

>> WHENEVER YOU ARE READY.  
>> MAY IT PLEASE THE COURT,  
COUNSEL, I AM MATTHEW KUTCHER  
GOES ON BEHALF OF MATTHEW  
SHEPARD, JESSE WILKINSON IS AT  
THE COUNCIL TABLE.  
THE ISSUE IS CONTROLLED BY THE  
COURT'S PRIOR DECISION IN STATE  
VERSUS HOUCK AS REAFFIRMED IN  
STATE VERSUS BURRIS AS WELL AS  
THE RULE CODIFIED IN SECTION  
775.021.  
THE ISSUE BEING WHETHER THE  
COURT CAN ALLOW RECLASSIFICATION  
OF A FELONY OFFENSE FOR USE OF A  
WEAPON WHEN THE ALLEGED WEAPON  
IS AN AUTOMOBILE.  
PETITIONER CONTENDS IT CANNOT.  
WHETHER A PARTICULAR OBJECT IS  
CONSIDERED A WEAPON IS TO BE  
DETERMINED BY TRIAL COURT IN THE  
FIRST INSTANCE.  
>> WHERE DOES THAT PRINCIPLE  
COME FROM?  
>> HOUCK.  
>> WHERE DID HOUCK GET IT?  
>> IT STATES WHERE IT COMES FROM  
BUT --  
>> THEY QUOTE THE DISTRICT  
COURT.  
>> THE DISTRICT COURT OF APPEAL.  
>> THERE IS NO OTHER AUTHORITY  
WE HAVE THAT ESTABLISHES THAT  
POINT.  
>> BURRESS REAFFIRMS THE  
PRINCIPLE.  
>> THE FIFTH DISTRICT PANEL, IT  
SAYS FIREARM OR WEAPON SO IT  
USES THE PRINCIPLE I CAN NEVER  
PRONOUNCE.  
TO SAY THAT.  
MY QUESTION ABOUT WHO DETERMINES  
IT.  
THE JURY INSTRUCTION THAT WAS  
GIVEN IS SO BROAD, NOT WHETHER  
IT WAS INTENDED TO BE, ANY  
OBJECT THAT COULD BE USED TO  
CAUSE DEATH OR SERIOUS INJURY.  
I ASSUME THE JURY INSTRUCTION  
WAS OBJECTED TO.

>> YES, THERE WAS AN OBJECTION.

>> IS THERE A STANDARD JURY INSTRUCTION?

>> I DON'T RECALL.

I THINK IT WAS PULLED FROM EITHER AGGRAVATED BATTERY OR SOME OTHER STATUTE IS MY RECOLLECTION.

>> IS THE DEFINITION OF A WHAT A WEAPON IS VARIED FROM STATUTE TO STATUTE?

IN OTHER WORDS THERE ARE SOME STATUTES THAT DEAL WITH EXCLUSIVELY FIREARMS, OTHERS THAT DEAL WITH WEAPONS.

ANY PLACE WHERE THE LEGISLATURE USES THE BROADEST TERM BECAUSE THIS WEAPON COULD BE EITHER OR IF THERE ARE DEFINITIONS THAT SAY EXACTLY THAT, AN OBJECT THAT COULD BE USED TO CAUSE SERIOUS INJURY, OR AN INSTRUMENT OF ATTACK IN DEFENSE IN COMBAT AS A GUN, SO IS THERE ANY PLACE WHERE THE LEGISLATURE INDICATED ITS INTENTION TO USE THE BROADEST POSSIBLE DEFINITION OF WEAPON WHICH WOULD VIRTUALLY TAKE ANY CASE OF MANSLAUGHTER, INVOLUNTARY OR VOLUNTARY MANSLAUGHTER AND WHATEVER WAS USED WOULD BE ELEVATED TO THE 1ST ∞.

I CAN'T THINK OF ANYTHING IF YOU ARE USING IT, IT IS A WEAPON.

>> THAT IS THE PROBLEM.

>> ANY STATUTES THAT LOOK AT IT WHERE WE LOOK AT OTHER DEFINITIONS OF WEAPON.

>> I DON'T KNOW IF IT IS ANY AID TO THE COURT BUT DEALING WITH WEAPONS AND FIREARMS, CHAPTER 790, THERE'S A PREPARATORY DEFINITION, 790.01 TALKS ABOUT SWORDS, KNIVES, THEN THE CAVEAT ON THE END OF IT, OR AN OBJECT THAT COULD BE USED FOR SERIOUS BODILY HARM, AS WE SIT HERE TODAY WE KNOW AS THE COURT HAS POINTED OUT VIRTUALLY ANY OBJECT

THAT WOULD CONSTITUTE THE MECHANISM OF DEATH WOULD BE CONSIDERED A WEAPON.

