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**Patrick Joseph Kelso v. State of Florida
SC05-597**

MARSHAL: PLEASE RISE. HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT. I WOULD LIKE TO WELCOME THE GROUP OF EIGHTH GRADERS THAT ARE HERE TODAY FROM FOREST LAKE EDUCATION CENTER, AND THEIR TEACHERS. WE THANK YOU FOR COMING AND SHOWING AN INTEREST IN THE JUDICIAL BRANCH, ESPECIALLY IT BEING LAW WEEK. WE WILL CALL THE FIRST CASE, AND THE FIRST CASE IS KELSO VERSUS THE STATE OF FLORIDA.

MAY IT PLEASE THE COURT. MY NAME IS TATJANA OSTAPOFF. I AM THE ASSISTANT PUBLIC DEFENDER IN WEST PALM BEACH REPRESENTING PATRICK KELSO. THIS CASE AROSE FROM A BURGLARY DURING WHICH PROPERTY WAS TAKEN FROM THE VICTIM AND \$21,000 OF FIREARMS AND AS RESULT OF THAT, MR. KELSO WAS CONVICTED OF TWO COUNTS OF GRAND THEFT, ONE FOR \$21,000 AND ONE COUNT FOR THE FIREARMS.

JUSTICE: NOW, THE STATE BASICALLY IS TELLING US, I THINK IN THIS CASE, THAT BECAUSE WE HAVE A FIREARM, IT SOUTH SIDE THE NORMAL ANALYSIS, AND THAT THERE FOR WE NEEDED TO THE LOOK AT 775, AND THAT THE STATUTE ITSELF JUST TELLS US THAT A FIRE ARM IS INVOLVED, THAT THAT IS A SEPARATE OFFENSE, AND NO MATTER WHAT.

YEAH. I THINK THAT ARGUMENT FAILS ON THIS GROUND. THE ANALYSIS THAT THIS COURT ENGAGED IN IN GRAPPIN WAS THE APPLIED RULES OF STATUTORY CONSTRUCTION, WHICH THE COURT APPLIES WHEN THE STATUTE IS UNCLEAR OR THE INTENT IS UNCLEAR FROM THE LEGISLATURE. IT WAS AN ANALYSIS WHERE THEY RELIED ON THE ARTICLE A, FIREARMS, AS OPPOSED TO ANY. BUT THAT WAS AN APPLICATION OF STATUTORY CONSTRUCTION. WHAT WE HAVE HERE IS THE EXPRESS TERMS OF THE LEGISLATURE, WHICH SAYS, WITHOUT ANY ROOM FOR AMBIGUITY, THAT IT IS AN EXCEPTION TO THE GENERAL RULE THAT MULTIPLE CONVICTIONS ARE ALLOWED, EVEN WHEN THERE IS A SINGLE CRIMINAL TRANSACTION, WHERE OFFENSES ARE DEGREES OF THE SAME OFFENSE AS PROVIDED BY STATUTE. THERE ISN'T ANY DOUBT, THERE REALLY CAN'T BE ANY DOUBT THAT IS THE STATUTE, AND THE WAY IT IS LAID OUT, DIFFERENT ARTICLES, DIFFERENT PROPERTIES THAT CAN BE STOLEN ARE DESIGNATED AS DEGREES OF THEFT.

JUSTICE: LET'S ADDRESS THAT. HOW WOULD YOU DEFINE DEGREE OF CRIME? FOR EXAMPLE IF I LOOKED AT BLACKS LAW DICTIONARY, IT SAYS DEGREE OF CRIME USED IN AN OFFENSE, A TERM SIMILAR TO CONDUCT THAT IS PUNISHED TO A GREAT ERROR LESSER EXTENT, DEPENDING ON EXISTENCE OF ONE OR MORE FACTORS, A DIVISION OF CHURCH OF ONE SPECIFIC -- OR CLASSICS OF ONE SPECIFIC -- CLASSIFICATION OF ONE SPECIFIC CRIME OR GRADES OF GUILT. IF YOU GO BACK TO OUR CASE LAW BACK TO THE 1800s, WHEN THE TERM "DEGREE OF CRIME" IS USED IT

SPEAKS OF DIFFERENT GRADES OR LEVELS , DEGREES OF PUNISHMENT, SO HOW DOES THAT HISTORY AND THIS DEFINITION FIT WITH YOUR ARGUMENT IN THE THEFT STATUTE?

THE LEGISLATURE HAD, IN THE THEFT STATUTE, SAYS THEY DEFINE FIRST-DEGREE GRAND THEFT , SECOND-DEGREE GRAND THEFT , THIRD-DEGREE GRAND THEFT.THERE ARE DIFFERENT KINDS OF THIRD-DEGREE GRAND THEFT , DEPENDING ON THE PROPERTY TAKEN , AND THEY ARE ALL DEGREES OF THEFT BUT THE SAME OFFENSE OF THEFT , AND THEN YOU GET EVEN DOWN TO PETTY THEFT, SO THAT THE LEGISLATURE HAS USED, I THINK , EXACTLY THE SAME DEFINITION .

JUSTICE: SO IF YOU HAVE THEFT OF PROPERTY , 300-TO-5,000 AND YOU HAVE THEFT AFTER FIREARM.

YES.

JUSTICE: ARE YOU SAYING THOSE ARE THE SAME DEGREE?

THEY ARE THE SAME DEGREE. THEY ARE THE SAME DEGREE.

CHIEF JUSTICE: DID YOU SAY ARE OR ARE NOT?

THEY ARE THE SAME DEGREE.

JUSTICE: CAN YOU BE CONVICTED OF BOTH OF THOSE?

NO.

JUSTICE: YOU CAN NOT BE CONVICTED OF HAVING A FIREARM AND STEALING A WHEEL.IF YOU STEAL A FIREARM AND YOU STEAL A WHEEL , BOTH OF WHICH ARE LISTED UNDER THE THIRD DEGREE THEFT STATUTE.

THAT'S RIGHT.

JUSTICE: YOU CANNOT BE CONVICTED OF STEALING BOTH OF THOSE KINDS OF PROPERTY?

NO. THOSE ARE ALTERNATE WAYS OF COMMITTING THE SAME CRIME OF THIRD-DEGREE GRAND THEFT. SO THE LEGISLATURE HAS STATED THAT IF THERE ARE DEGREES OF THE SAME UNDERLYING OFFENSE OF THEFT , THEN YOU CAN ONLY HAVE ONE CONVICTION.

JUSTICE: WELL , WHAT DO YOU THINK IS THE PURPOSE OF ALL OF THESE SEVEN , EIGHT , NINE , TEN OR 12 DIFFERENT ITEMS THAT ARE LISTED UNDER THE GRAND THEFT STATUTE , SO IF YOU STEAL MULTIPLE S OF THOSE , YOU ARE STILL ONLY GUILTY, YOU YOU ARE SAYING , OF ONE-THIRD DEGREE GRAND THEFT.

THAT'S RIGHT. AND THAT'S RIGHT. AND I DON'T KNOW , THE PURPOSE ON --

JUSTICE: YOU BELIEVE THAT IS BECAUSE OF 775?

