

>> WE'LL NOW MOVE TO THE FOURTH AND FINAL CASE ON OUR DOCKET FOR TODAY, MARRERO VERSUS THE STATE OF FLORIDA.

>> GOOD MORNING.

MAY IT PLEASE THE COURT.

ROBERT KALTER, ASSISTANT PUBLIC DEFENDER APPEARING ON BEHALF OF THE PETITIONER.

THE ISSUE COURT TO RESOLVE IN THE APPEAL WHETHER THE TRIAL JUDGE ERRED IN

APPELLANT'S MOTION FOR ACQUITTAL FAILURE TO REDUCE THE FELONY CRIMINAL MISCHIEF CHARGE FOR PETITIONER THAT THE STATE OF FLORIDA VEILED TO PROVE THAT THE VALUE WAS IN EXCESS OF \$1,000.

>> LET ME ASK A QUESTION BEFORE WE PROCEED HERE.

I THINK THAT IS A SIGNIFICANT ISSUE BUT I AM CONCERNED WITH THE DEFENDERS AGREEMENT WITH WHAT THE JUDGE TOLD THE JURY BEFORE THEY CAME BACK.

AS I UNDERSTAND THIS RECORD, AS I READ THE RECORD, THIS CAME UP WITH REGARD TO WHAT ARE WE GOING TO TELL THE JURY BECAUSE THE JURY ASKED A SPECIFIC QUESTION, WHAT ABOUT THE VALUE, CORRECT?

>> CORRECT.

>> AND THERE WAS SOME DISCUSSION AND SO THE JUDGE PULLS OFF THE STATUTE WITH REGARD TO THEFT AND SAYS I'M GOING TO TELL THE JURY THUS AND SO WHICH WAS ESSENTIALLY IF YOU CAN'T, IF YOU CAN'T DETERMINE THE VALUE, THEN YOU CAN USE

COMMON SENSE.

>> RIGHT.

>> AND THE DEFENDER SAID,  
SOMETHING TO THE EFFECT,  
PERFECT.

>> I THINK, IF THE ISSUE BEFORE  
THE COURT WAS WHETHER THE JURY  
WAS GIVEN AN IMPROPER JURY  
INSTRUCTION I THINK THE COURT  
WOULD BE CORRECT. HOWEVER THE  
ISSUE BEFORE THE COURT IS  
WHETHER THE TRIAL JUDGE ERRED  
IN DENYING THE MOTION FOR  
JUDGMENT OF ACQUITTAL.

>> WHEN THE LAWYER FOR THE  
PARTY HAS AGREED TO THAT'S WHAT  
WE TELL THE JURY FOR THE JURY  
TO RENDER ITS VERDICT --

>> I THINK --

>> YOU'RE TELLING ME THAT IS  
STILL PRESERVED?

YOU HAVE A CASE THAT TELLS ME  
THAT?

>> EXCUSE ME?

>> DO YOU HAVE A CASE THAT  
TELLS ME THAT?

>> WHAT I'M SAYING IF WE WERE  
TAKING THE POSITION THAT IT WAS  
AN IMPROPER JURY INSTRUCTION  
THE ONLY INSTRUCTION GIVEN TO  
THE JURY CONSISTENT WITH THE  
DEPARTMENT'S THEORY IN CASE.  
LADIES AND GENTLEMEN, YOU MUST  
FIND THE DEPARTMENT NOT GUILTY  
THE DEFENDANT WAS TAKING THE  
POSITION WHICH THE TRIAL JUDGE  
WAS WELL AWARE THIS CASE SHOULD  
HAVE NEVER GONE TO THE JURY.

>> DO YOU HAVE A CASE THAT SAYS  
THAT?

>> I DON'T HAVE A SPECIFIC  
CASE.

>> IT BECOMES IMPORTANT,  
BECAUSE I'VE LOOKED FOR THAT  
AND I CAN'T FIND ONE.

>> I THINK IT IS A UNIQUE  
SITUATION IN TERMS OF HAVING A  
CASE THAT SAYS THAT BUT IF THE  
ISSUE BEFORE THIS COURT AND THE  
TRIAL JUDGE AND THE THIRD  
DISTRICT COURT OF APPEALS WAS  
WHETHER THE CASE SHOULD HAVE  
GONE TO THE JURY, AT THAT  
STAGE, ONCE THE CASE WENT TO  
THE JURY, THERE WAS NO  
INSTRUCTION THAT COULD HAVE  
BEEN GIVEN TO THIS JURY TO  
RESOLVE THIS EXCEPT YOU SHOULD  
GRANT A JUDGEMENT OF ACQUITTAL.  
THE LAW IN FLORIDA IS IF YOU  
DON'T PROVE A CASE BEYOND ALL  
REASONABLE DOUBT --

>> I'M NOT QUESTIONING THAT.  
WE HAVE THAT ACT.  
YOU SAY IT IS IRRELEVANT.  
TO ME IT IS A SIGNIFICANT ISSUE  
IN THIS CASE.

>> I WOULD RECOGNIZE IT IS AN  
ISSUE BUT I DON'T THINK IT  
RESOLVES THE ISSUE IN LIEU OF  
THE FACT WHAT WE HAD IN THIS  
CASE THE TRIAL JUDGE NEVER  
THOUGHT IT WAS WAIVED BECAUSE  
EVEN AFTER THE JURY VERDICT THE  
TRIAL JUDGE ASKED THE PARTIES  
TO SUBMIT MORE MEMORANDUM OF  
LAW BECAUSE SHE WAS CONCERNED  
THERE WAS NO EVIDENCE OF VALUE.  
SO EVEN AFTER THE JURY CAME  
BACK WITH THE VERDICT, IF THE  
JUDGE WOULD HAVE THOUGHT IT WAS  
WAIVED, IT WOULD HAVE BEEN  
CONSIDERED WAIVED.

>> DOES THAT MEAN IF THE JUDGE

WRONGFULLY DOES SOMETHING THAT WE ARE BOUND BY THAT?

>> NO I DON'T THINK, WHAT I THINK IT MEANS THAT THE ISSUE OF PRESERVATION IS HAVE WE PUT THE RULE IN THIS CASE WAS SHE PUT ON NOTICE AND HAVE WE SAID ANYTHING INCONSISTENT TO LEAD HER TO RULE IN A DIFFERENT WAY.

>> YOU DID NOT UNTIL, WHAT DO WE TELL THE JURY?

>> RIGHT.

>> YOU SAID WE AGREE PERFECTLY.

>> IT IS WHAT WE TELL THE JURY IS NOT THE ERROR IN THIS CASE. THE ERROR WAS DENIAL OF JUDGMENT OF ACQUITTAL.

>> EXACTLY THE PROBLEM WE'RE TALKING ABOUT.

YOU HAVE TO HAVE VALUE.

THE DEFENDANT SAYS, TELL THE JURY NO, YOU DON'T.

IF YOU HAVEN'T DETERMINED THE VALUE YOU CAN USE YOUR COMMON SENSE.

>> IT IS, I'M REPEATING OURSELF IT IS OUR POSITION.

>> THAT'S FINE.

>> JUDGEMENT OF ACQUITTAL WAS MADE. THIRD DISTRICT COURT OF APPEALS THAT IT WASN'T WAIVED. THE TRIAL JUDGE CONCLUDED IT WASN'T WAIVED.

THE ISSUE IS WHETHER THIS CASE SHOULD HAVE EVER GONE TO THE JURY.

IF WE HAVE PRESERVED WHETHER THE CASE SHOULD HAVE GONE TO THE JURY, WHATEVER HAPPENS SUBSEQUENTLY WITH ALL DUE RESPECT IS IRRELEVANT.

THIS CASE SHOULD HAVE NEVER

GONE TO THE JURY.

>> IF THE THIRD DISTRICT IS  
CORRECT IT MUST BE CORRECT ON  
THE RULING ON THE LAW?  
SO YOU LOSE.

>> IF THE THIRD DISTRICT IS  
CORRECT, THEN I LOSE.

I DON'T THINK THE THIRD  
DISTRICT IS CORRECT ON THE BIG  
ISSUE WHICH IS BEFORE THIS  
COURT, WHICH IS THE ISSUE OF  
WHETHER OR NOT A JURY CAN  
CONVICT A DEFENDANT OF CRIMINAL  
MISCHIEF WHEN THERE IS NO  
EVIDENCE AS TO VALUE.

