAS REASONABLE TO SEE THAT NEGLIGENCE WOULD O CCUR, ACC IDENTS RES ULTING FROM NEGLIGENCE , THAT THIS STRICT FORM OF LIABILITYWOULD O CCUR.

LET'S LO OK AT THAT FOR A LITTLE BIT HERE , IF THAT IS THE POLICY , BEC AUSE NEGLIGENCE W OULD OCCUR , WOULDN'T THE SAME B E T RUE, I F WE WERE TALKING ABOUT RUNNING A ST OP SI GN, IF WE WERE TALKING ABOUT R UNNING A RED LIGHT AND THOSE KINDS OF THINGS, BEC AUSE IF I UNDERSTAND WHAT YOU WANT IS FOR US TO LOOK AT THESE CASES , WI TH AN I DEA OF WHETHER OR NOT, FIRST OF ALL , ARE YOU AR GUING THAT WE SHOULD LOOK AT IT AS A REASONABLY FORE SEEABLE , OR ARE YOU ARG UING THAT WE SHOULD LOOK AT THESE U NDER THE DOCTRINE OF NEGLIGENT ENTRUSTMENT, OR IS B OT H OF THOSE YOUR ARGU MENT?

WE HAVE PRESENTED TWO ALTERNATIVE VIEW S IN THEBRIEFS. ONE , WE DO FEEL THAT THECOURT SHOULD G IV E SOME CONSIDERATION TO A D OPT ING THE NEGLIGENT ENTRUSTMENT THEORY ACROSS THE BO ARD.

ISN'T THAT EXACTLY WHAT THE DANGEROUS INSTRUMENTAL ITY DOCTRINE , IT STARTED SO THAT YOU WOULDN'T HAVE TO DO. THAT ISN'T THAT

WE LL, IN THE CONTEXT OF NEGLIGENCE, IT, DID BUT WHAT WE HAVE SEEN AS THE LAW HASDEVELOPED IN FLORIDA , IS THAT PARTICULARLY IN INSTANCES WHERE YOU DO HAVE INTENTIONAL TO RTS BEING COMMITTED , THAT THE COURT HAS REQUIRED PROOF FAULT UNDER THOSE CIRCUMSTANCES, AND SPECIFICALLY , YOU KNOW,I AM TALKING ABOUT THIS COURT'S DECISION IN DITCHEN, THIS COURT'S, THE FOURTH DISTRICT'S DECISION AS ANEXAMPLE IN THE CARUSO VER SUS WAL-MART, WHENEVER THE CON DUCT, WHEN EVER YOU ARE TALKING ABOUT CREATING LIABILITY , FOR SOME ONE, BECAUSE OF A THIRD PARTY'S INTENTIONAL MISCONDUCT , THE COURT HAS NOT IM POSED STRICT VICARIOUS LIABILITY.

WOU LD YOU EXPLAIN TO ME WHAT IS THE DIFFERENCE IF I LOANED YOU MY CAR.

AND I RU N A STOP SIG N.

AND I KNOW THAT YOU MAY HAVE HAD A BEER, SO UNDER YOUR THEORY , THAT WOULD NOT , THE DANGEROUS INSTRUMENTALITY DOCTRINE WOULD NOT BE APPLICABLE, BECAUSE I KNEW THAT YOU HAD SOME ALCO HOL IN YOUR SYSTEM,SO I MIGHT , IT MIGHT END UP IN BEING A NEGLIGENT ENTRUSTMENT CASE, CORRECT?

AL MOST. WHAT I AM SAYING IS THAT , IF YOU HAVE REASON TO KNOW THAT OR SHOULD KNOW THAT SOMEONE IS IN COMPETENT AS A DRIVER OR RECOLLECTION LESS OR RECKLESS DRIVER AND YOU LE NDTHE CAR TO THEM , THE LIMIT OF LIABILITY WOULD BE BASED ON THAT KNOWLEDGE ON THAT FAULT.

YOU ARE AS KING US T O RECEDE FROM ALM OST 100 YEARS OF PRECEDENT. YOU KEEP ON TALKING ABOUT INTENTIONAL MISCONDUCT.

YES.

BUT AS I UNDERSTAND THEFACTS IN THIS CASE , THERE ISA DISP UTE AS TO WHETHER , CERTAINLY , THE NEGLIGENCE MAY BE RECKLESS , BUT THIS ISN'T A SI TUATION WHERE

SOMEBODY INTENTIONALLY USES A VEH ICLE TO RUN SOMEONE DOWN.

ON THAT POINT, YOUR HONOR , I WOULD DISAGREE , BECAUSE I THINK

BUT AS , THE WA Y IT COMESTO US AND THE WAY THE FIFTH DISTRICT HAS INTERPRETED IT , IT IS A MATTER OF DEGREE , IF SOMEBODY USES THEIR VEHICLEAS A WE APON .

YES.

THEN WE HAVE THAT SITUATION , BUT WE ARE GENERALLY LOOKING AND ANALOGIZING THESE TY PES OF VIC ARIOUS LIABILITY CASES, TO A N EMPLOYER /EMPLOYEE , AND THERE , OBVIOUSLY IF SOME BODY GOES AHEAD AND DOES AN INTENTIONAL ACT THAT IS OUTSIDE OF THEIR DRIV ING, WHERE THEY ARE INTOXICATED. THE EMPLOYER MIGHT NOT BE LIABLE FOR PUNITIVE DAMAGES , ABSENT NEGLIGENT ENTRUSTMENT, BUT THERE IS NO THEORY THAT , WHEN W E GO TO VI CARIOUS LIABILITY , THAT WOULD SAYTHAT, IF SOMEONE IS ACTING RECKLESSLY , THAT THERE FOR THE DANG EROUS INSTRUMENTALITY DOCTRINE SHOULDN'T APPLY .

WELL , LET ME START IN RESPONDING TO YOUR QUESTION , BY POINTI NG OUT THAT WE FEEL THAT THE FIFTH DISTRICT'S RULING , THAT THERE IS AQUESTION OF FACT HERE ABOUT THE DRIVER'S INTENT , WETHINK , IS

W E WOULDN'T TA KE , A GAIN , WE ARE HERE BECAUSE OF THE PURPORTED CONFLICT WITH THEFIRST DIST RICT. WE ARE NOT GOING TO RE DECIDE THE , WHETHER , WE MA Y OR MAY NOT, BUT THAT IS NOT WH Y WE ARE HERE TO DAY.

I WOULD U RGE YOU TO LOOKAT THAT IS SUE VERY CLOSELY , BUT I THINK ON THAT POINT ALONE , YOU CAN , I THINK IT IS A NECESSARY PREDICATE TO LOOK AT WHAT TYPE OF CONDUCTWE DO HAVE INVOLVED HERE.