YES . BECAUSE THAT IS WHAT 775 SAYS. AND THE PURPOSE OF HAVING ALL THESE ALTERNATIVE WAYS OF COMMITTING GRAND THEFT THIRD-DEGREE , IS SO THAT , FOR INSTANCE, A FIREARM , THE STATE DOESN'T HAVE TO SHOW THE VALUE OF THE FIREARM IS OVER \$300.

JUSTICE: SO IF WE ACCEPT YOUR ARGUMENT , REALLY WHAT YOU ARE READING THIS STATUTE TO SAY IS OFFENSES WHICH ARE THE SAME DEGREE --

NO.

JUSTICE: -- AS PROVIDED BY STATUTE.

THE STATUTE DOESN'T SAY SAME DEGREE , IT SAYS DEGREES OF OFFENSE. OFF ENSES , RIGHT, SO YOU COULDN'T GET CONVICTIONS S EITHER OF BOTH SECOND-DEGREETHEFT AND THIR D-DEGREE THEFT.THE REASON FOR THAT --

JUSTICE: WHAT ABOUT TWO THIRD-DEGREE THEFTS?

YOU CAN'T, AND AC TUALLYTHE DISTRICT COURTS HAVE BEEN V ERY STRAIGHTFORWARD ON THAT , THAT YOU CAN'T GET CONVICTIONS OF TWO CRIMES WHICH ARE THE SAME DEGREE. THE REASON FOR THIS IS THE THEFT TAKING, WHICH IS THE CORE OF THE THEFT OFFENSE , IS NOT NECESSARILY, IN FACT HARDLY EVER A DISCREET , A DISCREET ACTION.IN OTHER WO RDS , I F YOU TAKE FROM A STORE , LET'S SAY , TENSHIRTS THAT ARE E ACH WORTH \$30, THAT IS NOT AND HAS N EVER BEEN VIEWED A S TEN SEPARATE TAK INGS OF A P ETTY THEFT SHIRT .

JUSTICE: THE DIFF ERENCE BETWEEN THAT AND THIS SITUATION IS THE STATUTETALKS IN TERMS OF PROPERTY V ALUED AT \$300 OR MORE BUTLESS THAN \$ 5,000 AND 5,000 BUT LESS THAN TEN , LIKETHAT.

YES.

JUSTICE: AND THEN IT TALKS ABOUT SPECIFIC ITEMS OF PROPERTY , A FIREARM , A MOIK, A FIRE EXING IT -- AMOTOR VEHICLE, A FIRE EXTINGUISHER, THOSE K I NDS OF THINGS, WHICH IT S EEMS WAS THE LEGISLATURE'S INTENT TO FALL OUTS IDE OF SIMPLY OTHER P ROPERTY VALUED AT A CERTAIN AMOUNT.

BUT THAT RULE, THE REAS ONYOU HAVE BEEN ABLE TO SAY THAT IS BECAUSE THAT IS THE RULE OF STATUTORY CONSTRUCTION, WHICH YOU EMPLOYEE IF IT I S NOT -- WHICH YOU EMPLOY IF IT IS NOT CLEAR, A AND IT IS NOT CLEAR FROM THE STATUTE.

JUSTICE: DO YOU AGREE THAT WE ONLY APPLY THE STATUTE OF STATUTORY CONSTRUCTION, IF THE UNDERLYING OFF HE WA NTS STATUTE ISN'T CLEAR -- IF THE UNDERLYING OFFENSE STATUTE ISN'T CLEAR?

YES.

JUSTICE: WH Y IS IT UNCLEAR IN THE STATUTE, THEN , THAT THE LEGISLATURE INTENDED TO PUNISH CRIMES COMMITED FOR THEFTS OF C ERTAIN TICIZED ITEMS OF PROPERTY -- C ERTAIN PARTICULAR IZED ITEMS OF PROPERTY VE RSUS GENERALIZED ITEMS OF PROPERTY?

THIS COURT IN GRAPPIN HAD TO DISCUSS THAT AND IT STRUGGLED , I THINK M IIGHTLY WITH THAT IS SUE, AS TO THAT ISSUE , WHERE THE LEGISLATURE SAID IF YOU STEAL FOUR GUNS , THAT IS FOUR SE PARATE CRIMES OF GRAND THEFT EVEN THOUGH ALL OF THE GUNS WERE TAKENAT THE SAME TIME, AND IN ADDITION, IN THIS INSTANCE , IN THIS STATUTE , IT , THERE IS OTHER EV IDENCE OF --

JUSTICE: LET'S TALK IN TERMS OF FOUR DIFFERENT PARTICULAR IZED ITS ELMS, NOT FOUR FIREARMS , BUT -- PARTICULAR IZED ITEMS , FOUR FIREARMS , A WHAEL -- A WHEEL , AND OTHERITY EL MS. NOW , IF -- AND THE OTHER ITEMS. NOW , IF SOMEBODY STEALS ALL THE PROPERTY, IT IS ONECOUNT OF THEFT.

THAT IS THE UNDERLYING PREDICATE.THAT IS THE BASIS THAT WEHAVE TO DEAL W ITH.

CHIEF JUSTICE: THAT IS DIFFERENT. THAT IS THE CORE OFFENSE ANALYSIS, BUT YOU SAID THIS IS CLEAR WE DON'T HAVE TO GO TO ANYTHING MORE, BECAUSE IT IS CLEAR THAT WE ARE D E

ALING WITH DEGREES OF THE SAME OFFENSE , AND WHETHER OR NOT YOU ARE CORRECT IS BACK TO WHAT JUSTICE BELL SAID , WHICH IS THE FACT THAT THESE ARE THIRD-DEGREE , THEY ARE SECOND, WHAT , THIRD-DEGREE FELONIES, DOES IT MAKE ANY DIFFERENCE IF IT GOES THIRD-DEGREE, SECOND-DEGREE , THAT THOSE ARE CLEARLY DEGREES OF THE SAME OFFENSE. YOU ARE SAYING, NO , IT DOESN'T, BUT THE LEGISLATURE DOES USE THE WORD "DEGREES" RATHER THAN SAYING WITHIN THE SAME DEGREE.

WELL, THEY ARE DEGREES. THEY ARE BOTH DEGREES OF THE SAME UNDERLYING OFFENSE. LET ME POINT OUT IN THIS STATUTE, ALSO AS AN OTHER EXAMPLE OF AMBIGUITY IN THE STATUTE, HERE YOU HAVE PROPERTY THAT IS VALUED AT \$300 OR MORE BUT LESS THAN \$500 HOW IT IS THIRD-DEGREE GRAND THEFT. PROPERTY VALUED AT \$500 -- LESS THAN \$5,000, IT IS THIRD-DEGREE GRAND THEFT. PROPERTY VALUED AT MORE THAN \$5,000 BUT LESS THAN \$10,000 HOW IT IS THIRD-DEGREE GRANDTHEFT. PROPERTY VALUED AT MORE THAN \$10,000 BUT LESS THAN \$20,000, IT IS AGAIN THIRD-DEGREE GRAND THEFT. BUT IF YOU TAKE PROPERTY WORTH LESS THAN \$5,000 , SOME IS WORTH MORE THAN 5,000 AND SOME WORTH LESS THAN 5,000 , AND THE THREE SEPARATE OFFENSES OF THIRD-DEGREE THEFT IS WHAT --

JUSTICE: HOW WAS THIS INFORMATION CHARACTERIZED ?