>> IS THAT THE WAY FROM MANY DIFFERENT CONTEXTS, MANY YEARS WHERE WE HAVE OPINIONS THAT ARE QUITE RECENT WHERE WE REFER TO A HAMMER.

AS A WEAPON.

WE REFER TO A CASE GOING BACK TO THE 1870s WHERE THE COURT DECIDED AWAITED SCALE WAS A WEAPON AND WE HAVE A CASE FROM 1926 OR 27 WHERE WE SPECIFICALLY HELD THAT AN AUTOMOBILE WAS A DEADLY WEAPON SO FOR JURISPRUDENCE, WE HAVE THE USE OF THE TERM WEAPON IN WAYS THAT ARE INCONSISTENT WITH THE NARROW CONSTRUCTION OF THAT TERM THAT WAS ADOPTED IN HOUCK.

WHETHER HOUCK IS RIGHT OR WRONG, THAT IS A DIFFERENT QUESTION.

THIS LIMITED THE DEFINITION.

IS IT TRUE THAT IT IS THERE, VERY MUCH A LOT OF DIFFERENT THINGS IN CASE LAW, IT COMES AFTER HOUCK.

>> THE ONLY SITUATION I HAVE SEEN THAT APPLIED SEEMS TO BE AN ANOMALY, WHY THE DIVIDE IN THE LAW IS THE WAY IT IS ON THIS BUT FOR AGGRAVATED BATTERY AND ASSAULT, IT ALLOWED THE AUTOMOBILE TO BE USED AS A WEAPON AND ANY OTHER CONTEXT SPECIFICALLY IN CLASSIFICATION STATUTE, IS GIVEN THE DEFINITION OF PLAIN AND ORDINARY MEANING DESIGNED FROM THE DICTIONARY.

>> IF WE LOOK AT WEBSTER'S DICTIONARY, AND WEAPON APPLIES TO ANYTHING USED OR USABLE, OR DEFEATING AN ENEMY OR OPPONENT.

>> I WOULD NOT BE SURPRISED. ANOTHER DICTIONARY, STATES AN INSTRUMENT USED, A SWORD OR GUN.

>> THE LEGAL DICTIONARY WHICH SAYS, INSTRUMENT USED, TO INJURE OR KILL SOMEONE.

IF IT IS USED TO KILL SOMEONE  
ACCORDING TO BLACKS IT IS A  
WEAPON.

>> HOWEVER, THIS COURT HAS  
ALREADY DETERMINED THE BROAD  
SWEEPING DEFINITION CANNOT BE  
APPLIED.

>> DEALING WITH A BROAD SWEEPING  
DEFINITION AND DISCUSSED,  
MANSLAUGHTER WAS THE UNDERLYING  
CHARGE.

>> FIRST-DEGREE MURDER.

>> SO THE JURY CAME BACK WITH  
MANSLAUGHTER, THAT WAS THE  
VERDICT AND IT WAS AGGRAVATED.

>> ENHANCED UNDER THE STATUTE.

>> ONE CAN COMMIT MANSLAUGHTER  
BY HITTING SOMEONE WITH THEIR  
FIST.

I READ OF CASES EVERY DAY WHERE  
SOMEBODY GETS IN A FISTFIGHT,  
GETS HIT IN THE FACE, HITS HIS  
HEAD ON THE PAVEMENT, THAT IS  
MANSLAUGHTER.

WHAT IS WRONG WITH JURISPRUDENCE  
THAT WOULD ALLOW ENHANCEMENT  
WHEN SOMETHING OTHER THAN  
DEFENSE IS USED, OR I PICK UP A  
ROCK OR WHATEVER, WHY NOT  
ENHANCE IT WITH THAT?

>> IT PRECLUDES THAT.

IT IS STATUTE TO AMBIGUITY  
CONSTRUED IN FAVORABLE TO THE  
DEFENSE.

IT WOULD LEAD TO ABSURD RESULTS.  
THE GENTLEMEN, THE DEFENDANT WAS  
ACCUSED OF HOMICIDE.

I THINK WAS MANSLAUGHTER.

BY POUNDING A GENTLEMAN'S HEAD  
INTO THE PAVEMENT AND THIS COURT  
FOUND THE PAVEMENT COULD NOT BE  
CONSIDERED A WEAPON.

LET'S TAKE THAT ANALOGY, SOMEONE  
BEAT A DEFENDANT'S HEAD INTO A  
BRICK WALL.

UNDER THE SAME ANALYSIS, THAT  
BRICKWALL COULD NOT BE  
CONSIDERED A WEAPON.