WHAT OCCURRED IN THIS CASE THE  
THIRD DISTRICT COURT OF APPEALS  
AND THE TRIAL JUDGE BOTH  
RECOGNIZED THAT THERE WAS NO  
EVIDENCE OF VALUE IN THIS CASE.  
THIRD DISTRICT COURT OF APPEALS  
ALSO RECOGNIZED IN THE NORMAL  
CASE, YOU NEED EVIDENCE OF  
VALUE.

FINALLY THE THIRD DISTRICT  
COURT OF APPEALS THEN  
CONCLUDES, BUT IN THIS CASE  
WE'RE GOING TO MAKE AN  
EXCEPTION.

WE'RE GOING TO SAY THIS IS A  
RARE CASE WHICH THE STATE IS  
NOT REQUIRED TO PROVE.

>> LET ME ASK YOU A QUESTION  
ABOUT THAT.

IS IT REALLY TRUE THAT YOU  
WOULD HAVE BEEN ENTITLED TO A  
JUDGEMENT OF ACQUITTAL OR  
WHETHER OR NOT THIS WOULD HAVE  
BEEN THE SECOND DEGREE  
MISDEMEANOR?

>> IT SHOULD HAVE BEEN REDUCED.  
IT WAS ALWAYS ARGUED SHOULD

HAVE BEEN REDUCED.

>> ALL RIGHT. BECAUSE YOU SAID ONLY A JUDGEMENT OF ACQUITTAL.

>> IT SHOULD HAVE BEEN REDUCED TO \$100.

IF I MISSPOKE WHEN WE MOVED FOR JUDGMENT OF ACQUITTAL WHAT WE WERE ASKING IS GET REDUCED.

WHAT THE THIRD DISTRICT COURT OF APPEALS RELY ON A CASE, JACKSON v. STATE.

>> WHICH IS A THEFT STATUTE.

>> WHICH IS THEFT STATUTE.

WHAT JACKSON v. STATE HELD IN A RARE CASE WHICH I WOULD SUBMIT TO THE COURT WHICH WHAT CREATES THE PROBLEM HERE, WHAT IS A RARE CASE?

WHEN DOES AN APPELLATE COURT KNOW WHEN IS THE RARE CASE THAT THE STATE DOESN'T HAVE TO DO WHAT THE UNITED STATES CONSTITUTION IS ALWAYS REQUIRED, WHICH IS TO SUBMIT PROOF BEYOND A REASONABLE DOUBT WHICH IS WHAT IS MISSING IN THIS CASE.

WHAT THE COURT IN JACKSON DID THEY RELIED UPON A STATUTE, 810.012 PAREN 10-B I BELIEVE IT IS.

THAT STATUTE DOES NOT SAY IN OUR, IN OUR BELIEF DOESN'T SAY WHAT THE SECOND DISTRICT SAID IT SAID.

WHAT THAT STATUTE SAID IS IF VALUE CAN NOT BE ASCERTAINED THE JURY CAN LOOK TO MINIMUM VALUE.

THAT STATUTE DOES NOT SAY WHEN THE STATE OF FLORIDA DOESN'T DUVAL YOU, THAT YOU COULD THEN

USE YOUR COMMON SENSE AND APPLY  
AL RARE CASE AND SAY IN THIS  
RARE CASE WE'RE GOING TO  
ALLEVIATE THE STATE OF THEIR  
RESPONSIBILITY OF PROOF BEYOND  
A REASONABLE DOUBT.

>> DID THE DEFENDANT TELL THE  
TRIAL COURT THAT?

>> WHAT THE DEFENDANT TOLD THE  
TRIAL COURT NOT AS ARTICULARLY  
MAYBE THEY SHOULD HAVE WHAT THE  
DEFENDANT TOLD THE TRIAL COURT  
AND WHAT THE TRIAL COURT ITSELF  
RECOGNIZED BECAUSE THE TRIAL  
JUDGE EVEN AFTER THE VERDICT I  
AM EXTREMELY TROUBLED THERE IS  
NO EVIDENCE IN THIS CASE AS TO  
VALUE.

AND THE DEFENDANT FILED A  
MEMORANDUM OF LAW AFTER THE  
CASE SPECIFICALLY, THE STATE  
ARGUED JACKSON.

THE DEFENDANT ARGUED AGAINST  
JACKSON.

THIS WAS ALL PRESENTED TO THE  
TRIAL JUDGE.

AND IT IS OUR CONTENTION THAT  
THIS COURT NOW HAS TO CONSIDER,  
A, WHETHER TO OVERRULE JACKSON  
WHICH WE WOULD SUBMIT THE COURT  
SHOULD FOR SEVERAL REASONS.  
NUMBER ONE, THE STATUTE DOES  
NOT SAY WHAT THE COURT IN  
JACKSON SAID IT SAYS.

AND NUMBER TWO, IT HAS CREATED  
A COMPLETELY UNWORKABLE RULE.  
IT IS IMPOSSIBLE TO APPLY  
JACKSON.

THE STATE IN THIS CASE ARGUES  
TO THE COURT, WELL IN DADE  
COUNTY WHERE THERE IS HURRICANE  
RESISTANT HURRICANE SHUTTERS,

PEOPLE IN DADE COUNTY KNOW ABOUT HURRICANE SHUTTERS. AND THEREFORE, THE JURY HAD THE RIGHT TO GUESS AND SPECULATE WHAT THE DAMAGES ARE. WOULD THE SAME RESULT OCCUR IN ORLANDO OR IS THE STATE'S POSITION NOW DIFFERENT BECAUSE IN ORLANDO THEY DON'T KNOW ABOUT HURRICANE SHUTTERS? THE STATE ALSO, THE RULING IN JACKSON SEEMS TO INDICATE THAT THE TRIAL JUDGE'S LIFE EXPERIENCE BECAUSE THAT IS WHAT GETS YOU PAST THE JUDGEMENT OF ACQUITTAL. ARE THE JUDGE'S LIFE EXPERIENCES THE SAME AS THE JUROR'S LIFE EXPERIENCES? AND HOW DO WE KNOW -- >> IN THIS CASE, I WAS, MAYBE I WILL ASK THE STATE THIS QUESTION, THEY HAD SOME EVIDENCE OF TEMPORARY REPAIR AND THE, AND THE JUDGE SAID NO, WE'RE NOT GOING TO ALLOW YOU TO PUT TEMPORARY REPAIR IN. THERE IS NO INDICATION THAT THE STATE COULDN'T HAVE TRIED, THAT THEY WEREN'T ON NOTICE THIS WAS AN ISSUE. THAT THEY COULD HAVE PUT IN WHAT THE DAMAGE WAS. >> AS A MATTER OF FACT WHAT THE JUDGE SAID, YOU CAN'T DO BOTH. YOU CAN'T INTRODUCE TEMPORARY COSTS AND PERMANENT COSTS. THE STATE DECIDED THEN WE'LL INTRODUCE NOTHING. THIS WAS VERY SIMPLE. AT the RESTITUTION HEARING THE STATE INTRODUCED THE EVIDENCE.

IT WASN'T HARD TO DO.  
THEY CHOSE NOT TO DO IT.  
AND THE POINT IS, THAT IF WE'RE  
GOING TO CONTINUE WITH THIS  
RULE THAT'S OBTAINED IN JACKSON  
THE QUESTION BECOMES, WHEN WE  
PICK JURIES NOW DO WE NEED TO  
ASK JURORS WHAT THEIR LIFE  
EXPERIENCES ARE?  
ARE YOU FAMILIAR WITH GLASS  
RESISTANT HURRICANE SHUTTERS?  
I RECOGNIZE IN JACKSON, JACKSON  
WAS AN EASY CASE AND  
UNFORTUNATELY MAY HAVE CREATED  
BAD LAW.

EVERYONE IN JACKSON KNEW THAT  
THE YACHT WAS WORTH OVER \$100.  
THERE WAS NO DISPUTE ABOUT THAT  
THE QUESTION IS, BY ALLOWING  
THE RULE THAT SAYS IN THE  
FUTURE WE'RE GOING TO SAY IN  
RARE CASES, NOT DEFINE WHAT THE  
RARE CASES ARE BUT JUST SAY IN  
RARE CASES WE'RE GOING TO ALLOW  
JURIES TO SPECULATE ABOUT  
DAMAGES, WE NOW GET TO THE  
OTHER SPECTRUM WHICH IS THIS  
CASE.