DIDN'T WI LLIE BEAUFORD TESTIFY THAT HE WAS CH ASING THE OTHER CAR , THAT HE WAS WORRIED THAT THE OTHER MAN WAS KIDNAPING , I THINK IT WAS HIS SI STER , AND

INIT IALLY HE SAID THAT HE STARTED TO FO LLOW THEM OUT OF CONCERN FOR THEIR SAFETY , BUT THEN THERE IS A CLEAR BREAK IN HIS STES MONEY, WHE RE HE TESTIFIES IN HIS TESTIMONY , WHERE HE TESTIFIES THAT, ONCE THE DRIVER OF THE OTHER VEHICLE STOPPED IN ORDER TO LURE HIMOUT OF HIS CAR S O THAT T HEY COULD THEN TAKE OF F AND LOSE HIM AT A STOPLIGHT, THAT IS WHEN HE SAID HE BECAME ENRAGED AND THAT IS WHEN THECHASE BEGA N IN ERNEST . IT IS IN EARNEST. IT IS A T THAT POINT -.

HE NEVER SAID THAT HE DELIBERATELY RAN THE CAR OFFTHE ROAD .

NO. IN CONTRA RY TO THE FIFTH DISTRICT 'S O P INION O N PA GE 2 , HE DID NOT DENY THAT HE HAD THAT INTENTION, EITHER.

I THINK WE ARE GETTINGOFF THE SUBJECT HERE, BECAUSE WHAT DIFFERENCE DID THAT REALLY MAKE , BECAUSETHERE IS NO IN DICATION HERE THAT HIS CONDUCT , THAT HISUSE OF HIS CAR , BASICALLY CAUSED THE A C CIDENT. THE OTHER DEFENDANT , THE , SEATON ACTU ALLY WAS SPE EDING, ALSO, AND RAN INTO A T REE, CORRECT?

YES.

WHETHER HE HAD AN INTENT TO RAM INTO THAT CAR WHEN HE GOT TO IT , WOULD NOT BE RELEVANT HERE , SINCE THAT IS NOT HOW THIS ACCIDENTOCCURRED.

THE PLAINTIFF HAS ALLEGED AND STATED IN THEIR ANSWER TO SAY INTERROGATORIES THAT,

THIS WAS A WEAPON-LIKE USE OF THE VEHICLE, FOR THEPURPOSE OF TRYING TO PU RSUE HIM , C HASE HIM , CAUSE HIM TO FEAR FOR HIS SAF ETY AND BODILY HARM.

LE T'S ASSUME THAT WE DECIDE THAT THIS WAS NOT A WEAPON' LI KE USE OF THE VEHICLE , THEN WHAT IS YOUR ARGUMENT?

I STILL THINK THAT THE ISSUE COMES DOWN TO IF YOUFEEL THAT THERE IS AQUESTION OF F ACT O VER THE INTENT OF THE DRIVER , Y ES, THE CORE ISSUE IN FRONT OF THIS COURT -.

IF WE DON'T THINK THEREWAS A QUESTION OF F ACT, IF THERE WAS NO WEAPON LIKE USE, THEN WHERE ARE WE NOE NO W?

THIS - - WHER E ARE WE N OW?

IT SHOULD RE MAIN HOW SHOULD THE INSTRUMENTALITY APPLY WHEN THERE IS SOMETHING OTHER THAN WANTON , WILLFUL , INTENT IONAL ANDCRIMINAL. THAT IS THE ISSUE BEFORE THE COURT , YES.

YOU ARE TALKING NOW, ABOUT A MATTER OF DE GREE, AND YOU HAVE GONE F ROM G ROSS NEGLIGENCE AND THERE IS INTENTIONAL CONDUCT.

YES .

SO WE ARE NOT , THE QUESTION HERE , AND THAT IS WHY I SAY THE FACTUAL PREDICATE MAY BE IN HOW THE FIFTH DISTRICT PHRASED IT , IS THAT IT WAS, THEY PH RASED IT AS RECKLESS CONDUCT. I F YOU ARE ASKING US NOW , TO SAY, WELL , UN LESS IT IS PURE NEGLIGENCE, IF THERE IS SOMETHING THAT SHOWS THAT, AGAIN, THE PERSON RAN THE STOP SIGN OR THE RED LIGHT , THEN THAT , IT WON'T BE A DANGEROUS INS TRUMENTAL ITY DOCTRINE. IS THAT WHAT YOU ARE SAYING?

I DON'T KNOW THAT I AM THE ON E THAT IS ASKING YOU TO DO IT. THERE ARE THREE DISTRICT COURSE OF APPEAL STRUCK LINGO-DISTRICT COURTS OF APPEAL THAT ARE STRUCK WITH THIS QUESTION.WHE N YOU HAVE AN INTENTIONAL FORM OF MISCONDUCT , THERE IS A PROBLEM WITH IMPOSING STRICT VICARIOUS LIABILITY.

ARE YOU SAYING THE FIFTH DISTRICT IS STRUGGLING WITH IT, WHEN CLEARLY YOU HAVE A SITUATION WHERE A CAR IS USED CLEARLY AS WEAPON? HOW IS THAT A STRUGGLE WITH WHAT WE HAVE HERE TODAY?

WELL , BU T WHAT THE COURT IS SAYING, I MEAN AS I UNDERSTAND CHIEF JUST ICE PAR AGREEMENT'S YES IS PARIENTE'S QUESTION IS, WHY SHOULD WE MAKE ANY DIFFERENCE FOR ANY TYPE OF CONDUCTOR MAKE A DISTINCTION.

THAT WAS NOT M Y QUESTION. MY QUESTION WAS , A FTER INTENTIONAL, WHICH IS USINGIT AS A WEAPON .

YES.

WHERE IS THAT MATTER OF DEGREE, AND SO I JUST WANT TO MAKE SU RE WE UNDERSTAND, THAT BETWEEN RUNNING A STOP SIGN, BETWEEN RECKLESS BEHAVIOR , I WAS NOT SUGGESTING

I THINK THAT COMES BACK TO THE QUESTION OF FORESEEABILITY. I MEAN, IF WE ARE GOING TO BE TRUE TO WHAT THE SOUTHERN COTTON OIL COURT HE LD, THAT COURT WAS DE ALING STRICTLY WITH A SITUATION OF SI MPLE NEGLIGENCE, AND THE UNDERPINNINGS OF THAT DECISION WERE THAT SIM PLE NEGLIGENCE AR ISING FROM THE ORDINARY USE OF THE - -

WHAT ARE YOU RELYING ON , BECAUSE I HAVE A LOT OF DIFFICULTY WITH YOUR PROPOSITION THAT OUR FO CUS IN THAT CASE WAS LIMITING THIS ENTRUSTMENT, TO CASES WHERE THE RECIPIENT , THE LENDEE, WOULD JUST BE GUILTY OF SIMPLE NEGLIGENCE .

WHERE DO I FI ND THAT IN THE SOUTHERN C O TTON OIL DISPUTE?

RIGHT. WHERE WE HAVE FOCUSED ON THAN SAID SPECIFICALLY , AND LIMITED TO THE CASE OF NEGLIGENCE, WE ARE ADOPTING THIS DOCTRINE , BECAUSE THE POLICY REASONS BE HIND THAT DECISION DID NOT FOCUS ON THE NEGLIGENCE AS PECT OF IT. REALLY THE POLICY REASONS WERE TO SP READ THIS RISK , AND MY CON CERN WITH YOUR PROPOSITION , I S THAT WHAT YOU WOULD BE DOING IS , NOW , TAKING AWAY THE STABILITY . THE LEGISLAT URE , FROM TIME TO TIME , FOR INST ANCE , IN SITUATIONS OBVI OUSLY , HAS BEEN AWARE OF THIS AND HAS M ADE EXCEPTIONS .