THE INFORMATION CHARGED PROPERTY WORTH OVER \$ 20,000 BUT LESS THAN \$100,000 , AND IT WAS \$21,000 , AND IT ALSO CHARGED INTERESTINGLY , THEFT OF FIREARMS , PISTOLS AND RIFLES , MAN Y .

JUSTICE: NOW, FOR A PERSON TO BE CONVICTED UNDER THAT CHARGE , WOULD THE STATE HAVE TO PROVE THAT THERE WAS A TAKING OF A FIREARM ?

YES .

JUSTICE: WOULD THE STATE HAVE TO PROVE, IN ORDER TO PROVE THE CHARGE THAT IT WAS MORE THAN \$20,000, THE STATE WOULD HAVE TO PROVE THAT THERE WAS MORE THAN \$20,000 TAKEN. CORRECT?

YES. BUT INTERESTINGLY IN THIS CASE THEY TOOK ALL THE MONEY, ALL THE \$20,000 WAS TAKEN SORT OF . \$5,000 WAS FOUND IN ONE LOCATION. \$3,000 WAS FOUND IN ONE SHOE, AND \$10,000 WAS APPARENTLY IN ANOTHER SHOE, SO THE QUESTION, DID HE TAKE THE \$3,000 AND STUFF IT IN HIS POCKET? DID HE TAKE THE \$5,000 AND STUFF IT IN ONE SHOE? DID HE TAKE THE \$10,000 AND STUFF IT IN THE OTHER SHOE? WAS THAT THREE TAKINGS OR ONE? AND I THINK CLEARLY BECAUSE THE UNDERLYING TAKING HAS ALWAYS BEEN VIEWED AS AN AGGREGATE ACTION OF THE DEFENDANT. IT IS GOING TO BE \$21,000 THAT THE STATE GETS FOR SECOND-DEGREE THEFT.

JUSTICE: BUT IS THAT DIFFERENT WHEN YOU ARE TALKING ABOUT SPECIFIC ITEMS THAT THE LEGISLATURE HAS DESIGNATED AS POSSESSED TO AREN'T YOU TALKING APPLES AND ORANGES WHEN YOU START TALKING ABOUT THE VALUE OF MONEY AS OPPOSED TO TALKING ABOUT THE VALUE OF MONEY AND SEPARATE ITEMS ? THE VEHICLES THAT WE ARE TALKING ABOUT , IT SEEMS TO ME THAT NEITHER OUR PRIOR DECISIONS REALLY GIVE US ANY BASIS TO NECESSARILY GO THAT WAY, AND WE ARE TALKING ABOUT AGGREGATING FIREARMS OR THOSE THINGS , BECAUSE WE HAVE GOT TWO DIFFERENT ITEMS . WE HAVE GOT A VALUE, AND IT IS AGREED THAT IT IS NOT THE VALUE OF THE FIREARM , CORRECT? IT IS MONEY.

CORRECT.

JUSTICE: SO WHY WOULD THAT NOT BE TREATED DIFFERENTLY, THAT THAT IS THE LEGISLATIVE INTENT AND THAT WE NEED NOT EVEN LOOK TO 775? OR DO YOU ALWAYS LOOK AT 775, NO MATTER WHAT? THAT IS WHAT YOU ARE ARGUING.

WELL , HERE IS THE THING. LOOK AT 775 FIRST BECAUSE THAT TELLS YOU WHAT THE LEGISLATURE, THAT IS THE EXPRESSION SPECIFICALLY , OF THE LEGISLATIVE INTENT .

JUSTICE: YOU LOOK THEIR FIRST BEFORE YOU LOOK AT ANYTHING ELSE THEN.

YES, AND THEN YOU SEE , OKAY, WELL, IS THE CRIME , NOW YOU GO BACK TO THE CRIME THAT IS BEING CHARGED , THE MULTIPLE CRIMES , OBVIOUSLY , AND YOU SEE , WE'LL DO , THEY FIT INTO ANY OF THOSE EXCEPTIONS? IS IT A LESSER INCLUDED OFFENSE? IS ONE THE SAME OFFENSE STATUTORILY AS THE OTHER OR ARE THESE OFFENSES DEGREE OFFENSES?

CHIEF JUSTICE: WHY ARE YOU NOT ARGUING WHETHER THEY ARE THE SAME OFFENSE , IN OTHER WORDS THE SAME CORE OFFENSE , BECAUSE IT SEEMS TO ME THAT THAT IS THE ARGUMENT YOU ARE MAKING AS OPPOSED TO THE DEGREES , BECAUSE , AGAIN , YOU HAVE GOT TO SAY, YOU KNOW , GO TO THE FACT THAT THEY ARE ALL WITHIN THE SAME DEGREE OF CRIME , NOT A GREATER CRIME AND THEN A LESSER CRIME.

RIGHT. I THINK , AND IT IS DEFINITELY A RELATED ARGUMENT, AND THE REASON IS BECAUSE THE REASON THAT THESE DIFFERENT THEFTS ARE DEGREES, DEGREE OF OFFENSES, IS BECAUSE THE UNDERLYING OFFENSE IS THE TAKING, THE THEFT , AND SO THEY ALL HAVE , AND THIS IS JUST LEGISLATIVE SHORTHAND THIS. IS THE SAME OFFENSE. IT IS THEFT THAT WE ARE TALKING ABOUT , AND WE ARE GOING TO PUNISH IT BASED ON WHAT KIND OF PROPERTY IS TAKEN, WHAT THE VALUE IS. WE ARE GOING -- WHAT THE VALUE IS. WE ARE GOING TO PUNISH A FIREARM AS GRAND THEFT, HE HAVE TEN IT IS WORTH ABSOLUTELY NOTHING.

JUSTICE: GOING BACK TO THE DECADERS AGO SINGLE TRANSACTION, IF YOU HAVE ONE THEFT , IT DOESN'T MATTER HOW MUCH YOU TAKE OR WHAT YOU TAKE, IT IS A SINGLE TRANSACTION, AS LONG AS IT FITS WITHIN THE LISTING OF ITEMS UNDER THIRD-DEGREE FELONY.

YEAH. I AM DOING THAT BECAUSE THE LEGISLATURE HAS DONE THAT BY DEFINING THE SPECIFIC DEGREE OFFENSE WHICH IT HAS , AND I CAN, IF I CAN DISTINGUISH THIS FOR INSTANCE, BECAUSE I THINK THE TAKING , THE QUALITY OF THE TAKING IS REALLY REALLY CRUCIAL AND I THINK THE LEGISLATURE -- REALLY IS REALLY CRUCIAL, AND I THINK THE LEGISLATURE SAID THAT. IF YOU TAKE A CAR AWAY FROM A DRIVER IN PALM BEACH COUNTY, YOU CAN ALSO BE PROSECUTED FOR TAKING THAT CAR WHEN YOU DRIVE IT IN INDIAN RIVER COUNTY. IT IS AN ONGOING TAKING PROCESS , AND TO AVOID PROSECUTORS FROM JUST BREAKING UP A CRIME LIKE THAT, WHICH IS BASICALLY A SINGLE TAKING INTO DISCREET LITTLE ELEMENTS, THE LEGISLATURE SAYS THESE ARE DEGREE CRIMES. WE ARE GOING TO PUNISH THE TAKING .