>> THIS WOULDN'T BE A RARE,  
THIS WOULDN'T BE, THAT'S WHY I  
WANTED TO ASK YOU ABOUT THE  
STATE.

THE STATE NEVER EXPLAINED WHY  
IT COULDN'T PUT IN EVIDENCE OF  
THE DAMAGE?

DID THEY EVER OFFER THAT?

>> I THINK THERE WAS ARGUMENT,  
TO BE CANDID WITH THE COURT, IF  
YOU SAY I NEED TEMPORARY COSTS  
I DON'T AGREE WITH YOU.

I'M NOT PUTTING IT IN.

THEY HAD EVIDENCE OF BOTH.

AS A MATTER OF FACT THE RECORD SEEMS TO INDICATE THEY COULD HAVE PUT IN THE TEMPORARY COSTS.

>> THE RECORD INDICATES THAT THEY HAD THE MAINTENANCE OR THE FACILITY MANAGER AND I THINK THEY THOUGHT, HE SAID I DON'T KNOW.

>> WHICH ALSO GETS, WHICH CREATES ANOTHER INTERESTING ISSUE, WHICH HE SAYS HE DOESN'T KNOW BUT YET WE'RE SUPPOSED TO ASSUME SIX JURORS IN DADE COUNTY DID KNOW.

>> OKAY.

>> WE GO TO A RESTITUTION HEARING ON PAGE 43.

HOW MUCH DOES THE RESISTANT GLASS COST?

THIS IS THE PERSON WHO PUT THE GLASS IN.

HIS TESTIMONY IS THAT IT VARIES.

I CAN'T TELL YOU.

IT IS ACCORDING TO THE SEASON.

I THINK WHAT HAPPENS SOMETIMES, WE TAKE A BIG JUMP BETWEEN LAWYERS, AND MIDDLE CLASS AMERICANS WHO BUILD HOUSES AND KNOW ABOUT GLASS RESISTANT GLASS AND PEOPLE LIVING IN HOUSING PROJECTS WHO WOULDN'T EVEN KNOW THAT THERE IS SUCH A THING AS A GLASS RESISTANT GLASS, LET ALONE HOW MUCH IT COSTS.

IT IS A MAJOR, MAJOR LEAP.

SO IT IS OUR CONTENTION, NUMBER ONE, THIS COURT SHOULD OVERRULE JACKSON BECAUSE JACKSON SPECIFICALLY VIOLATES WHAT THIS

COURT AS CONSISTENTLY HELD IS,  
YOU CAN'T INFER DAMAGES.

>> LET ME MAKE SURE I  
UNDERSTAND BECAUSE IT SEEMS TO  
REALLY STRANGE TO ME THAT THE  
STATE, AFTER THE RULING ABOUT  
THE TEMPORARY THING, NEVER  
ATTEMPTED TO DO ANYTHING ELSE.  
THE ACTUAL REPAIRS HAVE BEEN  
DONE, AT THE TIME OF THIS  
TRIAL?

>> CORRECT. THE REPAIRS WERE DONE.  
WHAT HAPPENS IS, BECAUSE THE  
GLASS BROKE.

IT COST \$8,000 TO PUT IN WOOD  
AND TEMPORARY GLASS.  
COUPLE WEEKS LATER, I BELIEVE  
THE RECORD SHOWS, I'M NOT SURE  
OF THE TIME.

WAY BEFORE THE TRIAL THEY THEN  
PUT IN THE HURRICANE RESISTANT  
GLASS.

>> SO, THERE WAS A BILL FOR  
THAT AND THERE WOULD HAVE BEEN  
PEOPLE WHO ACTUALLY DID THE  
REPAIR WORK?

>> WHICH THEY DID AT THE  
RESTITUTION HEARING.  
THEY INTRODUCED THAT AT THE  
RESTITUTION HEARING SO WE KNOW  
NOW THAT THEY WERE THIS  
ABLE TO DO IT. SO REALLY --

>> IS THAT IN THE RECORD?  
>> THE RESTITUTION HEARING?  
YES.

>> WHAT DOES IT SHOW AMOUNT OF  
RESTITUTION?

>> \$48,000 FOR THE GLASS.

>> IF THIS CASE IS REDUCED TO  
WHAT YOU CONCEDE TO BE A  
MISDEMEANOR --

>> CORRECT.

>> -- DOES THE RESTITUTION  
STAND OR DOES THERE HAVE  
TO BE NEW RESTITUTION?

>> WE RAISED THE RESTITUTION  
AND LOST.

I DON'T THINK THAT STANDS.  
THIS IS JUST A MATTER OF  
WHETHER OR NOT --

>> IS HE SERVING HIS SENTENCE  
NOW?

>> HE COMPLETED HIS SENTENCE.  
I BELIEVE HE HAS PROBATION.

>> HE SERVED HOW LONG IN  
PRISON?

>> HE RECEIVED A THREE-YEAR  
SENTENCE.

HOW LONG HE ACTUALLY SERVED I  
DON'T KNOW BUT, I'M PRACTICALLY  
POSITIVE HE IS NO LONGER IN  
PRISON.

HE HAS BEEN RELEASED.

SO I THINK WHAT'S LEFT FOR THE  
COURT IS, NUMBER ONE, WHETHER,  
AND ONE OTHER THING --

>> LET ME UNDERSTAND ABOUT THE  
RESTITUTION.

MAYBE IT IS NOT AT ISSUE HERE  
BUT I'M JUST CURIOUS.

IS IT YOUR POSITION IF A  
CONVICTION IS REVERSED AND  
THERE'S RESTITUTION THAT WAS  
ORDERED BASED ON THE  
CONVICTION, THAT  
NOTWITHSTANDING THE REVERSAL OF  
THE CONVICTION, THERE IS NO  
RELIEF AVAILABLE FROM THE  
RESTITUTION ORDER?

>> I DON'T THINK I WOULD BE  
GETTING THE CONVICTION REVERSED  
HERE BECAUSE IT WOULD BE  
REDUCED TO A MISDEMEANOR.  
SO THE RESTITUTION WOULD BE THE

CRIMINAL MISCHIEF.

THE OTHER ISSUE I THINK NEEDS  
TO BE DISCUSSED --

>> BUT, WOULD IT THEN BE  
REDUCED TO \$100?

>> NO, BECAUSE THERE WAS A  
RESTITUTION HEARING.

THERE WAS A SUBSEQUENT HEARING  
THREE WEEKS LATER.

>> SO ON A MISDEMEANOR CHARGE,  
A DEFENDANT, IF IN FACT HE HAD  
BEEN CONVICTED OF THE  
MISDEMEANOR, AND YOU WENT TO A  
RESTITUTION HEARING WOULD THE  
RESTITUTION HAVE BEEN LIMITED  
TO \$100?

>> TO BE CANDID WITH THE  
THOUGHT I HAVEN'T THOUGHT OF  
THE ANSWER TO THAT.

I WOULD, IF THE JURY ONLY FOUND  
UNDER \$100, THE RESTITUTION MAY  
BE LIMITED TO UNDER \$100 BUT  
I'M NOT SURE OF THAT.

I'M NOT SURE OF THAT ANSWER.

>> THAT IS NOT WHAT THE  
RESTITUTION STATUTE SAYS  
THOUGH, CORRECT?

THERE IS NO LIMITATION ON  
RESTITUTION.

>> I'M NOT SURE OF THAT ANSWER  
BUT I DON'T THINK THERE IS ANY  
LIMIT TO THE RESTITUTION.

I THINK THE RESTITUTION IN THIS  
CASE WAS APPEALED AND WE LOST.

SO IN CONCLUSION I THINK THERE  
WILL ARE BASICALLY THREE THINGS  
THE COURT HAS TO RESOLVE.

NUMBER ONE, SHOULD JACKSON  
SURVIVE.

OUR CONTENTION IT CLEARLY  
SHOULDN'T SURVIVE BECAUSE IT  
CREATES A COMPLETELY UNWORKABLE

RULE.

NUMBER TWO, IF JACKSON DOES SURVIVE, AND THERE ARE RARE CASES WHERE IT SHOULD BE APPLIED, THIS IS NOT THE RARE CASE.

IF THE COURT LOOKS AT THE CASES WHERE JACKSON HAS BEEN APPLIED, AND HAS ONLY BEEN THREE IN THE STATE OF FLORIDA WHERE IT HAS APPLIED IT, OF ALL CASES WHERE THERE IS EVIDENCE OF VALUE INTRODUCED TO THE JURY.