HAS MADE EXCEPTIONS. YES.

WHAT YOU ARE ASKING US TO DO, THOUGH, IS , REALLY , PU LLTHE RU G OUT FROM UNDERNEATH THIS DOCTRINE AND C REATE INSTABILITY , IN THE S ENSE THAT VIRT UALLY EVERY CASE , NOW , WOULD HAVE TO BE EXAMINED, TO SEE I F I T MOVED TO SOME , WHAT I ASS UME THAT YOU WOULD STATE , SOME APPRECIABLE DEGREE OF CONDUCT THAT WAS JUST ABOVE M ORE THAN NEGLIGENT , AND I AM AF RAID THAT WHAT YOU AREASKING US TO DO WOULD CR EATE TERRIBLE INSTABILITY , WHEREAS OUR WH OLE POLI CY FOCUS THERE, WAS TO CREATE THIS FIN ANCIAL RESPONSIBILITY.

YES.

AND STABILITY OUT THERE IN SPREADING THE RISK, SO I HAVE GREAT CONCERNS FOR, FIRST YOU SAYING THAT OUR DECISION FOCUSED ON NEGLIGENCE, THAT IS THAT IT FOCUSED ON , IT DIDN'T FOCUS ON. THAT IT REALLY FOCUSED ON THE FACT THAT A MOTORVEHICLE , WHEN IT IS USED , BECOMES A DANGEROUS INSTRUMENTALITY , AND, YOUKNOW, IN ANYBODY'S HANDS, SO H ELP ME WITH WHERE WE LIMITED OUR DECI SION IN SOME WAY , NEGLIGENCE.

I AGREE WITH YOU THAT THERE IS NO QU ESTION THAT A FINANCIAL COMPONENT HERE, AND EVEN AS YOUR HONOR HAS INDICATED IN THE '80AMERICAN HONDA VER SUS FIN ANCE CASE, THERE IS A ECONOMIC EXACT THAT C OMES FROM THIS TYPE OF RISK SPREADING.I THINK THE PROBLEM IS THAT , IN THE SO UTHERN COTTON OIL CASE WHEN YOU ARE TALKINGABOUT THE ORDINARY USE OF THE VEHICLE AND SPRE ADING RISK BASED ON NEMING IS ONE THING , AND THERE WAS A LOTOF EMPERICAL EV IDENCE CITEDIN THE COTTON OIL CASE ABOUT THAT.

SO YOU ARE SAYING IF YOU LOANED YOUR BUDDY YOUR CAR.

YES.

AND SAID I WILL LOAN YOU THE CAR. YOU CAN GO AND WA TCH THE FOOTBALL GAME. WHATEVER THE , OKAY , AND HE AND HIS BUD DIES , THEIR TEAM WINS THE GAME , AND THEY ALL GO OUT AND , AFTERWARDS , THEY ALL GET DRUN K.

YES.

OKAY. AND THEY HAVE A WRECK IN THAT CA R.

RIGHT.

YOU KNOW , THAT YOULOANED. YOU IS SAY, WELL , NOW , WAITA MINUTE, THAT WASN'T SIMPLE NEGLIGENCE, NOW.

CORRECT.

WE HAVE DRUNKEN DRIVING . WHATEVER.

YES.

SO WHY SHOULD I BE RESPONSIBLE FOR MY FRIEND? WE CR OSSED THAT BRIDGE, I BELIEVE , WITH THE ORIGINAL DECISION.

I THINK THE IN CIDENCE O F , T HERE IS JUST, IN SOUTHERN COTTON OIL, THE COURT LOOKED AT A LOT OF EMPERICAL EVIDENCE ABOUT THE HIGH RATE OF AC CIDENTS INVOLVING NEGLIGENCE. THERE IS NO SHOWING ON THIS RECORD, THAT THE SAME TYPE OF MISCONDUCT FROM RECKLESSNESS, INTENTIONAL MISCONDUCT, WILL FUL , WANTON EXISTS THAT WOULD JUST IFY IMPOSING STRICT LIABILITY WITHOUT FA ULT.

NOW , WOULD YOU G O BAC K AND , BECAUSE I , IN AN SWER TO JUSTICE LE WIS 'S QUE STIONS , A BOUT YOU SAID THERE WAS CON FUSION OUT THERE IN THEFIRST , THE THI RD, THE FIFTH.

THE FIRST DISTRICT ANDTHE THIRD DISTRICT , BOTH HELD IN THE C A TANO AND THE C RESPO CASE THAT INTENTIONAL CONDUCT TERMINATED LIABILITYUNDER THE DOCTRINE WITHOUT SPECIFYING WHAT TYPE OF INTENTIONAL MISC ONDUCT.

WHAT WAS THE KIND OF CONDUCT THAT WAS INVOLVED?

WELL , IN THE CATAN O CASE, IT WAS THE USE OF THEVEHICLE TO T RY AND RUN SOMEBODY DOWN.

AS A WEAPON.

YES. AS IT WAS HERE. I THINK THIS IS WEAPON - LIKE USE, TOO, WHEN YOU USE AVEHICLE TO STALK SOMEON E AND PUT THEM IN FEAR OF BO DILY HARM, THAT IS

LE T ME ASK THIS QUES TION. IF WE DISAGREE, CERTAINLYTHERE IS ROOM FOR DISAGREEMENT HERE ON ALL OF THESE.

SURE.

IF WE DISAGREE WITH YOUR CHARACTERIZATION IN THISCASE, HOW DOES THIS CASE CONFLICT WITH THE CASESUSING A VEHICLE AS A WEAPON?

WELL , , HOW DOES THIS CASE CONFLICT WITH VEHICLES BEING USED AS A WEAPON?

YES. IF WE LOOK A T THIS AS A CASE INVOLVING REC LESSNESS OR EXCESSIVE SPEEDING, THAT KIND OF CATEGORY OF CASE , AND WE ADOPT THAT VIEW.

YES.

THAT IS WHAT THIS CASE INVOLVES. IT DOES NOT INVOLVE A WEAPON, AND WE LOOK AT THE FIRSTDISTRICT AND THE FIRSTDISTRICT WAS CLEARLY, IN MY ESTIMATION, AND I MAY BE WRONG , USED AS A WEAPON , A C LEAR DIFFERENT CATE GORY OF CASE, AND I AM TRYING TO UNDERSTAND WHERE THERE MAYBE CONF LICT OR CONF USION, IF WE DO N'T

THE CRE SPO CASE WOULD BE THE OTHER EXA MPLE WHERE YOUHAVE A DRIVER THAT HAS CROSSED THE CENTER LI NE AND RESULTED IN A VEHICULAR H OMICIDE AND THE CRESPO CASE DOES NOT PRO VIDE A LOT O F DETAIL WITH HOW THAT DISAPPEARED , OTHER THAN WHAT I JUST

TOLD YOU , BUT IN THAT INSTANCE THE COURT FOUND THAT THERE WAS AT L E AST THEPOTENTIAL FOR TO RT HAVING BEEN COMMIT TED.