JUSTICE: HOW WOULD WE RELATE THAT TO THE LONG HISTORY OF DIFFERENTIATING MURDER INTO DEGREES , IF WE ACCEPT YOUR DEFINITION OF DEGREE, HOW DOES THIS STATUTE FIT INTO THAT UNDERSTAND SOMETHING.

I THINK BECAUSE MURDER , HOMICIDE, IS NECESSARILY A DISCREET ACT. I MEAN, ONCE YOU KILL SOMEBODY, THAT PERSON IS DEAD, AND NO MATTER WHAT YOU DO TO HIM AFTER THAT , HE IS STILL GOING TO BE DEAD, NOT ANYMORE , NOT ANY LESS SINCE FROM THE MOMENT THAT YOU KILLED HIM, SO THE HOMICIDE HAS ALWAYS BEEN, IF THERE IS ONE KILLING , THEN THERE IS ONLY ONE CONVICTION , NO MATTER HOW MANY DIFFERENT THEORIST STATE MAY HAVE , AND THE STATE CAN HAVE LOTS OF DIFFERENT THEORIES.

BUT THE THEORIES ARE BROKEN DOWN INTO WHAT HAVE WE ALWAYS CALLED?

DEGREES.

JUSTICE: INTO DEGREES.

CHIEF JUSTICE: YOU ARE ASSUMING THERE IS LOGIC IN THIS DOUBLE JEOPARDY, WHICH I ON MY YEARS ON THE BENCH FIGURED OUT. YOU YOU ARE IN YOUR REBUTTAL.

IF THERE AREN'T ANY QUESTIONS --

JUSTICE: ONE QUESTION.

SURE.

JUSTICE: IF WE HAVE STATUTES, THE THEFT OF A FIREARM AND THEN 865 WE HAVE THE THEFT AFTER MOTORVEHICLE AND THEN WE HAVE THE THEFT OF DRUGS AND DIFFERENT STATUTES SPREAD OUT THROUGHOUT THE CODE, WHAT WOULD BE THE ANALYSIS THERE?

I WOULD HAVE A MUCH MORE DIFFICULT ARGUMENT, MUCH MORE, BECAUSE THEN THEY WOULDN'T BE DEGREE OF THEFTS.

JUSTICE: THEY COULD BE THE SAME DEGREE. THEY COULD BE CLASSIFIED AS A PARTICULAR FELONY DEGREE.

YOU KNOW, I DON'T KNOW WHAT THE LEGISLATURE IS GOING TO DO BUT IF THEY CLASSIFIED IT AS A THIRD-DEGREE THEFT BUT PUT IT IN A TOTALLY DIFFERENT SECTION, MY ARGUMENT WOULD BE MORE DIFFICULT, I THINK, AND I DON'T HAVE THAT PROBLEM OBVIOUSLY IN THIS CASE.

JUSTICE: ISN'T IT PRETTY CLEAR THOUGH --

CHIEF JUSTICE: I WANT TO MAKE SURE WE ARE IN REBUTTAL TIME.

JUSTICE: BEFORE YOU SIT DOWN IT SEEMS TO ME THAT IT IS PRETTY CLEAR THAT THE LEGISLATURE'S INTENT WAS AS TO PARTICULAR ITEMS OF PROPERTY, THE VALUE OF THE PROPERTY IS IRRELEVANT. IT DOESN'T MATTER WHETHER YOU STEAL A TOYOTA CELICA OR A CADILLAC, YOU STOLE A MOTOR VEHICLE, AND IT IS HARD TO PUT A VALUE ON A WHEEL. WHEN YOU STEAL A WHEEL, THAT THEFT, IT IS HARD TO SAY IT IS VALUED AT \$10 OR \$10 MILLION.

I THINK THE POINT IS, IF YOU STEAL ONE GUN OR IF YOU STEAL 20, YOU HAVE STILL STOLEN PROPERTY THAT MAKES THAT CONCEPT GRAND THEFT.

JUSTICE: THAT IS WHY I MEAN YOU CAN'T LUMP THE ITEMS OF THOSE PARTICULARIZED ITEMS OF PROPERTY WITH OTHER ITEMS THAT YOU CAN VALUE. A CHAIR, A SOFA.

I THINK THE PROBLEM IS THE STATUTE DOES NOT CREATE SEPARATE PROSECUTIONS EVEN THOUGH IN GRAPPIN THAT IS WHAT THIS COURT TELLS US BECAUSE THE LEGISLATIVE INTENT WAS UNCLEAR AS TO WHAT IS THE LEGISLATURE'S IDEA IN THE STATUTE? AND I HAVE TO GO BACK TO THE PROPERTY VALUED AT "X" A MOUNT HERE AND IT IS STILL YOU GO UP STAGE AND IT IS STILL THE SAME DEGREE OF GRAND THEFT. I DON'T THINK IT DOES CREATE DISTINCT CRIMES PER TAKING. I THINK IT CREATES DIFFERENT WAYS OF COMMITTING GRAND THEFT IN A TAKING. AND WHAT YOU ARE REALLY LOOKING AT IS THE TAKING. THANK YOU. GOOD MORNING. GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS JEANINE GERMANOWICZ, AND THERE IS NO DOUBLE JEOPARDY. THE FOURTH DCA NEEDS TO BE AFFIRMED IN THIS CASE, AND THE REASON FOR THAT IS THE LEGISLATIVE INTENT WITHIN THE INSTITUTE IS ABSOLUTELY -- WITHIN THE STATUTE SLURKTSLY CRYSTAL CLEAR. THERE IS NO -- I S ABSOLUTELY CRYSTAL CLEAR. THERE IS NO REASON FOR THE LEGISLATURE TO HAVE SEPARATED IT. PUNISHMENT AND CONVICTIONS FOR BOTH CRIMES, IF THEY HAVE, THEY WOULD HAVE LUMPED IT TOGETHER.

CHIEF JUSTICE: ON THAT, I AM SORT OF CURIOUS WHY THEY SEPARATED -- I AM SORT OF C

URIOUS WHY THEY SE PARATED OUT PROPERTY VALUED AT 3000 OR MORE BUT LESS THAN 5 ,000 , PROPERTY VALUED AT 5, 000 BUT LESS THAN 10,000 AND PROPERTY VALUED AT 1 0,000 OR MORE BUT LESS THAN 2 0,000. YOU ARE NOT SAYING THAT, IF SOMEONE STOLE PROPERTY VALVES VALUED AT UP TO 20,000 THAT , THEY COULD BE -- PROPERTY THAT WAS VALUED A T UP TO 2 0 ,000, COULD THEY BE CHARGED WITH UP TO THREE DIFFERENT FELONIES?

NO. THE OFFENSE WITH RE GARD TO PROPERTY THAT IS DE FINED AS TO THE VALUE OF THE PROPERTY RATHER THAN THE N ATURE OF THE PROPERTY , PROPERTY LESS THAN 3,000, I AM SORRY , LESS THAN 300 OR BETWEEN 300 DOLLARS AND \$500 , WHAT THEY SAID WAS PROPERTY MORE THAN \$ 20,000, IF , IN FACT , THE SAME PROPERTY WAS U SED FOR BOTH ATTE MPTS TO --

JUSTICE: ISN'T THAT QUESTION REALLY ANSWERED BY SUBSECTION 4- B .1 THAT WOULD REQUIRE FROM PROOF OF THE SAME I HAD -- RE QUIRE PROO F OF THE SAME IDENTICAL ELEMENT.YOU COULDN'T SEPARATE IT OUT BECAUSE IT WOULD REQ UIRE PROOF OF THE ID ENTICAL ELEMENT .