>> CAN'T YOU MAKE A DISTINCTION  
BASED ON THE UNDERSTANDING OF

WHAT WEAPON MEANS BASED ON WHAT WEBSTER SAYS AND A MULTITUDE OF DICTIONARIES.

THE CONNOTATION, A WEAPON IS SOMETHING A PERSON EMPLOYING THE WEAPON CONTROLS, YOU WIELD A WEAPON AND CONTROL IT SO YOU CAN WIELD A HAMMER, YOU CAN I THINK WIELD A CAR, YOU CAN CONTROL THAT.

BUT YOU CAN'T WIELD THE GROUND. YOU CAN'T WIELD OR CONTROL -- THAT CAN'T BE, THAT DOESN'T FIT WITHIN THE ORDINARY SENSE OF WHAT A WEAPON WOULD BE.

ISN'T THAT A WAY TO DISTINGUISH THIS?

YOU MAY SAY MAYBE WE SHOULD ALSO PUNISH THOSE CRIMINALLY BUT IF LEGISLATURE HAS USED THE TERM WEAPON WE ARE LIMITED BY WHAT THE LEGISLATURE HAS SAID.

>> IN THIS CASE IF WE WERE TO GRAFT MORE EXPENSIVE DEFINITIONS OF THE TERM WEAPON I WOULD CONTEND THAT IS LEGISLATING FROM THE BENCH BECAUSE LEGISLATURE USED THE TERM WEAPON.

>> WHEN THE LEGISLATURE, WHEN DID THEY ADOPT THE TERM IN THE LEGISLATURE?

>> I WAS LOOKING THROUGH THE LEGISLATIVE HISTORY ON THIS AND I KNOW THE DEADLY WEAPON ENHANCEMENT FOR ARMED ROBBERY CAME IN IN 74.

>> THAT IS BEFORE.

>> SOMETIME PRIOR TO 95.

>> WHEN THE LEGISLATURE USED THAT, THEY HAVE THE BENEFIT OF CASES LIKE WILLIAMSON VERSUS STATE AND THIS WHOLE BODY OF LAW WHERE OBJECTS THAT ARE NOT DESIGNED FOR THE PURPOSE OF INJURING OR KILLING SOMEONE HAVE BEEN REFERRED TO AS WEAPONS WHEN THEY ARE PUT TO THE USE OF INJURING OR KILLING SOMEONE. THERE IS A PRINCIPLE OF LAW THE LEGISLATURE, IF THERE CASE LAW

USED THE TERM IN A PARTICULAR WAY, THAT IS INFORMING THE WAY THE LEGISLATURE SUBSEQUENTLY USES IT.

WHY NOT CONSIDER THAT WHEN THE LEGISLATURE, THE TERM THEY USED.

>> THE COURT ANNOUNCED HOUCK IN 95, THE COURT WAS NOT IN A POSITION OF THE DEFINITION.

>> TO DISAGREE WITH YOU, WE WOULD HAVE TO RECEIVE FROM HOUCK.

I WILL CONCEDE THAT BUT I THINK WHAT IS AT ISSUE IN THIS CASE IS WHETHER WE SHOULD DO THAT NOT NECESSARILY ON THE RESULT RAISED BUT THE REASONING EMPLOYED.

>> DETERMINING THE DEFINITION OF WEAPON ASSUMING THE COURT CAN RECEIVE IT YOU'RE LOOKING AT THE FLAME AND ORDINARY MEANING AND IN THIS CASE THE DEFINITION OF WEAPON IS SUSCEPTIBLE TO DIFFERENT MEANINGS BY EVIDENCE OF THE DISTRICT IN THIS CASE. THE OPINION, THERE ARE DIFFERENT CONSTRUCTIONS OF WHAT THE TERM WEAPON MEANS.

GONZALEZ INTERPRETATION IS A REASONABLE CONSTRUCTION SO IF YOU HAVE REASONABLE INTERPRETATIONS, AND TOOK SHEPHERD.

>> HOW DOES THAT RULE APPLY WITH COMMON UNDERSTANDING OF THE WORD AND AN UNCOMMON DEFINITION.

DON'T WE APPLY THE COMMON UNDERSTANDING, THE LEGISLATURE MEANT WHEN IT USED THE WORD.

>> I CONTEND THAT --

>> YOU ASSUME THE LEGISLATURE USED A WORD IN A WAY IT IS COMMONLY UNDERSTOOD.

>> I WOULD AGREE.

COMMON UNDERSTANDING, IF SOMEONE TAKES A BASEBALL BAT TO A FIGHT AND BEATS SOMEONE WITH IT, WOULD THAT BE A WEAPON?

>> INTERESTING QUESTION.