BECAUSE THERE WAS A P LEA?

THERE WAS A PL EA OF GUILTY TO RECKLESS HOMICIDE. SO SAME , VERY SIM ILAR SORT OF CIRCUMSTANCES.

ARE YOU ONLY SEEKING, THEN, FOR THIS COURT TO SAY, WHERE THERE IS AN INTENTIONAL USE OF A VEHICLE TO HARM , THAT THE , IS THAT THE RU LE THAT YOU ARE ADVOCATE SOMETHING.

YES. THE RULE THAT I AM ADVOCATING

NOT RECKLESSNESS BUTWHERE THERE IS AN INTENTIONAL USE , THAT IS THE R ULE.

IF THE, WELL , IF THE , OUR BRIEF ASKS FOR A M UCH BROADER RULE, BUT FROM THE STANDPOINT OF IF IT IS INTENTIONAL MISCONDUCT , THEN WE FEEL THAT THE PLAINTIFFSHOULD BE REQUIRED TO SHOW FAULT ON THE PART OF THE O WNER OF THE VEHICL E AND SHOULD HAVE KNOWN.

IN THIS CASE THERE IS REALLY NOTHIN G THAT PREVENTS YOU FROM ARGUING THIS AT THE TRIAL, RIGHT? THE ONL Y THING THAT HAPPENEDIN THIS CASE W AS THERE WAS ASUMMARY JU DGMENT RENDERED. IT WAS RE VERSED BECAUSE THE DISTRICT COURT SAID THERE IS A QUESTION OF FACT HERE, ABOUT WHETHER IT WAS INTENTIONAL OR NOT.

YES.

AND YOU ARE NOT PREVENTED F ROM ARG UING THAT.

UNDER THE DE CISION AS IT IS NOW, YES, BUT WHAT WE WOULD STRONGLY U RGE YOU TO DO IN THIS C ASE IS TO REVERSE ON THE BASIS THAT THERE REALLY IS NO QUESTION OF FACT ABOUT THE LE VEL OF INTENT THAT WAS IMPLICATED IN THIS CASE.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTT AL.

I HAVE ONE MINUTE LE FT. THANK YOU VERY MU CH.

CHIEF JUSTICE: WITH OURHELP. MR. PARKS.

GOOD MORNING. MAY IT PLEASE THE COURT. COUNSEL.MY NAME IS DA RYL PA RKS OF THE LAW FIRM OF PARKS AND CRUMP HERE, IN TALLAHASSEE. I AM JOINED HERE TO DA Y WITH MY CLIENTS , MR . AARYON MILES 'S DAUGHTERS , NY'J AE AND REGINA SITTING HERE TODAY.

THE FIFTH DISTRICT COURT'S CONFLICT WITH CATANO , IS THERE REALLY CONFLICT BETWEEN THIS DECISION AND CATANO ON THE LEVEL OF INTENTIONAL CONDUCT NECESSARY?

I DON'T BELIEVE IT IS, JUSTICE CA NTERO , AND I THINK THAT JUSTICE LE WIS WAS ALLUDING TO THE FACTS, IN THAT THE FACT PA TTERN WAS SO , IN FACT I THINK CATANO IS PROBABLY WORSE THAN OUR CASE AND CERTAINLY THAT OUR CASE CAME CL OSE IN FACT UAL PATTERN, TO WHAT HAPPENED THERE.I THINK IT IS VERY CLEAR IN OUR CASE , THAT WHERE SHEINTENDED TO TRY TO HIT THEM IN CATANO, I N OUR CASE THE GUY INDICATES THAT HE DID NOT INTEND TO CAUSE PHYSICAL HARM.

ABOUT WITH WHAT ABOUT THE DOCTRINE OF TRANSFERRED INTENT? I THINK THE DISTRICT COURT SAID THAT THEY DISAGREED WITH CATANO TO THE EX TENT THAT CATANO SAYS THAT THEINTENT, YOU HAVE TO ACTUALLY HURT THE PERSON YOU INTENDED TO HURT, AND IF YOU

HURT SOMEBODY ELSE THAT YOU DIDN'T INTEND TO HURT , THEN THAT IS NOT INTENTIONAL CONDUCT, AND I THINK THE FOURTH DCA DISAGREED WITH THAT.

WELL , I THINK WHAT THEFIFTH WAS SAYING , JUSTICES , IS THEY THOUGHT

THE FIFTH. SORRY.

THEY DIDN'T GET INTO THE TRANSFERRED INTENT PART OF IT AS MUCH. I THINK THAT WHAT THEY CLEARLY MA DE AT THE VERY ENDOF THE DECISION , THAT THEY FOUND THAT THERE EXISTED AN OPPORTUNITY THAT A JURY SHOULD HE AR THE FACT S OF THIS CASE , BECAUSE A JURY COULD CLEARLY FIND THAT HE DID NOT INTEND TO CAUSE HARM IN THIS CASE.

BUT IF WE AREN'T DEALING, HERE, W ITH A WEAPON-LIKE SITUATION , DO WE EVEN G ET INTO THE DOCTRINE O F TRANSFERRED INTENT? I MEAN , IF THERE WAS NO USE OF THE VEHICLE , OTHER THAN AS A CONVEYANCE , AL BEIT AT A HIGH RATE OF SPEED , THEN ARE WE EVEN CONCERNED WITH IT BEING , WITH THE WEAPON -L IK E USE , AND ONLY IN THAT SITUATION ARE WE TALKING ABOUT THE TRANSFERRED INTENT? ISN'T THAT CORRECT?

I BELIEVE THAT'S CORRECT.I DON'T BELIEVE YOU GET TO THAT PO INT AT ALL, ESPECIALLY IF YOU FIND THAT THERE IS A GENUINE IS SUE OF MATERIAL FACT HERE, YOUR HONOR.

LE T ME , THE FIFTH DISTRICT SAID THAT THE DOCTRINE IS NOT LI MITED TO NEGLIGENT OPERATION OF A VEHICLE , AND THAT RECKLESS DRIVING OR OTHER INTENTIONAL MISCONDUCT BY AN OPERATOR , DOES NOT TERMINATE LIABILITY . NOW , I THINK THAT WE , IF YOU HAVE RECKLESS DRIVING, THEN WE HAVE GOT A SI TUATION WHERE YOU ARE ST ILL WITHIN THE SCOPE O F NEGLIGENCE , BUT BY SAY IN G "O R OTHER INTENTIONAL MISCON DUCT" , I , HOW WOULD YOU, WHERE WOULD YOU DR AW THE LI NE? I THINK YOU DEGREE THAT, IF THERE IS A I THINK YOU AGREE THAT, IF THERE IS AN INTENTIONAL USE OF THE VEHICLE AS A WEAPON, THEN THERE SHOULD NOT BE LIABILITY UNDER THE DANGEROUS INSTRUMENTALITY DOCTRINE. YOU WOUL D GO TO NEGLIGENT ENTRUSTMENT AND HAVE TO ESTABLISH SOME KIND OF KNOWLEDGE, SO WHERE WOULD YOU, HOW WOULD YOU DRAW THELINE?