I BELIEVE THERE WAS A CASE JUDGE CANADY WROTE.

A CELL PHONE COST \$450.

THERE WAS TESTIMONY THAT THE CELL PHONE WAS BRAND NEW.

IT WAS ONLY USED THREE MONTHS.

THE COURT SAID WITH THE JURY'S LIFE EXPERIENCE THEY CAN DETERMINE IT WAS OVER \$100.

>> AGAIN, THAT WAS WITH A THEFT.

>> THAT WAS WITH THEFT.

RIGHT.

>> BUT IT HAS A SPECIFIC PROVISION TO THAT.

>> IT HAS A SPECIFIC PROVISION THAT DOESN'T EXIST HERE.

EVEN IF IT WAS GOING TO TRANSFER OVER THE CRIMINAL MISCHIEF CASE THERE HAS NEVER BEEN A CASE OTHER THAN THIS CASE AND THE CASE IN ILLINOIS WHERE THE STATE INTRODUCES NO EVIDENCE AND JUST SAYS, GUESS WHAT, YOU CAN GUESS WHAT THE VALUE IS. MAYBE YOU CAN GUESS WHAT THE VALUE OF A YACHT IS BUT NO ONE COULD HAVE GUESSED WHAT THE VALUE OF THESE HURRICANE

RESISTANT SHUTTERS WERE AND  
BECAUSE NO ONE COULD HAVE  
GUESTED THIS IS NO DIFFERENT  
THAN THE CARNLEY CASE BACK  
IN 1919 IN CARNLEY  
THREE HOGS WERE STOLEN.  
THE VALUE OF THE HOGS PER  
POUND WERE BROUGHT TO THE JURY.  
THE WITNESS TESTIFIED THAT THE  
HOGS WEIGHED 100 POUNDS.  
EVERYBODY KNEW THAT. MAYBE NOT  
SOMEONE FROM NEW YORK LIKE ME  
THE HOGS WEIGHED 100 POUNDS.  
WHAT THE COURT HELD IS WE  
CAN'T INFER THAT.  
WE CAN'T INFER THAT THE HOGS  
WEIGH OVER 100 POUNDS THAT IS  
WHAT THE STATE IS ASKING YOU TO  
DO IN THIS CASE.

>> DO WE HAVE A CASE INVOLVING  
THE THIRD DISTRICT WHERE  
THEY'RE TALKING ABOUT COCAINE  
AND YOU CAN USE YOUR COMMON  
SENSE HOW MUCH COCAINE IS  
WORTH?

IS THAT UP HERE ON APPEAL?

>> I THINK THERE WAS A CASE YOU  
CAN USE THE COMMON SENSE AS TO  
THE WEIGHT.

>> THE WEIGHT.

>> THE WEIGHT.

I WOULD SUBMIT THERE IS NO WAY  
YOU CAN USE YOUR COMMON SENSE  
ON HURRICANE SHUTTERS.

>> DIDN'T THEY SHOW A VIDEO OF  
THE CRASH TO THE JURORS?

>> YES, SIR.

>> SO THEY COULD SEE IT WAS  
EXTENSIVE DAMAGE?

>> THEY SAW FOUR, BIG,  
HURRICANE RESISTANT WINDOWS  
COMING DOWN.

>> OKAY.

>> THAT IN NO WAY TELLS THEM HOW MUCH THOSE HURRICANE RESISTANT SHUTTERS WERE WORTH AND IN NO WAY DEALS WITH THE FACT THAT THERE MAY HAVE BEEN A LARGE MAJORITY OF THOSE JURORS HAD NO IDEA WHAT THE DIFFERENCE WOULD HAVE BEEN BETWEEN A HURRICANE-RESISTANT SHUTTER --

>> THEY MIGHT NOT, THEY MIGHT NOT HAVE KNOWN THE COST TO REPLACE THEM BUT THEY SURELY KNEW IT PROBABLY COST MORE THAN \$1,000?

>> I WOULD SAY THAT THEY WOULD HAVE TO SPECULATE.

>> THAT'S WHAT I SAY.

>> THEY PROBABLY HAD NO MORE KNOWLEDGE THAT THE WINDOWS WERE OVER \$1,000 THAN THAT JUROR BACK UNTIL 1919 OBVIOUSLY KNEW THOSE COWS, THOSE HOGS WEIGHED MORE THAN 33 POUNDS.

THE POINT IS THAT THIS COURT SAID YOU CAN'T SPECULATE.

WHEN THE COURTS LOOK TO DETERMINE, BASICALLY TWO RULES. THERE IS ONE RULE WHERE YOU CAN SPECULATE.

THAT IS WHAT THE STATE'S ASKING NOW.

OR THERE IS THE SECOND RULE WHICH IS EXISTED SINCE THE BEGINNING OF THIS CONSTITUTION, WHICH IS THAT IF THE STATE WANTS TO PROVE A CRIME, PROVE IT BEYOND A REASONABLE DOUBT.

THAT IS WHAT IN RE: WINSHIP STANDS FOR.

THAT IS WHAT ALL THE CASES DECIDE.

IF WE'RE NOT ASKING STATE TO  
PROVE BEYOND A REASONABLE DOUBT  
WE'RE NOT BACK UP HERE WITH THE  
NEXT CASE.

WHAT IS A RARE CASE?

THERE SHOULDN'T BE A RARE CASE.  
EVERY CASE IS THE SAME.

>> THIS ISN'T RARE ANY WAY.

YOU WOULD ARGUE IT --

>> IT IS NOT A RARE CASE  
ANYWAY. WE WOULD ASK  
THE COURT REVERSE  
THE OPINION OF THE THIRD  
DISTRICT COURT OF APPEALS.

THANK YOU.

>> MAY IT PLEASE THE COURT.

MY NAME IS FORREST ANDREWS,  
ASSISTANT ATTORNEY GENERAL ON  
BEHALF OF THE STATE OF FLORIDA.

THE ISSUE THE ARGUE COUNSEL  
SELL THERE WAS LACK OF EVIDENCE  
PRODUCED AT TRIAL.

THE STATE DISAGREES.

THERE WAS EVIDENCE PRODUCED AT  
TRIAL.

>> AS TO VALUE?

>> AS TO DAMAGE.

>> AS TO VALUE?

>> I THINK VALUE AND DAMAGE ARE  
DIFFERENT, DIFFERENT TYPES OF  
EVIDENCE.

VALUE IS GEARED TOWARDS THE  
THEFT STATUTE WHEREAS DAMAGE IS  
GEARED TOWARDS THE CRIMINAL  
MISCHIEF STATUTE.

>> YOU DON'T HAVE TO HAVE AN  
AMOUNT?

>> I DON'T BELIEVE A SPECIFIC  
AMOUNT HAS TO BE INTRODUCED.

>> DOESN'T THE STATUTE SAY THAT  
IT DETERMINES WHETHER YOU'RE A  
FELON BASED UPON AMOUNT?

>> IT SAYS THAT A THRESHOLD,  
CERTAIN THRESHOLD HAS TO BE MET  
BUT DOESN'T SAY A SPECIFIC  
DOLLAR AMOUNT HAS TO BE  
INTRODUCED.

I DON'T, THERE IS NOTHING IN  
THE STATUTE THAT SAYS THAT.

>> BUT ISN'T THAT, FROM A POINT  
OF VIEW, THEFT STATUTE,  
EVERYTHING, I REALIZE THE THEFT  
STATUTE MAY BE A LITTLE BROADER  
BUT THE CRIMINAL MISCHIEF  
STATUTE IS MAKING SOMEONE,  
WHETHER THEY'RE A FELON OR,  
THERE IS, THIS GUY STILL GETS  
NAILED, I MEAN HE GET AS  
MISDEMEANOR AND HE GETS A  
PRETTY HEFTY RESTITUTION AMOUNT  
FOR HIS, WHAT HE DID AND, BUT,  
THE JUDGE, TOLD THE STATE THEY  
HADN'T ESTABLISHED A PRIMA  
FACIE SHACASE THAT THE DAMAGE  
WAS \$1,000 OR MORE.

THAT WAS WHERE THE JUDGE WAS  
GOING.

WHAT EARTHLY REASON WOULD THE  
STATE HAVE IN THIS CASE WHERE  
DAMAGE IS AN ESSENTIAL ELEMENT,  
WHICH WOULD YOU AGREE OF FELONY  
CRIMINAL MISCHIEF NOT TO  
INTRODUCE EVIDENCE OF THE  
DAMAGE?