IT IS A RED HERRING . I AM SORR Y.

JUSTICE: YOU SAID THAT THE LEGISLATIVE INTENT IS CLEAR IN THIS STATUTE. WHERE DO WE GET THAT LEGISLATIVE INTENT? WHAT IN THIS STATUTE TELLS YOU THAT THE LEGISLATURE INTENDED SEP ARATE CONVICTIONS FOR EA CH OF THESE ITEMS , EVEN UNDER THE SECOND-DEGREE GRAND THEFT STATUTE , WE HAVE COMMERCIAL CARGO , SEPA RATE FROM JUST REGULAR \$20,000 , SO WHERE DO WE GET THE LEGISLATIVE INTENT THAT THAT IS WHAT WAS INTENDED? SEPARATE CONVICTIONS. ANOTHER BEST EVIDEN CE OF THE LEGISLATIVE INTENT IS THEFACT THAT THEY EVEN BO THERED TO SEPARATE OUT FIREARMS OR OTHER ITEMS L IKE FIRE EXTINGUISHER S FROM JUST REGULAR PROPERTY .

CHIEF JUSTICE: IF I TOOK OR SOM EONE NOT ME , TOOK FIVE STOP SIGNS, J UST ANY STOP SIGN, AM I CONVICTED OF FIVE SEPARATE THEFTS ? ANY STOP SIGN.

IT DEPENDS ON HOW THEY ARE , WHERE IS THE STOP SIG N. I THINK PROB ABLY IT MIGHT BE JUST ONE TAKING AS OPPOSED TO FIVE TAKINGS , BUT IT WOULD DEPEND, A LSO , O N WHETHER IT CAN B E SUFFICIENTLY SEPARATED BY TIME, P LACE , CIRCUMSTANCES .

CHIEF JUSTICE: THEY ARE ALL IN SOME BODY 'S BEYOND A REASONABLE DOUBT, FIVE STOP SIGNS OR FIVE FIRE EXTINGUISHERS.

THE DIFFERENCE BETWEEN THE FIREARM EXCEPTION AND THE FIRE EX TINGUISHER IS IN THE GRAPPIN CASE , THE COURT DISTINGUISHED FIVE DIFFERENT TAKINGS, AND RE CENT LY AFFIRMED BY THIS COURT , WHICH ANALYZED THE , THAT YOU COULD HAVE FIVE SEPARATE TAKINGS DEPENDING ON THE LANGUAGE. I AM NOT S U RE IF I ANS WERED YOUR QUESTION.

CHIEF JUSTICE: SO YOU J UST GO BACK TO THE ANY /A , WHICH IS REALLY JUST THIS COURT'S ATTEMPT TO MAKE SOME RULES THAT WE CAN AP PLY IN SOME EQUAL MANNER , BUT I T REALLY DOESN'T GET BACK TO WHETHER LEGISLATIVELY THERE WAS AN INTENT TO HAVE SEPARATE CONVICTIONS FOR THE CRIME. CORRE CT? I ME AN, SO WHY ISN'T IT THAT THESE ARE DEGREES OF , THAT THIS IS A DEGREE CRIME AND THEREFORE IT SHOULD BE PUNISHED IN ONE CONVICTION ?

WELL , I REALLY THINK THAT REALLY, I DI DN'T GO BACK T O THAT WHOLE CORE OFFENSE THING AND IF YOU ANA LYZE THE CORE OFFENSE , YOU HAVE THEFT OF A FIRE AL ARM AND -- FIREARM AND THE SO CIAL POLICY OF FIRE ARMS, WHICH IS TO KEEP FIRE ARMS FROM BEING STO LEN , FOR PURPOSES OF OTHER THEFTS AND BY THE FACT THAT THE LEGISLATURE ROUTINELY ENHANCES POSSESSION OF A FIREARM AND USE OF A FIREARM . W ITH REGARD TO THE PROPERTY OF STOLEN MORE THAN \$20, 000, THAT IS THE VALUE OF THE PROPERTY RATHER THAN THE NATURE OF THE PROPERTY BEING STOLEN, SO THAT IS THE DEGREE, THAT IS THE DIFFERENCE BETWEEN THE CORE OFFENSES, THE ONES WITHOUT THE -- ONE IS ABOUT THE TYPE OF THE PROPERTY , SON

ABOUT THE NATURE OF THE PROPERTY AND DIFFERENT -- AND ONE IS ABOUT THE NATURE OF THE PROPERTY, AND IT IS ABOUT THE NATURE OF THE PROPERTY RATHER THAN THE VALUE, AND ACTUALLY BECAUSE OF MONETARY VALUE, YOU MIGHT HAVE A LITTLE TROUBLE TRYING TO CONVICT SOMEBODY FOR THAT UNDER THE PROPERTY, THE VALUE OF PROPERTY, THEFT STATUTE, BUT THAT DOESN'T MEAN THAT YOU HAVEN'T COMMITTED A CRIME, AND I THINK THAT REALLY WAS AN EXTENSION. YOU HAVE GOT APPLES AND ORANGES, THE NATURE OF THE PROPERTY THAT IS BEING STOLEN.

JUSTICE: THE DEFENSE TELLS US THAT WE LOOK FIRST, TO 775 AND THEN TO THE SUBSTANTIVE STATUTE, AND IF WE APPROACH IN THAT FASHION, THE SECOND EXCEPTION, ALTHOUGH IT DOESN'T GET INTO A DESCRIPTION OF DEGREES, IT DOES TALK IN TERMS OF DEGREE. THEN WE LOOK AT A SUBSTANTIVE STATUTE THAT CONTAINS DEGREES, WHY IS THAT NOT THE PROPER ANALYTICAL APPROACH?

WELL, IN THAT CASE YOU NEED TO MAKE IT VERY CLEAR THAT -- IN THAT CASE, I NEED TO MAKE IT VERY CLEAR THAT WE DON'T EVEN HAVE THE RESOURCE OF 775.021 IN THIS CASE BECAUSE 775.021 IS A BAD RULE AT THIS JUNCTION, WHERE THE LEGISLATURE'S INTENT IS NOT CLEAR. 775.021, IT IS OBVIOUSLY THE STATE'S POSITION THAT IN THIS CASE, THAT THE THEFT STATUTE ITSELF, IS CRystal CLEAR THAT FIRE ARMS ARE TREATED SEPARATELY FROM THEFTS OF OTHER PROPERTY, NOT FIREARMS, THEREFOR WE DON'T EVEN HAVE TO LOOK AT 775.021 AT THIS POINT. DOES THAT ADDRESS YOUR CONCERNS? JUST JUST --

JUSTICE: I THINK IT DOES. WHERE DO WE GO IF OUR ANALYSIS SAYS, YOU KNOW, BOTH OF THESE ANALYSIS CAN HAVE LOGIC AND CAN BE APPLIED. WHERE DO WE GO? DOES THAT LEAD ONE WAY OR ANOTHER IF WE SAY THIS IS AMBIGUOUS TO THE EXTENT THAT WE DON'T KNOW.