I CERTAINLY A GREE THAT , IF A PERSON IS DRIVING A VEHICLE , INTEND S TO CAUSE A HARM, THEN THAT SHOULD BE EXCLUDED FROM THE DOCTRINE. HOWEVER , EVE RYTHING UNDER THAT , RIGH T

SO THEY WERE TOO BROADWHEN THEY SAID "OR OTHER INTENTIONAL MISCONDUCT" IS, REALLY, UNNECESSARILY BR OAD , GIVEN THE FACTS OF THIS CASE , I S THAT WHAT

THAT'S RIGHT, AND I THINK THEY WENT PRETTY FA R, IF I M UST SAY SO, I N TERMS OF OTHER THINGS THAT THEY GET T O IN THE OPINION. ONCE DID YOU GET TO THE ISSUE , IT ONCE YOU GET TO THE ISS UE THAT , IT IS IS A ISSUE OF MATERIAL FACT HERE , THAT STOPPED THE PROCEEDINGSIN ORANGE COUNTY .

SO YOU SAY THE JUDGE COULD INSTRUCT THE JURY THAT SUN STATE FOR D WOULD BE LIABLE FOR THE AC TIONS OF THE DRIVER , UN LESS YOU FIND THAT THERE WAS AN INTENT IN THE USE OF THE VEHICLE, TO SPECIFICALLY HARM.

I A G REE WITH THAT.

THE VICTIM.

I AGREE WITH T HAT.

AND ALSO , AS FAR AS THE TRANSFERRED INTENT DOES IT MAKE ANY SENSE THAT , IF SOMEBODY

IS REALLY DRIVING AVEHICLE AND INTEND ING TO RUN SOMEBODY OFF , SOMEBODY O VER, YOU KNOW , THEY ARE MAD LIKE THEY WERE IN THE FIRST DISTRICT CASE , AND THEY ARE, IT SHO ULDN'T MATTER , BASED ON CRIMINAL THEORY , THAT THEY END UP RUN NING OVER VICTIM B, IF THEY INTENDED TO HIT VI CTIM A , THE TRANSFERRED INTENT SHOULD APPLY AS WELL.

I BELIEVE SO . I BELIEVE SO.

LET ME ASK YOU THIS , THE F IFTH DISTRICT ALSO SAID, IN THEIR OPINION, THAT EVEN IN SITUATIONS WHERE THE CAR IS USED IN A WEAPON-LIKE MANNER , THAT LIABILITY COULD STILL BE IMPUTED , I F IT WAS REASONABLY FORESEEABLE. DO W E NE ED TO GO THAT FAR , IN RESO LVING THIS PARTICULAR CASE , OR IS THAT A GOOD POLICY DECISION?

I THINK IT I S M ORE , THAT IS MORE OF A NEGLIGENT ENTRUSTMENT ISSUE IN MY OPINION, BECAUSE THERE IS SOME KNOWLEDGE A PERSON MAY HAVE BEFORE HAND. LET'S SAY IN OUR STATE WE S EE A WHOLE BUNCH OF DR UN K DRIVING AND FO LKS KNOW IF IT IS SATURDAY NIGHT AND YOU HAVE BEEN DRI NKING AND SOMEONE GET S INTO YOUR CAR , WE CAN STILL S UE THE DRIVER FOR HIS OR HER NEGLIGENCE AND WE CAN STILL HO LD THE O WNER O F THE CAR JOINTLY AND SEVERALLY LIABLE I N THIS STATE , W HICH IS A GOO D THING , AND I THINK THE GREAT THING ABOUT SOUT HERN COTTON OIL IS THAT IT ALL OWS US , IT IS A GOOD PROTECTOR OF MAKING SURE THAT CAR O WNERS ARELIABLE FOR THE USE OF THEIR VEHICLES.

LET ME ASK YOU AQUESTION. LET'S TAKE JUSTICE ANSTEAD 'S HYPOTHETICAL EARL IER AND NOT ONLY I N LOANING THE VEHICLE. THEY LOANED A FIR EARM. THERE IS A FIREARM IN THECAR FOR PROTECTION , LET'SSAY , AND THEY GO OUT ANDHAVE THE PARTY. THEY START PLAYING WITH THE FIREARM AND SIMPLIVE NEGLIGENTLY, THE FIREARMS DISCHARGE IN JURY SOME BODY. UNDER OUR CURRENT LAW , THE OWNER OF THAT FIREARM COULD OR COULD NOT , ASSUMING THERE IS NO NEGLIGENT ENTRUSTMENTBUT THE SIMPLE FACT PATTERN, THE OW NER OF THE FIREARM COULD NOT BE HELD LIABLE FOR THAT INJURY, IS THAT CORRECT?

THAT'S CORRECT, IF YOU FOLLOW HOW THE LO WER COURTS HAVE INTERPRETED 39 , YES, SIR .

WHAT IS THE P O LICY REASON TO DIFFERENTIATE THE ARGUMENT BET WEEN A FIREARM WHICH IS CLE ARLY DANGEROUS AND A VEHICLE?

WELL , THE BEST ARG UMENT , JUSTICE BELL, IS THE MERE FACT THAT ON E OF THE OTHER JUDGESAL ALLUDED TO EARLIER JUDGE S ALLUDED TO EARLIER , M EANING THE TORT REFORM OF 1999, SO OUR LEGISLATURE HAS ALREADY ADDR ESSED THAT ISSUESOME, AND THEY HAVE MADE SOME DECISION THAT MANY OF US MA Y NOT AGREE WITH , BUTTHEY HAVE ADDRESSED THE ISSUE AS RE LATES T O RE NTAL CAR COMPANIES , AND THEY LIMITED LIABILITY AS RELATES TO THE USE OF AUTOMOB ILES ON THE ROAD OF FLORIDA.

ACTUALLY IT MIGHT BE A GOOD I DEA TO HOLD OWNERS OF FIREARMS STRICTLY LIABLE. WE ARE NOT HERE FOR THAT TODAY.

LET ME ASK YOU A QUESTION,BECAUSE YOU WERE ALLUDING TO THE POLICY BEHIND THE DANGEROUS INSTRUMENTALITY DOCTRINE , AND YOU SAID THATWE SHOULD HOLD OWNERS LIABLE,BECAUSE THEY SHOULD KNOW WHO THEY ARE REPUGNANT THE CAR TO, AND THEREFORE THEY CAN HAVE KNOW LEDGE O F THE PERSON , B EFORE THEY LOAN THE CAR . MY QUESTION IS , HOW IS THAT POLICY FURTHERED B Y I M POSE ING LIABILITY, WHERE THE OWNER LENDS THE CAR TO SOMEBODY , IS ABLE TO SEE THE PERSON HAS A DRIVERS LICENSE, G REAT DRIVING RECORD, HAS NEVER GOTTEN INTO AN ACCIDENT, ANDTELLS THEM, BUT DON'T LEND THIS CAR TO ANYBODY ELSE.I AM JUST LENDING IT IT TO YOU , AND THEN THE LENDEE FAILS TO FOLLOW INSTRU CTIONS , LENDS IT TO SOMEBODY, WHO, THEN, CRASHES THE VEHICLE. HOW ARE THE POLLS BEH IND THE DANGEROUS INSTRUMENTALITY HOW ARE THE POLI CIES BEHIND THE DANGE ROUS INSTRUMENTALITY DOCTRINE FURTHERED IN THAT KIND OF CASE?