A BASEBALL BAT IS A WEAPON OR A

BASEBALL BAT USED TO INFLICT HARM IN A FIGHT?

>> IF I SAID WHAT WEAPON DID HE USE?

HE USED A BASEBALL BAT WITH THE LISTENER GO THAT IS NOT A WEAPON, THEY USE THE UNUSUAL DEFINITION.

>> THE USUAL DEFINITION IS A DEVICE USED TO HIT BASEBALLS.

>> THE USUAL DEFINITION OF A WEAPON IS AN OBJECT USED TO INFLICT INJURY.

>> A KNIFE, A SWORD, BLACK BRASS NICHOLS.

>> UNDER YOUR UNUSUAL DEFINITION ABILITY CLUB WOULD BE A WEAPON, BUT A BASEBALL BAT WOULD NOT.

>> IN ALL THE CASES WHERE WE HAVE SAID THAT SOMEONE USED A HAMMER OR BASEBALL BAT OR SOME OTHER OBJECT LIKE THAT, NOT DESIGNED TO INFLICT HARM ON OTHERS BUT USED FOR THE PURPOSE OF DOING THAT, WE HAVE BEEN MISUSING THE TERM WEAPON, WHEN WE REFER TO THOSE AS WEAPONS.

>> I'M RELUCTANT TO SAY THAT. I DON'T KNOW IF IT WAS RAISED BELOW IN THOSE CONTEXTS AND IT MAY HAVE BEEN EVERYONE ASSUMED THAT WAS A WEAPON WITHOUT A CHALLENGING PREMISE OF THE ISSUE.

>> THE PRACTICAL EFFECT OF THIS, CHARGED WITH FIRST  $\infty$  PREMEDITATED MURDER, WHETHER IT WAS A CAR OR BAT OR GUN WOULD HAVE BEEN IRRELEVANT.

>> LIKEWISE SECOND-DEGREE MURDER.

>> WOULD HAVE BEEN A FIRST-DEGREE FELONY.

>> PUNISHABLE BY LIFE.

>> NO REASON.

NOW WE GO BACK TO ME AND WHAT I WANT THE STATE TO TALK ABOUT, THIS IS RECLASSIFICATION STATUTE, NOT WHETHER A CRIME WAS COMMITTED.

THE EFFECT OF WHERE I HEAR MY COLLEAGUES GOING, WHETHER IT IS PAVEMENT OR BRICKWALL, EVERY INVOLUNTARY OR VOLUNTARY MANSLAUGHTER, SECOND-DEGREE, WILL BE RECLASSIFIED AS FIRST-DEGREE FELONY.

WHAT IS THE DIFFERENCE IN THE PUNISHMENT FOR FIRST-DEGREE FELONY, CAN GET UP TO WHAT?

>> 30 YEARS.

>> SECOND-DEGREE?

>> 15.

>> HE WAS SENTENCED CONSECUTIVELY.

>> LEAVING THE SCENE OF THE CRASH INVOLVING DEATH.

THE COURT TOOK THE MANSLAUGHTER FINDING, USED THE ENHANCEMENT, TOOK A SECOND-DEGREE FELONY AND MAXED AMOUNT 30 YEARS AND IN YOUR CONTENTION THAT IS THE CONCERN, THE PANDORA'S BOX THAT GETS OPENED.

>> WHY DO YOU SAY THE PANDORA'S BOX?

THAT ESCAPES ME.

IF SOMEONE USES AN INSTRUMENT AS A WEAPON WHY SHOULDN'T IT BE ENHANCED?

THERE IS THE ASSUMPTION THAT IS OPENING A PANDORA'S BOX, SEEMS TO ME A RHETORICAL POINT, NOT A LEGAL POINT.

>> THE LEGISLATIVE INTENT AND ENACTMENT OF THE STATUTE IN HOUCK TO PRECLUDE PERSONS FROM BRINGING ITEMS COMMONLY UNDERSTOOD TO BE WEAPONS, FIREARMS, KNIVES AND THE LIKE 2 SCENES OF THE CRIME TO AVOID THE ENHANCEMENT OF THE HARM THAT WOULD HAPPEN IN THESE SITUATIONS AND THE PROVINCE OF THE LEGISLATURE TO MAKE THOSE DETERMINATIONS.

>> JUST AS UP YOUR MATTER OF STATUTORY CONSTRUCTION IF YOU ARE RIGHT, WHEN THE LEGISLATURE USES THE TERM WEAPON IT HAS TWO

REASONABLE CONSTRUCTIONS OR MEANINGS AND WE HAVE TO APPLY THE RULE AND RESEED FROM THE CASES THAT SAY THAT A WEAPON IS ANYTHING USED TO INFLICT INJURY. WOULDN'T -- TO THIS COURT -- >> DEALING WITH RECLASSIFICATION STATUTE.