775.021 IS AMBIGUOUS?

NO. BOTH BECAUSE OF THE ENTERPLAY OF THESE TWO. IF WE COME TO A SITUATION, WE CAN READ THE STATUTE AND IT SAYS DEGREES. THEN WE LOOK AT THE OTHER STATUTE AND IT IS DIVIDED. WHAT IS THE ANALYSIS IF WE SAY BOTH OF YOU HAVE LOGICAL POSITIONS AND IT COULD BE EXPLAINED IN EITHER WAY, WHERE DOES THAT TAKE US?

I AM NOT SURE I AM UNDERSTANDING YOUR QUESTION CORRECTLY.

I GUESS WHAT I AM SAYING IS THAT, IF WE FIND THAT THE TWO TOGETHER CREATE A SUFFICIENT AMBIGUITY THAT WE HAVE TO GET IN AND TRY TO DETERMINE WHAT IT MEANS, DOES THAT LEAD US ONE WAY OR ANOTHER AS TO OUR APPROACH, LOOKING AT THE SUBSTANCE FIRST OR 775 FIRST.

WELL, I THINK WE NEED TO LOOK AT THE SUBSTANTIVE STATUTE FIRST, BECAUSE OBVIOUSLY THE SPECIFIC STATUTE WITH REGARD TO THE PARTICULAR CRIME AND 775.021 IS MORE OF A GENERAL STATUTE, SO CLEARLY YOU WOULD LOOK TO THAT STATUTE FIRST.

CHIEF JUSTICE: I WOULD HAVE AN EASIER TIME WITH YOU SAYING THIS IS CLEAR, IF IT WASN'T THAT IS THE FIREARM WAS RIGHT AFTER A WILL, CODICIL OR OTHER TESTAMENTARY INSTRUMENT. WE FEEL SO STRONGLY AS A LEGISLATURE WHAT ABOUT FIRE ARMS THAT, WHEN A FIREARM IS -- ABOUT FIREARMS, THAT WHEN A FIREARM IS TAKEN, WE ARE ALWAYS GOING TO CHARGE AN ADDITIONAL CRIME, AND THE ANALYSIS TO ME BREAKS DOWN BECAUSE THEY USE "OR WILL, CODICIL OR OTHER TESTAMENTARY INSTRUMENT", SO IF SOMEBODY TOOK FIVE WILLS UNDER YOUR CONSTRUCTION, WE WOULD HAVE FIVE DIFFERENT CRIMES, SO IT IS REALLY THE WAY THEY HAVE MIXED THOSE ALL TOGETHER THAT MAKES ME WONDER HOW CLEAR THE INTENT WAS THAT THESE SHOULD BE SEPARATE CRIMES AS OPPOSED TO JUSTICE CANTERO I THINK WAS SAYING THAT, THE FACTOR YOU WERE SAYING THE FACT THAT YOU EITHER LOOK AT IT BY THE NATURE OF THE PROPERTY OR THE VALUE, BUT YOU DON'T AGGREGATE THE

DIFFERENT CRIMES . IT IS DIFFERENT WAYS OF LOOKING AT IT WHERE YOU DON'T WORRY ABOUT THE VALUE , IF A WILL IS TAKEN. SO DO YOU SEE , IN OTHER WORDS , HOW IS IT SO CLEAR THAT THEY INTEND TO PUNISH THESE SEPARATELY , AS OPPOSED TO JUST MAKING SURE THAT A FIREARM IS ALWAYS PROSECUTED AS A THEFT OF THE THIRD DEGREE ?

WELL , FIRST IF YOU LOOK AT WILLS, IT IS NOT JUST WILLS. IT IS OTHER THINGS THAT SEEM TO HAVE SPECIAL CONSIDERATION BY THE LEGISLATURE.

CHIEF JUSTICE: I THINK THAT IS WHERE I THINK IT FALLS DOWN , BECAUSE TO SAY THAT A FIREARM IS GOING TO BE IN THE SAME CATEGORY AS A FIRE EXTINGUISHING ERROR THE ONE THAT IS ONE -- FIRE EXTINGUISHER, OR THE ONE THAT IS ONE OF MY FAVORITES, A COMMERCIALLY FARMED ANIMAL, IT SEEMS WE ARE THROWING EVERYTHING INTO THIS STATUTE .

OBVIOUSLY THESE PARTICULAR SEPARATE THINGS LIKE WILLS OR FIRE EXTINGUISHERS , THEY OBVIOUSLY HAVE DIFFERENT SOCIAL POLICIES WHICH THE LEGISLATURE HAS DETERMINED THAT THEY BE TREATED INDEPENDENTLY AND NOT JUST LUMPED IN WITH OTHER PROPERTY . FIRE EXTINGUISHERS, THEY ARE TRYING TO PREVENT A TRAGIC ACCIDENT, SUCH AS FIRES OF BUILDINGS , BECAUSE THE FIRE EXTINGUISHER IS SOMETHING THAT GOES BEYOND JUST A THEFT OF A FIRE EXTINGUISHER AND THE MONETARY VALUE OF THE FIRE -- AND THE MONETARY VALUE OF THE FIRE EXTINGUISHER. THEY ARE TRYING TO ADDRESS THE RESULT. I THINK THEY ARE ALL LIKE THAT. IT IS NOT LIKE THEY ARE PUTTING IN THE SAME THING RANDOM IN THE STATUTE. EVERY SINGLE ONE OF THESE OTHER EXCEPTIONS SEEMS TO HAVE SOME SORT OF WELL-THOUGHT-OUT SOCIAL POLICY BEHIND THEM. IF YOU HAVE ANY OTHER QUESTIONS, DOES THAT ANSWER YOUR QUESTION?

CHIEF JUSTICE: I THINK THAT IS A GOOD ARGUMENT. I DON'T THINK IT THEN THERE FOR CLARIFIES THAT IT IS UNAMBIGUOUS AS TO THE INTENT. THAT IS REALLY MY CONCERN.

I THINK THE BOTTOM LINE IS YOU HAVE GOT TO LOOK AT THEFT OF PROPERTY , VALUE , IF THE LEGISLATURE HAD NOT INTENDED SPECIAL TREATMENT FOR THESE OTHER ITEMS , THEY WOULD HAVE JUST LEFT THE STATUTE ALONE AS TO THEFT OF PROPERTY UP TO \$20,000 AND LUMPED EVERYTHING AND THERE WOULD BE NO REASON TO SEPARATE.

CHIEF JUSTICE: IF YOU TAKE A FIREARM OR YOU TAKE A WILL, IT WILL ALWAYS BE CHARGED AT A THIRD-DEGREE FELONY, WITHOUT HAVING TO WORRY ABOUT THE VALUE. TO ME THAT MAKES A LOT OF SENSE , BUT THAT STILL DOESN'T SAY TO ME THAT , IF IT IS TAKEN AT THE SAME TIME , THAT THE IDEA IS THAT THERE ARE GOING TO BE SEVERAL DIFFERENT OFFENSES.

WELL , LET'S LOOK TO THEFT OF FIREARM . THERE ARE ANTIQUE FIRE ARMS WORTH MORE THAN \$20,000, SO I DON'T THINK THAT IS AN ARGUMENT. YOU COULD CHARGE SOMEBODY WITH THEFT OF A FIREARM , WHICH WOULD BE A THIRD-DEGREE FELONY , AND THE THIRD DEGREE FELONY, IF THE FIREARM HAPPENED TO BE WORTH MORE THAN \$20,000 , IF IT IS AN ANTIQUE , YOU COULD ALSO CHARGE THEM WITH A SECOND-DEGREE FELONY FOR THEFT OF PROPERTY MORE THAN \$20,000. YOU COULD CONVICT BECAUSE WHAT YOU HAVE IS THE SAME ACT.