I THINK IF YOU LOOK BACK AT SOUTHERN COTTON OIL , THE PUBLIC POLICY PART OF THAT CASE, THEY CERTAINLY REALIZED THAT THE PERS ON IN THE BEST PO SITION OF THAT , TO PROTECT FOR THE CARNAGEON THE ROADS, IS THE WORDINGTHAT THEY USED, IS THE OWNER OF THE VEHICL E, AND IT I S VERY DIFFICULT TO EXPECT THAT AN YONE I N A GE NERAL PUBLIC WOULD HAVE A B IGGER VANTAGE POINT THAN THE PERSON WHO OWNED THEVEHICLE.

ISN'T THE PERSON IN THE BEST POSITION IN THAT CASE , THE PERSON WHO WAS LENT THE VEHICLE AND THEN GIVES IT TO SOMEBODY ELSE , BECAUSE THEY HAVE THE DI RECT CONTACT. THE ORIG INAL OWNER , WHO IS TWO STE PS BEHIND , MAY HAVE NO IDEA WHO THIS THIRD PERSON S THEY LENT IT TO THE SECOND PERSON. THEY KNEW THAT PERSON'S DRIVING RECORD. THEY HAD NO IDEA AND THEY SPECIFICALLY PROHIBITED THE SECOND PERSON FROM LOANING IT TO ANYBODY ELSE, SO HOW IS THE OWNER IN THAT CASE , IN THE BEST POSITION TO DETERMINE WHO TO LEND THE CAR TO?

I THINK I WOULD CERTAINLY SAY THAT THE PERSON WHO OWNS A VEHICLE , H AS FAR MORE AUTHORITY OVER A VEHICLETHAT HE OR SHE OWNS, THAN THE PERSON WHO IS JUST SEEKING TO GET A RIDE TO RUNTO THE STORE. AND THAT THE PERSON WHO OWNS THE VEHICLE CAN EA SILY SAY , NO, I DON 'T WANT TO LET YOU USE M Y CAR , OR HOW IS YOUR DRIVING RECORD, OR DO YOUHAVE A LICENSE. STIPULATIONS THESE DAYS , Y OUHAVE TO ASK IS YOUR LICENSE VALID.

BUT JUSTICE CANTERO IS GIVING YOU AN EXAMPLE THAT EXTENDS THAT, AND SAYS THAT INDEED, THE OWNER THAT YOU SAY IS I N THAT GOOD POSITION AND SAYS, YOU HAVE A GR EAT DRIVING RECORD AND YOUR DRIVERS LICENSE AND ALL OF THIS, BUT I AM GOING TO IMPOSE A CON DITION WHEN ILOAN THE VEHICLE TO YOU, THAT IT I S JUST TO B E USED BY YOU . AND NOW THAT PERSON THAT THECAR IS LENT TO , NOW , LENDS IT TO SOMEBODY ELSE , IN VIOLATION OF THAT RESTRICTION THAT THE OWNERPUTS ON , SO HOW DOES OUR RATIONALE A PPLY TO WHEN THAT PROHIBITION IS BR OKEN , AND IT, NOW , IN FACT , THE PERSON THAT HAS THE CAR , NOW , DOES LET SOMEBODY ELSE DRIVE IT , IN VI OLATION OF WHAT THE OWNER , HOW , DOESN'T THE RATIONALE BREAKDOWN IN THAT SITUATION?

WELL , I THINK THE CURRENT L AW IS THIS COURT HAS DEC IDED IN S USCO CAR RENTAL , UNLESS THERE IS CONVERSION OF THEFT WHICH IS THE CURRENT LAW , THEN YOU ARE STILL RESPONSI BLE FOR IT, AND I THINK WE HAVE TO GO BACK TO THE PUBLIC POLICY THAT WE ARE T RYING TO ADVOCATE HERE. WE LI VE IN A STATE THAT HASMANY, MANY , MANY DRIVERS ON THE ROAD, MANY, MANY DIFFERENT RENTAL CAR COMPANIES ON THE ROAD, ANDTHERE HAS TO BE SOME PROTECTION IN P LACE , AND THE BEST POSSIBLE GR OUP T O PROTECT THE GENERAL PUBLIC ARE THE OWNERS OF THE VEHICLES, THEMSELVES.

WELL, THEN , THERE YOU ARE REALLY TA LK BI NGT PRED HAVINGOF THE TALKING ABOUT THE SPREADING OF THE RISK AND IT IS MORE LIKELY TO REQUIRETHE OWNTORY HAVE INSURANCE , AND SO WE ARE REALLY LOO KINGAT THE PROTECTION OF THE INJURED PERSON, BUT IN TERMSOF, I GUESS, THE TWO- STEP REMOVED QUESTION, DOESN'T REALLY , AG AIN , YOU KNOW , RENTAL COMPANIES WI LL GO AHEAD AND GET ALL THE INFORMATION ON THE PERSON'S DRIVERS LICENSE AND TELL PEOPLE THAT THE Y ARE NOT SUPPOSED TO LEND THE CAR , BUT, THEN , LIKE IN THIS SITUATION, THEY DO. SO AT THAT POINT , THE ISSUE OF WHETHER THE OWNER IS IN THE BEST POSITION NOT TO LEND IT TO AN INCOMPETENT DRIVER, REALLY, DOESN'T COME IN. DO YOU AGREE WITH THAT, THAT WE ARE REAL LY, THEN , LOOKING M ORE AT THE SPREADING OF THE R ISK ISSUE , AS OP POSED TO A POLICY THAT SOMEONE I S GOING TO SCRE EN AND GIVE IT TO A COMPETENT DRIVER .

YES. PAR T OF THE PROBLEM, TH OUGH , AS I SEE I T

DO YOU AGREE THAT THE POLICY CAN'T BE IF SOMEONE , THAT IF A RENTAL COM PANY SAYS ONLY DRIVER A CAN DRIVE IT, AND DRIVER A HAS A DRIVERS LICENSE BUT THEY GIVE, DRIVER A

GIV ES TO DRIVER B, WHO HAS A HISTORY OF LOTS O F ACCIDENTS , THAT IS WHERE JUSTICE CANTERO 'S QUESTION CAME FROM , W HERE , HOW IS , THE ORI GINAL POLICY THAT YOU MENTIONED , WHICH IS THAT WE AS SUME THE OWNER IS GOING TO ONLY GIVE THE VEHICLE TO COMP ETENT DRIVERS, HOW IS IT FURTHERED WITH THE TWO-STEP RE MOVED ISSUE?