>> TELL ME HOW YOU WOULD DISTINGUISH THAT.

>> AS I'VE YOU THAT I HAVE NOT SEEN A CASE WHERE A DEFENDANT HAS RAISED THE IMPROPER USE OF A DEADLY WEAPON IN JUST THOSE TWO STATUTES.

THAT IS THE ONLY CASE I SEE WHERE THE ISSUE HAS GONE ON ANALYZED.

AGGRAVATED BATTERY AND AGGRAVATED ASSAULT.

I DON'T KNOW IT IS PERSONALLY A PROBLEM.

>> THERE'S NOTHING IN THE TEXT OF THE STATUTE THAT WOULD LEAD YOU TO CONCLUDE WEAPON MEANS ONE THING IN THE STATUTE AND ANOTHER THING IN THE BATTERY STATUTE, RIGHT?

>> I CAN'T DEFINE IT.

I DON'T KNOW WHY THAT SCHISM EXISTS.

>> SHOULDN'T THE LOBBY COHERENT?

>> SHOULD IT BE?

THEORETICALLY YES.

>> THAT IS AN ISSUE HERE BECAUSE OF ALL THIS OTHER STUFF WHERE WE USE THE TERM WEAPON AND IT IS INCONSISTENT WITH THE WAY IT IS UNDERSTOOD IN HOUCK.

THAT SEEMS TO BE A PROBLEM.

MAYBE IT IS RESOLVED IN YOUR FAVOR, BUT SOME OTHER THINGS HAVE TO GO THAT ARE OUT THERE IN CASE LAW.

ULTIMATELY OF OUR LAW IS GOING TO BE COHERENT.

>> I WOULD THINK SO.

THESE ISSUES MAY ARISE IN THE AGGRAVATED BATTERY AND AGGRAVATED ASSAULT CONTEXT WHEN

A TRADITIONAL WEAPON IS NOT USED.

IF I HAVE A CASE LIKE THAT TODAY I KNOW I WOULD BE RAISING IT, TO YOUR HONOR'S POINT I DON'T KNOW THAT ANY OF THE CASES ADDRESSING AGGRAVATED BATTERY OR AGGRAVATED ASSAULT AND NONTRADITIONAL WEAPONS EVER ENGAGED IN THAT ANALYSIS.

IT IS AN ASSUMPTION.

>> ANALYSIS OF WHAT?

YOU HAVEN'T READ WILLIAMSON.

>> IT IS AN AUTOMOBILE.

>> THAT IS THE ARGUMENT, WHETHER THAT COULD BE CONSIDERED A WEAPON AND IT WAS EXTENSIVELY, THERE IS AN EXTENSIVE ANALYSIS IN THAT CASE ABOUT THE CASE LAW THAT SAID WE PREVIOUSLY DECIDED THE DEADLY WEAPON IS NOT ONE THAT MUST KILL MAY KILL BUT WHICH WOULD LIKELY PRODUCE DEATH OR GREAT BODILY INJURY USED BY THE DEFENDANT IN THE MANNER IT WAS USED.

THEN WE TALK ABOUT A LARGE STICK MAY CONSTITUTE A DEADLY WEAPON, ON AND ON AND ON GOING TO CASE LAW FROM OTHER STATES AND THEN ULTIMATELY CONCLUDE THAT YES, AN AUTOMOBILE CAN BE A DEADLY WEAPON.

>> IT WASN'T A MANSLAUGHTER FLIGHT.

THE INTENT OF THE DEFENDANT IS DIFFERENT IN WILLIAMSON, HE INTENDED TO RUN THE GENTLEMAN OVER WITH A CAR BUT THE JURY RETURNED A VERDICT OF MANSLAUGHTER.

>> RETURNING THE VERDICT MANSLAUGHTER WITH A SPECIFIC FINDING OF MANSLAUGHTER WITH A WEAPON.

I AGREE WITH YOU IF AN ITEM IS NOT SOMETHING DESIGNED TO INFLICT HARM, YOU HAVE TO HAVE SOME INTENDS.

IF YOU NEGLIGENTLY CALL BUBBLY

BUT NEGLIGENTLY DROP A HAMMER  
OUT A WINDOW INTO THE LAND ON  
SOMEONE'S HEAD, EVEN THOUGH A  
HAMMER COULD BE USED AS A WEAPON  
IT WOULDN'T BE A WEAPON IN THAT  
CONTEXT BUT HERE THE JURY MADE  
THE SPECIFIC FINDING THAT IT WAS  
WITH A WEAPON.