>> AND I THINK THE COURT'S  
CONCERN, EVEN THOUGH A  
SPECIFIC, THE COURT WAS LOOKING  
FOR A SPECIFIC AMOUNT AND --

>> BUT THEY HAD, THIS ISN'T  
EVEN, TO FEEL BADLY FOR THE  
STATE HERE, THE STATE HAD, IT  
WAS LIKE AS IF THE PROSECUTION  
GOES, WELL, YOU KNOW, YOU  
DIDN'T LET ME PUT THE TEMPORARY

REPAIRS IN, AND THE JUDGE EXPLAINED WHAT THE JUDGE'S RULING WAS.

>> AND I THINK, AND THAT PART OF THE JUDGMENT OF ACQUITTAL THE STATE WAS MISTAKEN AS TO WHAT THE CASE THAT THE DEFENSE CITED WAS.

>> SO THE DEFENDANT ALREADY SERVED A SENTENCE.

HE HAS RESTITUTION, ISN'T IT FROM A POLICY POINT OF VIEW FOR THE FUTURE OF THIS STATE AND PROSECUTIONS FOR CRIMINAL MISCHIEF NOT TO LEAVE THIS VAGUE STANDARD THEY CAN LOOK AT LIFE EXPERIENCE BUT SAY THEY HAVE GOT TO ESTABLISH WHEN IT IS JUST LIKE OTHER STATUTES WHERE THE LEVEL OF CRIME IS BASED ON AN AMOUNT OF MONEY, THAT THE STATE HAS TO PUT ON COMPETENT SUBSTANTIAL EVIDENCE OF THAT AMOUNT?

>> IN A CASE LIKE THIS I BELIEVE THERE WAS COMPETENT SUBSTANTIAL EVIDENCE.

AS LONG AS THE STATE, THE TYPE OF EVIDENCE THAT WAS PUT IN ESPECIALLY WITH THE VIDEO, THIS IS, THIS IS SHOWING THAT --

>> WHY COULDN'T THE STATE JUST COME UP WITH AN AMOUNT?

>> THEY SHOULD HAVE INTRODUCED A SPECIFIC AMOUNT.

>> IF THIS HAD BEEN A SIMPLE CASE, DIFFERENT PEOPLE MIGHT PLACE DIFFERENT VALUES ON DIFFERENT THINGS.

THIS WAY THERE IS NO DOUBT ABOUT IT.

THAT IS WHAT THE REASONABLE

DOUBT MEANS, RIGHT?

>> RIGHT.

I THINK WHEN YOU HAVE THE LOOK AT CASES CITED BY THE DEFENSE WHERE THE PROPERTY AT ISSUE WASN'T SELF-EVIDENT, THAT THE DAMAGE EQUALED OR EXCEEDED \$1,000 THAT IS WHEN THE SPECIFIC DOLLAR AMOUNT WOULD COME INTO PLAY BECAUSE IT IS VERY CLOSE TO THE MINIMUM THRESHOLD.

WHEN YOU HAVE A CASE LIKE THIS WHERE YOU HAVE A VIDEO OF A GUY DRIVING THROUGH FOUR HURRICANE IMPACT RESISTANT GLASS DOORS, DAMAGING ELECTRONIC AUTOMATED SYSTEM --

>> NOT LIKE THE STATE THOUGHT THEY HAD TO RELY ON THAT. THE STATE HAD, WAS TRYING TO PUT ON TEMPORARY REPAIRS. THEN THE STATE PUT ON THE FACILITIES MANAGER AND WAS ASKED THE QUESTION, WHAT WAS THE DAMAGE.

WHAT DOES THE FACILITIES MANAGER SAY?

>> HE SAID HE DIDN'T KNOW.

>> IT DOESN'T, YOU'VE GOT A SITUATION HERE WHERE IT IS REALLY, YOU KNOW, NOT THAT I'M SYMPATHETIC TO EITHER SIDE FRANKLY BUT IN TERMS OF TRYING TO KEEP THE, A PRINCIPLE THAT WE HAVE DUE PROCESS, GOT ESSENTIAL ELEMENTS OF THE CRIME, WE OUGHT TO KEEP THE STATE TO ITS BURDEN OF PROOF. SEEMS THAT IS THE BETTER RULE OF LAW TO, NOT REQUIRE THIS LIFE EXPERIENCE EXCEPTION.

AND THAT'S, YOU KNOW, BECAUSE,  
THE STATE DIDN'T DO WHAT IT  
SHOULD HAVE DONE.

>> I DISAGREE.

I THINK THE STATE DID DO WHAT  
IT SHOULD HAVE DONE.

WE'RE FOCUS ON ONE THING THAT  
THE STATE DIDN'T DO.

WHETHER THEY SHOULD HAVE IS  
DEBATABLE.

BUT THE FACT MATTER THEY PUT ON  
SUBSTANTIAL EVIDENCE OF NATURE  
OF THESE DOORS.

THESE AREN'T ORDINARY DOORS  
THAT THE DEFENDANT DESTROYED I  
COULD SAY, I DON'T KNOW, MAYBE  
IT IS JUST A COUPLE \$100.

I THINK IT EVIDENT BASED ON THE  
TESTIMONY, BASED ON VIDEO THESE  
WERE UNIQUE, VERY UNIQUE OR  
EQUALED OR EXCEEDED \$1,000.

SO THE STATE IS STILL BEING PUT  
TOWARDS ITS BURDEN OF  
PROOF BECAUSE IT ESTABLISHED --

>> A SIMPLE CASE.

PLAINTIFFS HAVE TO PUT ON WHEN  
THERE IS DAMAGE TO A VEHICLE,  
AND I JUST CAN'T IMAGINE THE  
CASE WHERE THE ARGUMENT WOULD  
BE, THEY SHOW THE DAMAGES AND  
SAY YOU RELY ON YOUR LIFE  
EXPERIENCE TO DETERMINE WHAT  
THESE ACTUAL PECUNIARY LOSSES.  
IS THAT WHAT, I DON'T THINK  
THERE IS ANY OTHER REALM WHERE  
THAT WOULD EVER OCCUR.

>> AND THAT'S NOT WHAT WE'RE  
ASKING.

WE'RE NOT SAYING THAT THE JURY  
SHOULD DETERMINE EXACT AMOUNT  
BECAUSE NOBODY CAN DETERMINE  
THE EXACT AMOUNT.

WHAT THE CRIMINAL MISCHIEF  
STATUTE IT IS A THRESHOLD.  
DOES THE JURY BELIEVE IT IS  
\$1,000 OR MORE WHICH IS MUCH  
EASIER DETERMINATION TO MAKE  
THAN SAYING WELL, I THINK IT  
WAS \$15,233.18.

>> IF WE ACCEPT THE REASONING  
PROBLEM IT SEEMS TO ME  
TRADITIONALLY CRIMINAL LAW HAS  
USED LEVELS AS DIFFERENTIATING  
BETWEEN DIFFERENT VIOLATIONS  
AND WHAT'S A FELONY, WHAT'S A  
MISDEMEANOR.

SO IN IT IS APPLICABLE HERE,  
THEN IT WOULD BE APPLICABLE IN  
EVERY CRIMINAL SITUATION WHERE  
THERE IS A DELINEATION BASED  
UPON AMOUNTS.

FOR EXAMPLE, ALL OF THE DRUG  
POSSESSION, DEALING ALL OF  
THOSE, YOU WOULDN'T HAVE TO  
HAVE ANY EVIDENCE AS TO AMOUNTS  
OR ANYTHING.

JUST SAY WELL, IT WAS IN THAT  
PICTURE.

SO, IT WAS PROBABLY.

THAT SEEMS TO BE AN AWFUL  
SLIPPERY SLOPE.

AND IT IS IN THE THEFT ONE FOR  
A VERY GOOD REASON.

IT IS ACTUALLY IN THE STATUTE  
AND IT MAKES REFERENCE TO THOSE  
THINGS THAT YOU CAN'T REALLY  
PUT A VALUE ON.

AND THAT IS SOMETHING LIKE A  
PIECE OF ARTWORK OR SOMETHING  
IS UNIQUE, AN INDIVIDUAL  
SCULPTURE OR SOMETHING LIKE  
THAT.