I THINK THAT YOU HAVE GOTTO GO B ACK TO THE PUBLIC POLICY ARGUMENT, BECAUSE YOU RUN A VERY DANGEROUS RISK , WHEN YOU ABSOLVE THE RENTAL CAR COMP ANIES OR PERSONS WHO LOAN A CAR FROM RESPONSIBILITY, JUST BECAUSE THE PERSON THEY GAVE IT TO , GIVES IT TO SOMEONE ELSE. I THINK YOU HAVE TO THINK BACK TO COM MON LIFE EXPERIENCE. WE COULD BE ON A TR IP GOIN G TO MI AMI FROM HERE. ONE PERSON WENT TO RENT THECAR. THEY DECIDED TO C HANGE DRIVERS IN ORLANDO, BECAUSE THEY ARE A LITTLE TIRED , AND LO AND BEHOLD THEY HAVE AN ACCIDENT BETWEEN OR LANDO AND M IAMI AT YEE-HAW JUNCTION, AND TO SAY THAT THEY SHOULDN'T BE RESPONSIBLE FOR THE MERE FACT THAT THEY HAPPENED TO SWITCH DRIVERS IN A VERY COMMON LIFE EXPERIENCE, I DON'T THINK , IS FA IR TO THE PUBLIC , AND CERTAINLY SHOU LD BE A SITUATION WHERE , IF THE RISK IS GOING TO BE SPREAD OUT , THE BEST PERSON IN THAT SITUATION TO COVER THE RISK , WOULD BE THE OWNER OF THE VEHICLE.

BUT IN THAT CASE, RENTAL CAR COMPANIES ALLOW AN OTHER DRIVER REGULARLY, AS LONG ASYOU TELL THEM WHO THE DRIVER IS, AND GIVE THEM THE DRIVERS LICENSE SO THEY HAVE AN OPPORTUNITY TO MAKE SU RETHAT THIS PERSON IS AUTHORIZED T O DRIVE IN THESTATE OF FLORIDA , SO ISN'T THAT AL READY TA KEN CARE OF?

YES, SIR , AND I REALLY THINK IT IS TAKEN CARE OF IN THE LA WS OF 19 99 , JUSTICE CANTERO , WHERE THE LEGISLATURE AC TUALLY SET OUT HOW IT COULD BE APPORTION ED .

DIDN 'T WE , A LS O , IN THE, I BELIEVE IT IS THE SU SKO CASE , THAT ANY BREACH , ABSENT THEFT, THAT THEPERSON WHO RENT ED THE CAR OR THE OWNER OF THE CAR COMPANY, WOULD STILL BE LIABLE , IF IT IS ANY CUSTODY. DIDN'T WE HOLD TAKE?

DANGEROUS INSTRUMENTALITY HOLD THAT?

THE DANG EROUS INSTRUMENTALITY DOCTRINE IS REALLY AS TO THEFT.

AS FAR AS THE DEFEND ANT BELOW , AS I AM UNDEREDING IT , THEY ARE UNDERSTANDING IT , THEY ARE EITHER ASKING FOR A FUZZY L I NE TO BE DRAWN PAST , WHERE RECKLESS CONDUCT WOULDNOT BE SUBJECT TO THE DANGEROUS INSTRUME NTALITY DOCTRINE OR THAT WE RECED E F ROM IT ENTIRELY AND GO TO NEGLIGENT ENTRUSTMENT, BUT WAS THE ISSUE ARGUED THAT, BECAUSE THIS WAS TWO ST EPS REMOVED, WE OUGHT TO RECEDE FROM PRECEDENT ? WAS THAT RAISED AS ISSUE?

YES, IT WAS , AND IN EFFECT

IT WAS RAISEED?

IT WASN'T RAISED AT THECIRCUIT COURT LE VEL AND WASN'T RAIS ED AT THE FI FT H DISTRICT COURT OF APP EAL S , AND IN FACT I BRIEFED THE ISS UE, IN THAT I DIDN'T THINK IT S HOULD BE AN ISSUE HERE AND OBVIOUSLY THEY DISAGREED , AND SO I DON'T THINK IT REALLY SHOULD BE AN ISSUE AND THIS COURT SHOULD ADDRESS , WHEN SOME LO WER COURTS WERE NOT ALLOWED TO ADDRESS IT DO WN THERE , BU T I THINK IT IS VERY INTERESTING , THE TWO CASES THAT THEY C ITE, I WANT TO SPEAK A LITTLE BITON, AS TO WH Y YOU SHOULD CONSIDER BACK OF F OF THE DANGEROUS INSTRUMENTALITY DOCTRINE, THE TWO CASES, ESPECIALLY KITCHEN V Kmart AND WAL-MART , IN KITCHEN , WHEN THEY HAVE ASKED THAT YOU ALLOW THEM TO HAVE THESAME PROTECTIONS AS FIREARM DEALERS , AND OUR RESPONSE TO THAT IS VERY SIMPLE. A FIREARM AND A CAR ARE TOTALLY DIFFERENT. I THINK WE CAN EA SILY AGREE THAT FIREARMS , IN AND OF ITSELF , ARE USED TO SHOOT SOMETHING.THEY ARE NO RMALLY US ED TO KILL

SOMETHING . IF NOT FOR TARGET PRACTICE, SO THE TWO THIN GS ARE INHERENTLY DIF FERENT, AND TO TRY AND USE TH OSE TWO CASESTO GET THIS COURT TO MAKE THAT JUMP , I THINK , IS JUST A BIG JUMP THAT WE CAN NOT AFFORD. I THINK THAT THE COURT SHOULD RELY UPON THE G REAT PRECEDENT OF THE DANGEROUS INSTRUMENTALITY DOCTRINE THAT WE ALREADY HAVE.

WER EN'T THOSE, ALSO , SALES? ARE THOSE SALES CASES?

YES. Y ES.

SO DON'T WE HAVE A TOTALLY DIFF ERENT SITUATIONBETWEEN A SALE? I ME AN, CERTAINLY IF THE VEHICLE HAS BEEN SOLD , YOU WOULD HAVE NO RESPONSIBILITY ON WHO EVER HAS SOLD THE VEHICLE , AND ARE THERE ANY ENTRUSTMENTS OF FIREARMS OR SOMEONE GIVING , LOAN AGO FIREARM CASE THAT WE CAN TURN TO , OR ARE ALL OF THEM SALES CASES?

THE ONE THING THAT MADE THIS CASE VERY UN IQUE , JUSTICE LE WIS , WAS THE FACT THAT THE PERSON WAS INTOXICATED WHEN H E SOLD ITTO HIM. SO THAT KIND OF

ARE ANY OF THE FIREARMS CASES, ARE THERE ANY THAT DEAL WITH THE LO ANING OF A FIREARM?