YOU HAVE A FOCUS ON CHALLENGING  
THAT.

>> BASED ON DEFINITION BY THE  
TRIAL COURT ANYTHING COULD BE  
USED AS A WEAPON IF IT WOULD  
INFLICT SERIOUS BODILY HARM OR  
DEATH.

TURNING A TOASTER INTO A BATHTUB  
THE TOASTER BECOMES A WEAPON,  
ANYTHING COULD BE USED AS A  
WEAPON UNDER THE FORMULATION IN  
JURY INSTRUCTIONS BY THE TRIAL  
COURT AND IF THE COURT WERE TO  
ADOPT THE STATE'S CONSTRUCTION.

>> A COUPLE MINUTES REBUTTAL.

>> CAITLIN WISE FOR THE OFFICE  
OF THE ATTY. GEN. FOR THE STATE.  
IT IS THE STATE'S POSITION THE  
RECLASSIFICATION STATUTE AND  
LANGUAGE SUPPORTS THE  
INTERPRETATION OF THE STATUTE  
FOR USE OF THE WEAPON THAT  
SHOULD DETERMINE --

>> YOU AGREE WITH THAT CASE, AND  
ANY OBJECT USED DEATH OR SERIOUS  
INJURY.

>> THEY REJECT FIRST ∞ MURDER  
AND SECOND-DEGREE MURDER, THEY  
DIFFERENTIATE WHETHER WAS  
INVOLUNTARY OR VOLUNTARY.  
UNDER THE SCENARIO BY JUSTICE  
KENNEDY, THE OPPOSING COUNSEL,  
IF SOMEBODY CALL BUBBLY THROUGH  
AN OBJECT, OUT THE WINDOW  
LOOKING AT WHO WAS UNDERNEATH,  
WHATEVER THE OBJECT WAS WHETHER  
THERE WAS INTENDS OR NOT WOULD  
QUALIFY AS A WEAPON.

>> THE INCREDIBLY IMPORTANT  
DISTINCTION TO MAKE IN CASES OF  
CULPABLE NEGLIGENCE, AN ITEM  
WOULD ONLY BE A WEAPON IF IT WAS

USED AS A WEAPON.

>> ANY OBJECT THAT COULD BE USED, THAT TO ME, THAT DEFINITION WHICH IS NOW A JURY FINDING, NOT A JUDGE FINDING WAS AS BROAD AS ANY NONPASSIVE OBJECT, ANYTHING, WHETHER IT IS A HAMMER, A TOASTER, WHATEVER. THE QUESTION OF THE INTENT GOES TO WHETHER IT WAS INVOLUNTARY MANSLAUGHTER, VOLUNTARY MANSLAUGHTER, SECOND-DEGREE MURDER OR FIRST-DEGREE MURDER. THAT IS WHERE THE INTENT COMES IN.

IT DOESN'T REALLY MATTER IF THEY FOUND HIM GUILTY OF FIRST-DEGREE MURDER.

IT WAS A CAR NOBODY IS ARGUING. MY CONCERN IS AFTER THIS DECISION, THE RECLASSIFICATION BECOMES AUTOMATIC IF WE ALLOW THIS DEFINITION FOR ANYTHING EXCEPT PASSIVE OBJECT WOULD YOU AGREE WITH THAT?

>> I WOULD NOT.

>> WHAT WOULD BE EXCLUDED?

>> I KNOW THIS IS A COURT OF POLICY BUT MUCH WOULD HAVE TO BE FACT SPECIFIC.

AN OBJECT THAT WAS NOT USED AS A WEAPON IN A CONFLICT COULD NOT BE ENHANCED.

>> THE WHOLE THING IS, THIS IS A QUESTION WITH THE LEGISLATURE INTENDED, TO PROVIDE HARSH REPLENISHMENT AND DETER THOSE PERSONS WHO USE INSTRUMENTS COMMONLY RECOGNIZED, COMMONLY RECOGNIZED AS HAVING A PURPOSE TO INFLICT SERIOUS INJURY.

I DON'T KNOW IF WE GOT THAT OUT OF NOWHERE OR IF IT WAS THERE WHEN THE STATUTE PASSED AS LEGISLATIVE INTENT BUT IT SEEMS TO ME MOST RESPECTFULLY TO YOU, MY COLLEAGUES, THE FIRST DISTRICT, WHAT WE ARE DOING IS DECIDING SOMETHING THE LEGISLATURE NEVER DECIDED WHICH

IS THIS TERM IS SO BROAD, TO ENCOMPASS ANYTHING OTHER THAN A PASSIVE OBJECT.