>> I THINK WHAT ALLEVIATES THAT  
PROBLEM THE FACT THAT YOU WOULD

HAVE TO HAVE A SUFFICIENT DESCRIPTION OF, FOR INSTANCE, IN THE DRUG CASE, IF YOU JUST HAD A BAGGIE OF MARIJUANA AND YOU'RE GOING TO SAY THAT THIS IS TRAFFICKING WEIGHT, THAT IS NOT OBVIOUS.

I THINK JUSTICE PARIENTE REFERING TO A CASE IN THE THIRD DISTRICT, I THINK IT WAS KING IF WE'RE TALKING ABOUT RIGHT CASE, IT WAS BALES.

>> IT WAS A BOX AND VALUE OF COCAINE AND NO ONE THIS COURT HAVE ANY IDEA WHAT VALUE COCAINE SELLS FOR BUT THEY'RE SAYING A GROUP OF CITIZENS OFF THE STREET, MAYBE THAT IS THE CASE THAT THEY WOULD NO MORE.

I DON'T KNOW ANYBODY SITTING AT OUR TABLE WOULD KNOW WHAT THE VALUE OF COCAINE WAS.

>> I'M NOT SAYING THAT YOU HAVE --

>> CAN'T DISCLOSE THOSE DELIBERATIONS.

>> I'M SORRY.

I'M NOT SAYING THAT YOU WOULD HAVE NO KNOW PRECISELY A KILO COSTS \$15,000.

>> SURE YOU WOULD.

SURE YOU WOULD.

BECAUSE YOU HAVE WITH WHERE IT DELINEATES.

IT DELINEATES IT BASED UPON CERTAIN NUMBERS.

>> WE'RE TALKING ABOUT, WE'RE TALKING ABOUT WEIGHT IN THAT SITUATION.

>> RIGHT.

>> IF YOU HAD BALES AND BALES AND

BALES YOU HAD A THRESHOLD I  
THINK IT IS REASONABLE AND  
COMMON SENSE YOU COULD  
DETERMINE --

>> WOULD IT BE COMMON SENSE FOR  
THE STATE TO BRING IN SOMEBODY  
TO TELL YOU WHAT THAT WEIGHT  
WAS, WHAT THE VALUE WAS?

>> THEY CERTAINLY COULD.

>> WOULDN'T THAT BE THE EASIER  
CASE?

>> THAN IN OTHER CASES --

>> SHOULDN'T THAT BE THE  
STATE'S POLICY?

>> I THINK THAT'S THE BEST  
PRACTICE.

>> OKAY.

>> HOWEVER, IN A CASE THAT IS  
CLOSE, BUT IN A CASE LIKE THIS  
WHERE NOT, WHERE ITS OBVIOUS  
THAT THE DAMAGE --

>> IF IT IS SO OBVIOUS IT  
SHOULD BE EASIER, EASILY DONE I  
WOULD THINK.

>> BUT FOR, AND I'M NOT  
EXCUSING IT BUT FOR A MISTAKE,  
THEY DIDN'T DO IT.

BUT BECAUSE OF THE NATURE AND  
EXTENT OF THE DAMAGE IN THIS  
CASE I DO BELIEVE THAT IT  
EQUALS \$1,000.

>> THE PROBLEM IS, THIS, I HAVE  
TO LOOK BACK ON JACKSON, BUT  
THINK WHAT THE POINT BEING MADE  
BY MR. KALTER IS THAT  
CAUGHTER, LIFE EXPERIENCE  
WHAT DO YOU DO WITH  
JURY ON VOIR DIRE?

YOU'RE TALKING ABOUT SOMETHING  
THAT IS, I REMEMBER GOING TO A  
BRIDAL SHOWER AND SOMEBODY  
ASKING ME WHAT WAS, YOU KNOW,

HOW MUCH IS THE VALUE OF ALL THIS FOOD AND A SHOPPING BAG? I HAD LESS REQUESTED THAN SOMEONE ELSE. SO YOU GET INTO SOMETHING WHERE YOU'RE ASSUMING SOMETHING. NOW I MEAN IF THIS WAS THAT HE HAD CRASHED A, YOU KNOW A CORPORATE JET, YOU KNOW YOU MIGHT GET TO SUCH A POINT THAT IT WOULD SO ABSURD THAT YOU SAY, COME ON, AND VALUE IS \$100, OR OVER, YOU MIGHT, AND THAT YOU WOULD HAVE THAT EXTREME SITUATION BUT AGAIN, YOU WOULDN'T REALLY EVER, SO IT IS NOT, IT IS THAT EXTREME CASE THAT MIGHT BE OKAY BUT WHAT WE'RE CONCERNED ABOUT IS A RULE THAT THEN IS RELIED ON IN TRIAL COURTS AROUND THE STATE TO SAY, NO, THE STATE DIDN'T HAVE TO DO THIS. THEY CAN RELY ON THEIR LIFE EXPERIENCE. I THINK MR. KALTER MADE A GOOD POINT THERE. THAT IS NOT THE WAY THE STATUTE WAS REALLY MEANT TO BE SATISFIED. SO HOW DO YOU ANSWER THAT? WHICH IS, DOESN'T SEEM SO BAD HERE BECAUSE BUT, YOU KNOW, IN ANOTHER CASE MAYBE LIFE EXPERIENCE MIGHT BE A LITTLE MORE QUESTIONABLE? >> WELL I THINK WHERE IT IS QUESTIONABLE THIS RULE OBVIOUSLY WOULDN'T APPLY AND CASES WHERE THE DEFENSE CITED IT WAS QUESTIONABLE SO IT WASN'T APPLIED BUT --

>> ARE YOU SAYING THAT THE JURY WOULD BE TOLD ALTHOUGH THE STATE HAS PUT ON NO EVIDENCE OF THE DAMAGE HERE, YOU MAY USE YOUR LIFE EXPERIENCE TO DETERMINE WHETHER THE AMOUNT EXCEEDS \$10,000?

>> I THINK THE JURIES ARE ALREADY INSTRUCTED ON SOMETHING SIMILAR TO THAT WHERE THEY'RE INSTRUCTED TO USE THEIR COMMON SENSE AND APPLY IT TO THE EVIDENCE.

SO I DON'T THINK THIS RULE DOES ANYTHING MORE THAN SAY USE YOUR COMMON SENSE, APPLY IT TO THIS EVIDENCE WHERE SUBSTANTIAL AND COMPETENT AND SHOWS THAT THE DAMAGE EQUAL OR EXCEEDED \$1,000.

>> YES.

>> GUESS WHAT I'M WONDERING, SEEMS TO ME THAT BEING CONVICTED OF A FELONY IN THE STATE OF FLORIDA, IT MEANS SOMETHING, TO BE A CONVICTED FELON.

YOU'RE ASKING US TO ADOPT A RULE OR APPROVE A RULE THAT ALLOWS JURORS TO COME IN AND GUESS ON THE SIGNIFICANT PORTION OF A STATUTE THAT MAKES IT A FELONY, YOU KNOW WHAT I'M SAYING? THAT IS WHAT CONCERNS ME, WE'RE GUESSING SOMEBODY INTO BEING A CONVICTED FELON. TO ME, BEING A FELON STILL MEANS SOMETHING.

>> AND I AGREE WITH THAT BUT I DON'T THINK THE JURY IS HE IS ABOUTING HERE. BUT A GUESS IS REALLY A

CONCLUSION WITHOUT ANY BASIS.

HERE THERE IS A BASIS FOR THE  
JURY'S VERDICT WHICH IS --

>> DEPENDS ON HOW YOU FILE IT.

IF I THROW A ROCK THROUGH A CAR  
AND BREAK THE WINDOW, LET'S SAY  
I GO TO A GATOR GAME AND FIND  
URBAN MEYER'S CAR AND THROW A  
ROCK THROUGH IT BECAUSE HE  
LOST, SOME PROSECUTOR COULD  
CHARGE ME WITH A FELONY,  
ASSUMING THAT THE JURY IS GOING  
TO COME IN AND GUESS THAT WIND  
SHIELD IS GOING TO COST MORE  
THAN \$1,000.

>> IF THE PROSECUTOR IN THAT  
CASE DID CHARGE A PERSON --

>> 250.