I DIDN'T SEE ANY. THAT WAS A FIREARM CASE THAT I F OCU SED ON , SI NCE THEY LAID THEIR HA T ON IT. I WENT A FTER IT, AND THAT IS WHAT I FOU ND. THE OTHER CASE WH ICH , I THINK , IS JUST AS , PROBABLY FAR-FETCHED , IS THIS WAL-MART CASE, AND THE FACTSOF THAT ARE VERY INTERESTING , IN THAT YOU HAVE AN OPTOMETRIST WHO IS RENTING S PACE, AND AN EMPLOYEE ATTEMPTS TO POISON HI M, ANDI THINK THAT, FOR US TO USE THOSE FACTS AS A PREMISE LIABILITY ISSUE IN WHICH THEY SAY THAT WAL-MART SHOULD HAVE REASONABLY ANTICIPATED AND HAD ACTUAL OR CONSTRUC TIVE KNOWLEDGE, I THINK WHEN YOU START TALKINGABOUT CARS , CARS ARE SO DIFFERENT FROM THE PREMISE LIABILITY CASES THAT THEY QUOTE AND SO DIFFERENT FROM THE FIREARMS CASE WITH KITCHEN V Km art THAT THEY , ALSO, RELY U PON, I THINKTHAT THE LAW HERE I S STILL VERY SE TTLED AND STILL VERY GOOD LAW. I DO NOT BELIEVE THAT THEREIS A TRUE CONFLICT THAT EXISTS BE TWEEN THE DCA'S. I THINK THAT , AS YOU LOOK AT THE CAT ANO CASE, THAT IT WAS VERY CLEAR, AND IN THE CATANO, IT IS VERY SIM ILAR TO OURS, IN THAT THAT COURT , ALSO, FOUND THAT THERE WERE FACTS THERE THAT WOULD CERTAINLY BE THE TYPE OF FACTS WHERE IT IS A GENUINE ISSUE THERE THAT COULD BE LOOKED UPON DIFFER ENTLY BY A JURY AND WAS SENT BACK DOWN FOR A JURY TO DECIDE. WE THINK SU CH IS THE SA ME IN THIS CASE THAT WE ARE IN HERE TODA Y, THAT THIS C ASE IS A CASE THAT SHOULD GO TO A JURY , AND THAT COURT SHOULD LE AVE IT ALONE AS IT IS.

WE SHOULD DISMISS THIS CASE THAT THERE IS NO CONFLICT?

I THINK YOU SHOULD AFFIRM THE FIFTH DIST RICT OPINION , JUSTICE CANTE RO.

IF WE AFFIRM, WHY TAKE THE CASE?

I THINK YOU AF FIRM THEPART WHERE THEY SAY THAT THEY BELI EVE THERE IS A ISSUE OF GENUINE FACT HERE. THAT SHOULD GO BACK DOWN TO THE CIRCUIT COURT.

BUT I F WE DISMISS THE CASE, THEN THAT WILL BE AFFIRMED, BECAUSE THAT OPINION STANDS.

I WOULD BE OKAYING WITH THAT . THAT'S RI GHT . I AM SORRY. I MISUNDERSTOOD YOU.

I AM JUST SAYING IF YOU ARE SAYING THERE IS NO CONFLICT, THEN THERE IS NO REASON FOR US TO GETINVOLVED IN T HIS CASE AND WE SHOULD JUST LET THE FIFTH DCA OPINION STAN D.

THAT IS EXACTLY MY POSITION. I COULDN'T HAVE SAID IT BETTER . THANK YOU VERY MUCH. I

WILL AN SWER ANYMOREQUESTIONS IF THE COURT HAS F URTHER QUESTIONS. THOSE REPRESENT THE POSITIONS. WE APPRECIATE THE COURT'S INDULGENCE ON THOSE ISSUES.

THANK. VERY QUIC KLY , I DON'T THINK , IN RESPONSE TO JUSTICE BELL'S QUESTION, I DON'T THINK THERE IS ANY JUSTIFICATION FOR DIFFERENTIATING BETWEEN FIREARMS AND G UNS.

EXCUSE ME. HAVE WE , WE DO TR EA T THE WEAPONS AND AUTOMOBILES THE SAME IN SALES , CORRECT?

WELL , PU TTING ASIDE FOR A SECOND THE SALES ISSUE, OKAY,MY PO INT IS THEY ARE B OTH DANGEROUS INSTRUMENTS .

JUST ONE SECOND.WE HAVE DE ALT WITH THE SALE OF A MO TOR VEHICLE

YES.

TO AN INCOMPETENT DRIVER UN DER THOSE ALLEGATION AND THERE IS NO LIABILITY , CORRECT?

THAT IS TRUCHLT SO WE ARE TOTALLY CONS ISTENT IN SALES SITUATIONS.

IN SALES SITUATIONS.

WE HAVE A FLORIDA CASE THAT DEALS WITH THE LOANINGOF A FIREARM.

I UNDERSTAND WHAT YOU ARESAYING.

DO WE HAVE A FLORIDA CASE THAT DEALS WITH THE LOANINGOF A FIREARM?

NOT THAT I AM A WARE OF, BUT WHAT I AM DRIVING A T I S THE SIMP LE FACT THAT, IF THEY ARE BOTH DANGEROUS STRUMAL ITS , I DO NOT SEE AJUSTIFICATION FOR HAVING A DIFFERENT STANDARD OF FAULTWHEN YOU ENTRUST A WE APON TO SOMEBODY ELSE .

WHERE DO WE HAVE A DIFFERENT STAND ARD OF FAU LTIN FLORIDA? WE HAVE THE IDENTICAL STANDARD OF FAULT , IS THAT YOU SELL A CAR TO AN INCOMPETENT DRIVER. THERE IS NO LIABILITY. YOU SELL A WEAPON TO SOMEONETHAT SHOULD N'T HAVE A WEAPON. THERE IS NO LIABILITY.

I UNDERSTAND THAT.I AM TALKING ABOUT THE ENTRUSTMENT OF THE VEHICLE. ENTRUSTMENT OF A FIREARM.

WHERE IS THE FLORIDA CASE THAT SAYS THERE IS LIABILITYFOR ENTRUSTMENT OF A FIREARM?

THERE ISN'T , BUT WHAT I AM SAYING, THAT I AM AWARE OF, THERE IS THE SALE, BUTTHERE IS THE ISSUE HERE, OF THE DIFFERENCE BETW EEN THE KITCHEN CASE, WHICH REQUIRES PROOF OF FAULT, INVOLVING A DANGEROUS INSTRUMENT ALITY SUCH AS A GUN , AND THIS CASE , WHICH INVOLVES OR IN THE AUTOMOBILE CONTEXT , DANGEROUS INSTRUMENTALITY AND STRICT LIABILITY. THAT IS MY CONCERN. WITH RESPECT TO JUSTICE

CHIEF JUSTICE: YOUR TIME HAS EXPIRED . IF YOU WANT TO CONCLUDE.

YES . WE DON'T BELIEVE OUR POSITION IS FUZ ZY . WE ARE ASKING FOR ABRIGHT-LINE RULE IN THIS CASE IN OUR BRIEFS, AND WE WOULD REQUEST THAT YOU REVERSE THIS DEC ISION AND FIND AS A MATTER OF LAW, THAT IT WAS THE WEAPON-LIKE USE OF A VEHICLE .

CHIEF JUSTICE: THANK YOU VERY MUCH. O KAY. THANK YOU VERY MUCH , TO BOTH SIDES.