>> I THINK THIS COURT IF YOU LOOK AT THE THIRD FOOTNOTE THIS COURT HAS ACKNOWLEDGED THE DEFINITION MADE THE WAY THE STATUTE WAS CONSTRUCTED IS ENORMOUSLY BROAD AND IT IS PURPOSELY BROAD.

THE STATUTE USES BROAD LANGUAGE TO DEFINE USING A WEAPON AND BROAD LANGUAGE TO DEFINE WHAT CAN BE A WEAPON.

THE LANGUAGE IN THE STATUTE --

>> WE MAKE REFERENCE IN A FOOTNOTE, THE WILLIAMSON CASE TALKS ABOUT THE AUTOMOBILE BEING A DEADLY WEAPON.

>> LET'S LOOK AT THE TOASTER USED BY COUNSEL.

IT IS ONE THING, SOME PEOPLE ARE KIND OF STRANGE, THEY TOAST THEIR TOAST AND TAKING A BATH. IF IT HAPPENS TO DROP AND SOMETHING HAPPENS OBVIOUSLY THE INTENT IS NOT THERE TO COMMIT HARM.

HOWEVER, IF SOMEBODY PURPOSELY DROVE A TOASTER IN THE BATHTUB WHERE SOMEBODY IS TAKING A BATH, THE USE OF THE WEAPON CHANGES. SO THAT IS THE THINKING, SAME WITH AN AUTOMOBILE.

NO ONE IN THEIR RIGHT MIND TODAY CAN DENY CARS ARE NOT BEING USED AS WEAPONS TO KILL PEOPLE.

WE TURN THE TV ON EVERY DAY AND SEE THAT.

THAT IS FOOLISH.

IF HE DROVE THE CAR THAT NIGHT NOT INTENDING TO HIT THIS GUY, TRYING TO GET AWAY FROM HIM, AND HIT HIM WITHOUT INTENT TO KILL OR DO HARM THAT IS A DIFFERENT MATTER.

IT IS HOW THE WEAPON IS USED AND THAT HAS GOT TO BE THE INTENT OF THE LEGISLATURE IN THIS INSTANCE.

IF I'M THE SENTENCING JUDGE AND JURY FINDS A WEAPON WAS USED AND THE JURY WAS INSTRUCTED THE WEAPON WAS USED WITH THE INTENT TO COMMIT HARM OR SOMETHING LIKE THAT, ENHANCEMENT IS APPROPRIATE.

WHETHER IT IS A ROCK, SOMEONE DROPS, IF I AM A ROOFER WE HAD A ROOFING CASE EARLIER, LET ME MAKE SOMETHING INTERESTING OUT OF IT.

SAY A ROOFER DROP THE HAMMER FROM THE ROOF AND LANDS ON SOME POOR GUY WALKING UNDERNEATH PICKING UP DEBRIS, INTENT IS NOT THERE TO ENHANCE THE SENTENCE. SOMEONE PICKS UP A HAMMER AND THROWS IT THAT IS ANOTHER THING. WE GOT TO GET SOME COMMON SENSE. >> YOU SUMMARIZED MY POSITION.

[LAUGHTER]

>> EXCEPT THE JURY INSTRUCTION DIDN'T SAY THE WEAPON WAS THE OBJECT THAT WAS INTENDED TO BE USED.

I MIGHT AGREE WITH THAT BEING AN INTERIM SOME DEFINITION.

>> THE JURY INSTRUCTION READS LIKE THIS.

IF YOU FIND SHEPHERDED COMMITTED MANSLAUGHTER AND YOU FIND THAT DURING THE COMMISSION OF CRIME HE PERSONALLY USED THREATENED TO USE OR ATTEMPTED TO USE A WEAPON YOU SHOULD FIND HIM GUILTY OF MANSLAUGHTER, THE DEFINITION THAT WE READ AND IF THEY COMMITTED MANSLAUGHTER BUT DID NOT USE.

THEY ARE NOT ASKED TO FIND A WEAPON BUT WHETHER HE USED A WEAPON.

THESE ARE STANDARD INSTRUCTIONS.

>> WE HAVE CASES AS EARLY AS THIS YEAR.

AND THE DEFINITION IN FLORIDA.

>> I POINT TO THE FACT THIS, INTERROGATORY OF A WEAPON. THE JURY FOUND THE FINDING THAT

A WEAPON WAS USED IN THIS CASE,  
ALTHOUGH I AGREE WITH JUSTICE  
LAWSON THE DEFINITION, THE JURY  
INSTRUCTIONS WERE SUFFICIENT,  
WAS THIS USED?

>> ABOUT THE JURY INSTRUCTION, I  
ASSUME DEFENDANT'S ATTORNEY  
REQUESTED A DIFFERENT  
INSTRUCTION ABOUT THE DEFINITION  
OF A WEAPON.