>> WITH FELONY CRIMINAL  
MISCHIEF, FIRST OF ALL THIS  
WOULD HAVE TO GO THROUGH THE  
JUDGEMENT OF ACQUITTAL STAGE  
WHERE THE JUDGE IS GOING TO  
LOOK AT THE EVIDENCE, LOOK AT  
WHAT TYPE OF GLASS IT IS AND  
THINGS OF THAT NATURE, EXTENT  
OF DAMAGE.

>> JUDGE WILL SAY IT IS A JURY  
QUESTION. THEY CAN GUESS.

>> BUT UNDER THIS RULE, THIS  
RULE WOULDN'T APPLY TO THAT, IF  
YOU SAY A WINDOW WAS BROKEN, WE  
DON'T KNOW WHAT KIND OF WINDOW  
WAS BROKEN.

IF YOU SAY WHAT KIND OF DOOR  
WAS DAMAGED WE DON'T KNOW WHAT  
KIND OF DOOR.

>> THAT WOULD BE, THAT WOULD BE  
A THROWING A MISSILE INTO A  
CONVEYANCE THAT WOULD BE MORE  
THAN THIRD-DEGREE FELONY.

>> I THINK THE PROBLEM WE'RE

POINTING OUT AND I APPRECIATE YOUR, WHAT YOU'RE DEALING WITH HERE IS THAT WE ANNOUNCE A RULE OF LAW AND THE WAY THEN IT GETS USED IN THE COURTROOMS AROUND THE STATE HAS THE DANGER OF REALLY NOT GIVING EFFECT TO THE LEGISLATURE'S INTENT TO, FOR THE CRIME OF CRIMINAL MISCHIEF. IF IT IS GOING TO BE CHANGED WHERE THERE IS DIFFERENT STANDARD AND FELONY CRIMINAL MISCHIEF IS DAMAGE TO ANY APPRECIATE PROPERTY, WHERE HE DRIVES HIS VEHICLE THROUGH AND ENDANGERS OTHER PEOPLE. THIS IS NOT A INSIGNIFICANT ACT BUT, THERE COULD HAVE BEEN OTHER CHARGES FILED.

SO WE'RE JUST DEALING WITH IS THAT A GOOD, IS THAT APPROPRIATE WAY FOR THE STATE TO ESTABLISH AN ESSENTIAL ELEMENT OF CRIME?

YOU WOULD SAY IT DEPENDS. DEPENDING IS SO MANY VARIABLES THAT THAT'S WHAT CONCERNS ME THAT WE END UP GIVING A VAGUE STANDARD WHEN THERE'S A VERY SIMPLE MONETARY STANDARD THAT THE STATE HAS THE ABILITY TO PRODUCE.

>> AND I THINK WHAT MAKES IT, YOU KNOW, I KNOW THAT THE DISTRICT COURTS HAVE USED THE PHRASE, SELF-EVIDENT AND DISTRICT COURTS HAVE DEFINED IT AS BEING SO OBVIOUS TO DEFY CONTRADICTION WHICH TAKES MANY, A LOT OF THESE RUN OF THE MILL CRIMINAL MISCHIEF CASES OUT OF THAT REALM.

>> SO IF SOMEONE DROVE THEIR CAR INTO MY FRONT DOOR, FOR EXAMPLE, WOULD THE STATE BE ALLOWED TO RELY ON THIS EXPERIENCE IN ORDER TO DETERMINE THE VALUE OF MY FRONT DOOR?

>> WELL WE, IF WE HAVE A VIDEO. IF WE HAPPEN TO KNOW THE NATURE AND QUALITY OF THE DOOR, IF WE JUST SAY IT'S A DOOR, THEN NO, BECAUSE IT COULD BE, JUST A SLAB OF WOOD.

HERE WE KNOW SPECIFICALLY WHAT IT IS AND A UNIQUE MAKEUP OF IT, HURRICANE IMPACT RESISTANT GLASS. AND JUST BY THAT --

>> EVEN WITH THAT, IT SEEMS TO ME WE ARE LEAVING AN AWFUL LOT FOR A JURY TO DETERMINE AND SPECULATE ABOUT.

COST OF GLASS.

A COST OF THE WOOD.

THE COST OF THE LABOR.

I MEAN, YOU KNOW, ALL OF THAT.

>> I DON'T THINK IT IS SOMETHING THAT IS BEYOND THE COMPREHENSION OR UNDERSTANDING OR EXPERIENCE OF THE AVERAGE JUROR.

I'M NOT SAYING THAT THEY HAVE TO HAVE EXPERIENCE WITH COMMERCIAL-SIZED DOORS BUT GO INTO HOME DEPOT, GETTING MATERIALS, DOING HOUSEWORK ANYTHING LIKE THAT WHERE YOU HAVE SOME TYPE OF EXPERIENCE AND YOU CAN COMPARE THAT TO THIS, SAYING --

>> WHAT IF YOU'RE A JUROR WITHOUT THAT KIND OF EXPERIENCE, YOU MIGHT STAY AWAY

FROM HOME DEPOT.

>> JURORS ARE DETERMINED TO  
HAVE A DEGREE OF LIFE  
EXPERIENCE.

>> SHOULDN'T THE BURDEN BE ON  
THE STATE TO PRESENT THAT TO  
THE JURY?

JUST AS SHE SAID.

>> AS FAR AS THE NATURE --

>> THE COST, VALUE.

>> NATURE, THEY DID.

THEY DIDN'T DO THE EXACT VALUE  
BUT AS FAR AS NATURE AND  
EVERYTHING ELSE, THEY DID  
EVERYTHING EXCEPT FOR THE EXACT  
AMOUNT.

>> ARE YOU TELLING ME THAT IF  
I'M A JUROR, THAT I'M ON A JURY  
BRING IF THERE WERE VOIR DIRE,  
SOMEONE SAID I GO TO HOME  
DEPOT, SOMEONE DIDN'T, THEY  
WOULD BE ABLE TO GO BACK AND  
SAY, I JUST DID, I'M ON HERE  
BECAUSE I CAN TELL YOU I DO  
HOME REPAIRS ALL THE TIME AND I  
KNOW THIS, ISN'T THAT EXACTLY  
WHAT WE TRY TO FERRET OUT IN  
VOIR DIRE?

THAT PEOPLE DON'T USE THEIR  
OWN, NOT THE COMMON SENSE OF,  
TODAY IS NIGHT AND DAY AND IT  
IS COLD OUT BUT ON SOMETHING  
SOME PEOPLE KNOW ABOUT AND SOME  
PEOPLE DON'T KNOW ABOUT?

I SEE A DANGER IN WHAT YOU JUST  
SAID, WE WOULD EXPECT SOMEBODY  
TO HOME DEPOT WOULD LEAD THE  
JURY WHETHER IT IS A FELONY OR  
NOT.

>> I'M GIVING THAT AS AN  
EXAMPLE OF EVERYDAY EXPERIENCE.  
AS FAR AS SELECTING JURORS

SPECIFICALLY FOR THAT PURPOSE  
THAT WOULD BE IMPROPER.

WHEN THE JUROR GETS BACK IN THE  
JURY ROOM, THERE IS NUMBER, IN  
ANY SINGLE CASE THAT IS PART OF  
COMMON SENSE IN LIFE THAT  
JURIES USE IN EACH CASE.

>> BACK IN OLD DAYS, THAT IS  
HOW THEY SELECTED JURORS THE  
ONE WHO KNEW MOST ABOUT THE  
INFORMATION.

WE DON'T KNOW MORE ABOUT THE  
INFORMATION.

WE DON'T DO THAT ANYMORE.

>> THAT'S WHAT WE DO.

WHEN THEY GET BACK THERE AND  
START DISCUSSING THIS LIKE IN  
ANY TYPE OF CONVERSATION, IF  
YOU HAVE AN OPINION ABOUT  
SOMETHING YOU'RE GOING TO BASE  
YOUR OPINION BASED ON YOUR  
EXPERIENCE WHICH I DON'T THINK  
IS ANYTHING MORE THAN JURORS DO  
IN EVERY CASE ANYWAYS.

>> I CAN JUST IMAGINE THE LINE  
OF QUESTIONING DURING VOIR DIRE  
TO FIND OUT WHAT KIND OF  
EXPERIENCE PEOPLE HAVE WITH A  
PARTICULAR OBJECT INVOLVED.

>> THAT WOULD BE PRETRYING.

>> THAT THAT'S WHAT I'M SAYING  
IF YOU ALLOW THIS TO STAND, I  
THINK LAWYERS WOULD BE  
PERMITTED TO ASK PROSPECTIVE  
JURORS ABOUT DOORS OR HURRICANE  
SHUTTERS AND DETAILS AND WHAT  
THEY KNOW ABOUT THOSE THINGS.