JUSTICE: BUT ISN'T THE LEGISLATURE MAKING VERY DIFFERENT JUDGMENTS ? THEY DECIDE TO INCLUDE IN ONE STATUTORY SCHEME , A SCHEME IN THIS INSTANCE FOR EXAMPLE , FOR THEFT , ALL OF THESE VARIOUS ITEMS , INCLUDING MONEY . ALL RIGHT. AS OPPOSED TO, AND THE clearest example that comes to my mind, would be in the days when taking someone's horse was considered so offensive because a horse was so necessary to the farm or transportation, that the legislature might choose to actually have a separate statute or statutory scheme and provide the death penalty for the theft of a horse , BUT HERE WE ARE FACED WITH THE FACT THAT THE LEGISLATURE ITSELF HAS PUT ALL THESE ITEMS IN THE ONE STATUTORY SCHEME FOR THEFT AND THEN HAS SIMILARLY PROVIDED AN EXCEPTION WITH REFERENCE TO THE IR LEGISLATIVE INTENT ABOUT

MULTIPLE CRIMES , FOR DEGREE VARIANCE OF THE SAME THEFT STATUTE , AND SO IT AP P EARS TO BE A LEGISLATIVE CHOICE , AND THE LEGISLATURE IS THE ONE THAT HAS CHOSEN TO USE THIS LANGUAGE, AND HERE W E SIMPLY DON 'T HAVE A SEPARATE STATUTORY SCHEME FOR THE THEFT OF A HORSE BEFORE US, DO W E ? YOU SEE MY ANALOGY ?

I SEE YOUR ANALOGY , AND I THINK ONE OF THE THINGS THAT YOU NEED TO CON SIDER ABOUT 7 75.021 IS REALLY AS ADDRESSED TO CASES WHERE THERE ARE THE SAME A CTS BUT DIFFERENT STATUTES , AND I THINK THAT IF YOU HAVE EVERYTHING VALUED IN THE SAME STATUTE , IT AC TUALY HELPS TO SHOW WHAT THE LEGISLATIVE INTENT WAS MORE CLEARLY THAN IF YOU HAVE TWO DIFFERENT STATUTES, BECAUSE IF YOU HAVE GOT TWO DIFFERENT STATUTES , YOU ARE NOT AS CLEAR ABOUT THE LEGISLATURE INTENDED TO PUNISH THOSE THEFTS STATUTES -- STATUTES SEPARATELY IF THEY ARE, IN FACT , THE SAME, DEGREES OF THE SAME OFFENSE, BUT IF YOU HAVE GOT ALL OF THESE CRIMES WITHIN THE SAME STATUTE AND SPECIFICALLY SEPARATED OUT FROM EACH O THER, THEN YOU HAVE A M UCH CLEARER VIEW OF THE LEGISLATION -- OF THE LEGISLATURE'S INTENT TO PUNISH SEPARATELY FOR THESE CRIMES BECAUSE THEY WERE WITHIN THE SAME STATUTE , AND , YES , THEY HAVE BEEN SEPARATED OUT.

JUSTICE: MY CONC ERN IS THAT, WITH THE EXCE PTION I N THE LEGISLATIVE INTENT TO PUNISH AS MANY CRIMES , THEY HAVE SPECIF ICALLY CR EATED THIS EXCEPTION FOR DEGREE VARIANCE OF THE SAME STATUTE , AND SO WE ARE , WE APPEAR TO BE STUC K IN A PO SITION WHERE THIS IS WHAT THE LEGISLATURE DID. THEY PUT ALL OF THESE THINGS IN THE THEFT STATUTE , AND THEN THEY MEASURED THEM BY DEGREE VARIANCE , DEPENDING ON EI THER THE VALUE OR WHAT THE ITEMS ARE. THEY DID NOT PUT THEM IN SEPARATE STATUTORY SCHEMES , INDICATING CLEARLY A SEPARATE PUNISHMENT. I MEAN, THIS IS WHAT, THIS IS THE DILEMMA IS IT NOT, THAT WE ARE FACED WITH HERE.

I UNDERSTAND THAT OFFENSES WE ARE PO INTING OU T, THE LEGISLATURE ON ABOLISHED IN '77 , '76, AND THEN THEY AMENDED THE STATUTE , NOT A RESPONSE TO GRAPPIN BUT A DIRECT RESPONSE TO ANOTHERCASE THAT MA DE IT CLEAR THAT IT CANNOT TRUMP THE SI NGLE TRANSACTION RULE, AND THEN WE AFFIRMED THE SIN GLE TRANSACTION RULE BY REPEATING AND ADDING LANGUAGE SAYING , AGAIN REAFFIRMING THE SINGLE TRANSACTION RULE IN 1988.

JUSTICE: BUT CONCEPTUALLY WE ARE NO LO NGER FACED WITH , REALLY, A SINGLE TRANSACTION RULE ANALYSIS. CONCEPTUALLY NOW WE ARE FACED WITH A DEGREE VARIANCE OF THE SAME STATUTE .

I THINK AS A MA TTER OF COMMON SENSE , YOU REALLY HAVE TO KNOW WHAT THE LEGISLATURE WAS DOING , THEIR INTENT BY CLEARING THIS PARTICULAR EXCEPTION , THERULE THAT THEY HAD TWICE AFFIRMED THAT THEY MEANT TO ABOLISH THE SINGLE TRANSACTION RULE I N 1 976 AND AGAIN IN 1988 AM ENDMENT , SO IT IS COMMON SENSE THAT THIS PARTICULAR EBBS EPTION IS NOT -- EXCEPTION IS NOT SUPPOSED TO BE THE EXCEPTIONAS WELL AS THE RULE.

JUSTICE: SO IF YOUR ANALYSIS OF THESE, OF THIS STATUTORY SCHEME, IF YOU IN FACT ST EAL PROPERTY UNDE R IT THAT IS WORTH \$20,000 BUT LESS THAN \$100,000 AND AT THE SAME TIME YOU STEAL SOME EMERGENCY ME DICAL EQUIPMENTYOU WOULD THEN BE GUILTY OF TWO OFFENSES O F SECOND-DEGREE GRAND THEFT.

YES. THE SAME ANALYSIS OF THE FIREARM EXCEPTION, THE SAME ANALYSIS OF THE FIREARM SEPARATION FROM THE PROPERTY SEPARATED OUT FROM MO TOR VEHICLES , OF COU RSE THE N ATURE OF THE PROPERTY R ATHER THAN THE VALUE OF THE PROPERTY .

JUSTICE: WHAT ABOUT I F SOMEONE STE ALS \$100,000 UNDER THE THIRD DEGREE GRAND THEFT STATUTE AND THEN AT THE SAME TIME THEY USE A CAR TO RUN INTO THE G ARAGE WHERE THE \$100 I S , WOULD -- WHERE THE \$100 HOW IT IS, WOULD YOU STILL HAVE -- WHERE THE \$100 HOW IT

IS , WOULD YOU STILL HAVE - - WHERE THE \$ 100,000 IS , WOULD YOU STILL HAVE THE SAME DEGREE OF THEFT?

HAD THEY STOLEN THE CAR?

JUSTICE: NO. IT DOESN'T SAY THE CAR HAS TO BE STOLEN. IT SAYS USING A MOTOR VEHICLE AS -- IT SAYS USING A MOTOR VEHICLE AS AN INSTRUMENTALITY.

I UNDERSTAND. IT IS TALKING ABOUT THE PART WHERE IT SAYS IF IN THE COURSE OF COMMITTING THE OFFENSE THE OFFENDER USING A MOTOR VEHICLE AS AN INSTRUMENTALITY THAT SHOULD BE ONE CRIMINAL OFFENSE. IT IS MORE OF AN ENHANCEMENT . IF YOU ARE TELLING ME THAT THEY HAVE STOLEN THE MOTOR VEHICLE AND THEN USED THE MOTOR VEHICLE TO COLLECT \$100,000, I WOULD SAY THAT THERE IS ARGUABLY TWO SEPARATE CRIMES THERE. BUT HERE IF THEY ARE JUST TALKING ABOUT USING A MOTOR VEHICLE AS AN INSTRUMENTALITY BUT THEY DON'T SAY ANYTHING ABOUT STEALING THAT MOTOR VEHICLE .

CHIEF JUSTICE: THANK YOU VERY MUCH.

JUSTICE: I UNDERSTAND WHAT YOU ARE SAYING.

CHIEF JUSTICE: IT MAKES AS MUCH SENSE AS EVERYTHING ELSE ABOUT THE STATUTE. THANK YOU VERY MUCH . YOUR TIME IS EXPIRED.

THANK YOU VERY MUCH , AND IN CONCLUSION, OF COURSE , PLEASE AFFIRM THE FOURTH DCA'S DECISION.

CHIEF JUSTICE: REBUTTAL .

I REALLY DON'T HAVE ANYTHING TO SAY UNLESS THE COURT HAS ANY OTHER QUESTIONS .

JUSTICE: I WANT TO TRY TO EXPLORE YOUR DEFINITION OF DEGREE BECAUSE I AM REALLY STRUGGLING WITH THIS. LOOKING AT A DIFFERENT STATUTE , IT IS HARD TO DO BECAUSE I HAVE GOT THE STATUTE BOOK HERE , BUT IN 837.05 THE STATE IS LOOKING AT PEOPLE GIVING FALSE REPORTS TO A LAW ENFORCEMENT AUTHORITY . AND THE STATUTE IN SUBSECTION 1 SAYS THAT IF YOU DO THAT AND YOU GIVE A FALSE REPORT ALLEGING COMMISSION OF ANY CRIME , IT SAYS YOU COMMIT A MISDEMEANOR OF THE FIRST-DEGREE. HOWEVER, IF YOU DO THE SAME THING IN REGARD TO A CAPITAL FELONY, IT IS A THIRD-DEGREE FELONY. IT SEEMS TO ME THAT IS WHAT THE STATUTE IS REALLY TALKING ABOUT HERE, IS THE DEGREE BASICALLY OF THE SAME OFFENSE. YOU HAVE THE OFFENSE OF FALSE REPORT , BUT IT IS BROKEN DOWN INTO DIFFERENT DEGREES . I DON'T SEE THAT IN THE STATUTE. YOU KNOW , HAVING SERVED AS A CIRCUIT JUDGE, THE DIFFERENCE BETWEEN STEALING FIVE FIREARMS VERSUS SOMETHING ELSE, DOESN'T MAKE MUCH LOGICAL SENSE TO ME, SO I STRUGGLE WITH IT , BUT IT SEEMS TO ME THAT WHAT THIS PROVISION IS TALKING ABOUT IS THROUGHOUT THE STATUTE , WE HAVE EXAMPLES LIKE THE ONE I AM JUST GIVING NOW ON THE FALSE REPORTING OF CRIMES , THAT THERE ARE DIFFERENT DEGREES. I DON'T SEE THAT SEPARATION HERE IN THIS STATUTE , OTHER THAN, WELL , OTHER THAN THE FELONY MISDEMEANOR PETTY THEFT.

THE REASON IT IS . IT MEANS IT IS THE SAME , BECAUSE IN THE FALSE REPORT STATUTE , THAT YOU COMMITTED AND WITHOUT LOOKING AT IT I CAN'T 100 PERCENT BE CONSUMMATED IN MY RESPONSE, BUT IF SOMEBODY MAKES A FALSE REPORT AND THEY REPORT THREE OR FOUR CRIMES, ONE OF WHICH IS A CAPITAL FELONY , I DON'T THINK THAT THE STATE WOULD BE JUSTIFIED IN PROSECUTING FOR TWO SEPARATE OR MORE SEPARATE COUNTS OF FALSE REPORTS. THEY COULD PROSECUTE FOR THAT THEY COULD CHARGE THE DEFENDANT WITH MULTIPLE INCIDENTS , CRIMES , BUT THE JURY, THERE CAN ONLY BE CONVICTION FOR ONE OF THEM AND I THINK THAT IS THE SAME THING THAT WE ARE TALKING ABOUT HERE. REALLY WE ARE TALKING ABOUT ALTERNATE WAYS OF

COMMITTING THEFT , AND I THINK THE STATE IS QUITE CORRECT THAT THE STATE DOES HAVE A CONCERN ABOUT FIREARMS AND HOW DANGEROUS THEY ARE AND ABOUT FIRE EXTINGUISHERS AND HOW DANGEROUS THEY CAN BE AND ABOUT WILLS AND HOW IMPORTANT IT IS THAT WILLS STAY WHERE THEY ARE SUPPOSED TO BE , BUT THAT IS WHY FEELING ANY OF THOSE ITEMS SINGLY IS -- STEALING ANY OF THOSE ITEMS SINGLY IS GRAND THEFT, REGARDLESS WHAT VALUE IS PLACED ON THEM. JUDGE PARIENTE COGENTLY POINTED OUT THAT DOES NOT ANSWER THE QUESTION AS TO WHETHER THERE IS GOING TO BE A SEPARATE PROSECUTION PERMISSIBLE FOR EACH OF THOSE CRIMES, AND I THINK WHEN YOU GO BACK --

JUSTICE: REALLY WHAT YOU ARE TALKING ABOUT IS NOT A SEPARATION IN DEGREE. YOU ARE TALKING ABOUT VARIANCE OF THE SAME CRIME.

YOU ARE TALKING ABOUT ALTERNATIVE WAYS OF COMMITTING THE CRIME.

JUSTICE: THAT IS NOT A FORM OF DEGREE.

IT IS A DEGREE. YOU CAN'T GET AWAY FROM THAT LANGUAGE, I THINK THAT IT IS A AGREED CRIME. - THAT IT IS A DEGREEED CRIME. IF I CAN SAY, HOMICIDE IS LIKE THIRD-DEGREE FELONY MURDER AND THEN THERE IS MANSLAUGHTER AND THOSE ARE THE SAME DEGREE OF OFFENSE, BUT IT THERE IS ONLY ONE DEATH, THERE IS STILL GOING TO BE ONLY ONE CONVICTION AND I THINK THIS IS A ANALOGOUS SITUATION. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. THE COURT WILL TAKE THIS MATTER UNDER ADVISEMENT