>> I THINK, THOSE MAY BE  
IMPROPER ARGUMENT OR IMPROPER  
VOIR DIRE WHERE YOU'RE PRETRYING THE  
JURORS.

SO I DON'T KNOW IF THAT IS

GOING TO BE THAT EXTENSIVE OF A PROBLEM THAT A JUDGE CAN'T CONTROL.

>> ALL BECAUSE THE STATE DIDN'T PUT ON THE REPAIR BILL THAT IT HAD IN ITS POSSESSION.

I MEAN REALLY AND TRULY, YOU KNOW, WE'RE NOT, AND WE'RE NOT GIVING YOU HYPOTHETICALS THAT ARE TOTALLY OUT OF THE REALM OF POSSIBILITY.

THESE ARE VERY REALISTIC AND REASONABLE THINGS THAT COULD HAPPEN IF WE WERE TO LEAVE THIS LIFE EXPERIENCE EXCEPTION AS IT IS STATED BY THE THIRD DISTRICT.

>> I BELIEVE THAT THE WAY THAT THE RULE AS CITED BY THE THIRD DISTRICT I THINK IT PROVIDES A WORKABLE RULE FOR THE DISTRICT COURTS IN ORDER TO, THAT IS ONLY GOING TO BE APPLICABLE IN NARROW SITUATIONS WHERE THE VALUE WAS SELF-EVIDENT.

I THINK THE JURY USING ITS COMMON SENSE BASED ON ITS LIFE EXPERIENCE WILL BE ABLE TO DIFFERENTIATE THE OBVIOUS FROM THE NOT SO OBVIOUS AS THEY HAVE DONE IN THE PREVIOUS DISTRICT CASES.

>> WAIT A MINUTE.

THERE IS NOT A SINGLE OTHER CASE THAT I HAVE FOUND, UNDER THIS MISCHIEF STATUTE WHERE THIS HAS BEEN ALLOWED.

>> WELL, IN T.B.S. VERSUS STATE AND --

>> THEY MAY HAVE DISCUSSED THE RULE BUT THEY HAVEN'T APPLIED IT.

>> THEY DIDN'T APPLY IT TO  
FELONY CRIMINAL MISCHIEF BUT AS  
FAR AS FIRST DEGREE CRIMINAL  
MISCHIEF THEY DID.

IT WAS NOT OBVIOUS THAT IT MET  
THE FELONY CRIMINAL MISCHIEF  
STATUTE BUT THEY DIPPED NOT GET  
DOWN TO FIRST DEGREE BUT SECOND  
DEGREE.

THEY DID IT IN T.B.S. AND S.P.  
VERSUS STATE.

IN THOSE TWO CASES AND THEY  
HAVE RECOGNIZED, ALL THE  
DISTRICT COURTS ADDRESSED THIS  
ISSUE HAVE RECOGNIZED THIS RULE  
AND IN THOSE CASES THEY  
ACTUALLY APPLIED IT INCLUDING  
THIS ONE.

AND IF URNS HAVE YOUR HONORS  
HAVE NO FURTHER QUESTIONS, I  
RESPECTFULLY ASK THAT YOU  
AFFIRM THE CONVICTION.

>> THANK YOU.

>> I THINK THE STATE IN  
MISAPPREHENDS ONE OF THE MOST  
CRUCIAL ISSUES IN OUR CRIMINAL  
JUSTICE SYSTEM WHICH IS THE  
DIFFERENCE BETWEEN THE JURY  
INTERPRETING EVIDENCE AND THE  
JURY SUPPLYING EVIDENCE.  
JURORS ARE ALLOWED TO INTERPRET  
EVIDENCE.

THAT IS WHY THE JURY  
INSTRUCTION THAT THE STATE  
RELIES ON ABOUT COMMON SENSE  
SPECIFICALLY TELLS THEM USE  
YOUR COMMON SENSE WHEN  
EVALUATING THE EVIDENCE.

THE JURY IS FURTHER INSTRUCTED  
YOU CAN NOT RELY UPON ANYTHING  
OTHER THAN EVIDENCE YOU HEAR IN  
COURT.

WHAT THE STATE NOW IS ASKING  
THE COURT TO ALLOW IS THE LET  
ONE WITH THE JURORS GO INTO THE  
JURY ROOM, GO, I'M IN  
CONSTRUCTION. TAKE MY WORD FOR IT.  
THESE HURRICANE SHUTTERS, THESE  
HURRICANE GLASS COST \$1,000.  
FIVE OTHER JURORS, I DON'T KNOW  
THAT.  
IN ESSENCE WHAT WE NOW HAVE IS  
JURORS SUPPLYING EVIDENCE.  
THAT'S NOT WHAT OUR SYSTEM IS  
ABOUT.  
THE STATE SUPPLIES THE  
TESTIFIED.  
NOT ONLY WOULD THIS RULE  
REQUIRE, LIKE THE STATE NOW  
CONCEDES, PRETRYING THE CASE,  
YOU HAVE TO PRETRY CASES NOW.  
THE REASON WHY YOU CAN'T PRETRY  
CASES IS BECAUSE JURORS AREN'T  
SUPPOSED TOO TO BRING THEIR  
LIFE EXPERIENCES INTO THE JURY  
ROOM AND SUPPLY EVIDENCE TO THE  
STATE.  
FINALLY THE STATE, IT IS OUR  
POSITION ON TOP OF EVERYTHING  
ELSE WHAT THIS RULE DOES IS  
LEAVE OPEN THE TREMENDOUS  
POSSIBILITY OF INCONSISTENT  
RESULTS IN ALL THE DISTRICT  
COURTS.  
WE SUPPLEMENTED, WE CITED A  
CASE IN OUR SUPPLY BRIEF.  
SOMEONE BURNED DOWN A SHOPPING  
CENTER.  
HE INTRODUCED PHOTOGRAPHS OF  
THE SHOPPING CENTER.  
INTRODUCED PICTURES OF THE  
SHOPPING CENTER.  
IN THAT CASE THE STATE NEVER  
EVEN ALLEGED THAT THE JURY

SHOULD USE LIFE EXPERIENCE.  
SO IN THE FOURTH DISTRICT THEY  
HOLD YOU CAN'T LOOK AT  
PICTURES.  
YOU NEED VALUE, AND LIFE  
EXPERIENCE HAS NEVER EVEN  
BROUGHT UP.  
THIS THE THIRD DISTRICT YOU CAN  
SAY WELL YOU JURY COULD HAVE  
USED THEIR LIFE EXPERIENCE.  
WHAT THAT LIFE EXPERIENCE IS,  
NOBODY EVER KNOWS.  
IT IS OUR CONTENTION THAT THE  
MOST IMPORTANT CONCEPT IN OUR  
SYSTEM IS PROVING A CASE BEYOND  
A REASONABLE DOUBT.  
IF THE STATE DID THAT IN THIS  
CASE, WE WOULDN'T BE HERE.  
AND IF THIS COURT OVERRULES  
JACKSON NOBODY ELSE IS GOING TO  
BE HERE.  
BECAUSE ALL THE COURT HAS TO DO  
IN A CRIMINAL MISCHIEF CASE  
REQUIRE THE STATE TO PROVE IT.  
AND IT IS IMPORTANT TO NOTE  
THIS COURT DEMANDED A JURY  
INSTRUCTIONS AS TO CRIMINAL  
MISCHIEF THIS YEAR,  
SPECIFICALLY STATING THAT AS TO  
THE VALUE, YOU HAVE TO PROFFER  
THE AMOUNT BEYOND A REASONABLE  
DOUBT.  
THAT WAS NOT DONE IN THIS CASE.  
AND IT WASN'T DONE IN THIS CASE  
BECAUSE JACKSON ALLOWED IT.  
JACKSON ALLOWED A  
MISINTERPRETATION AND THIS  
COURT NEEDS TO REVERSE JACKSON  
ON THE ALTERNATIVE, LIMIT  
JACKSON TO SUCH A RARE CASE  
THAT HOPEFULLY IT DOESN'T GET  
USED AGAIN.

THANK YOU.

>> ALL RIGHT.

WE THANK BOTH OF YOU.

IT IS OUR LAST CASE AND COURT  
IS ADJOURNED.

>> PLEASE RISE.