>> IT WAS OBJECTED TO, THE FACT  
THE CAR WAS A WEAPON, PUTTING  
THAT IN THE INSTRUCTION IT WAS  
OBJECTED TO, CAN'T RECALL IF  
THEY REQUESTED SOMETHING  
DIFFERENT.

>> WAS THIS PARTICULAR JURY  
INSTRUCTION WHICH DEFINES A  
WEAPON, WAS IT AN ISSUE RAISED  
ON APPEAL?

ON APPEAL, THE FOURTH DISTRICT.

>> I BELIEVE IT WAS, BECAUSE THE  
ISSUE OF CAR AS A WEAPON WAS  
APPEALED TO THE FIRST.

>> I UNDERSTAND THAT ISSUE WAS,  
BUT I'M TALKING ABOUT THE  
SPECIFIC JURY INSTRUCTION THAT  
DEFINES WHAT A WEAPON IS.

WAS THAT A SEPARATE ISSUE THAT  
WAS RAISED ON APPEAL?

>> NO.

I DON'T BELIEVE THAT I HAVE EVER  
SEEN ANYTHING IN THIS CASE  
CHALLENGING THE SPECIFIC JURY  
INSTRUCTION USED.

>> LET ME ASK YOU THIS.

DO THE OTHER, I THINK THE  
PROBLEM, THE OTHER PROBLEMATIC  
PART OF HOUCK IS IT TREATS THIS  
AS ISSUE OF LAW.

IF YOU USE A USE DEFINITION  
NECESSARILY DOESN'T HAVE THAT TO  
BE A ISSUE OF FACT?

>> I THINK IT DOES.

I THINK THAT TREATING IT AS  
ISSUE OF FACT GOES HOPEFULLY  
ALLEVIATING JUSTICE PARIENTE'S  
CONCERN AUTO AS A WEAPON.

IF YOU LOOK AT FACTS SURROUNDING  
THE USE OF AN OBJECT YOU

HOPEFULLY ELIMINATE A LOT OF FEAR OF AUTOMATIC ENHANCEMENT.

>> YOU BELIEVE THEN, WHETHER, THE DEFINITION OF WEAPON IS JURY INSTRUCTIONS OR NOT SAY THIS IS ISSUE IS FACT FOR THE JURY, WOULD YOU AGREE TO BE DEFINED TO MEET ANY OBJECT WAS INTENDED TO BE USED TO CAUSE DEATH TO INFLICT SERIOUS BODILY INJURY?

>> YES, ANY OBJECT INTENTIONALLY USED AS A WEAPON.

>> THAT WAS NOT, WHETHER IT WAS, AGAIN WE'LL SEE IF IT WAS OBJECTED TO BUT THAT IS NOT WHAT THE JURY INSTRUCTION IN THIS CASE PROVIDED?

>> IN THE JURY IN CASE THOUGH, DID MAKE THE FINDING, SPECIFIC FINDING, I THINK IS SO IMPORTANT HERE.

THAT HE DID USE A WEAPON.

>> WE KNOW, IF THEY'RE GIVEN A DEFINITION THAT A WEAPON IS ANYTHING THAT COULD BE USED TO CAUSE DEATH, WHETHER IT'S A HAMMER, TOASTER, A ROCK, OR A CAR, IT IS, THAT, IT BECOMES AN AUTOMATIC FINDING, THE USE THEN IS SUPPLEMENTAL.

THERE WASN'T A SEPARATE FINDING, WAS THE AUTOMOBILE IF THIS CASE INTENDED TO BE USED TO CAUSE DEATH?

BECAUSE AGAIN, THE JURY DID REJECT FIRST-DEGREE MURDER AND SECOND-DEGREE MURDER, WHICH UNDER THE FACTS OF THE CASE WAS A PRETTY RESULT FOR THE DEFENSE LAWYER BECAUSE THE FACT WAS SEEM TO SUPPORT A HIGHER LEVEL.

WE'RE NOT TALKING ABOUT, THESE ARE NOT GREAT FACTS FOR THE DEFENDANT IT SEEMS TO ME.

BUT THERE IS NO, THERE IS NO SEPARATE FINDING, WAS THIS AUTOMOBILE INTENDED TO BE USED TO CAUSE-- WE DON'T KNOW, BECAUSE IT IS EITHER VOLUNTARY OR INVOLUNTARY.

IF IT WAS FOUND TO BE VOLUNTARY  
MANSLAUGHTER, WE WOULD HAVE  
FINDING OF INTENT.

>> THE SPECIFIC FINDING THE JURY  
MADE IN THIS CASE EXACTLY  
MIRRORS THE LANGUAGE IN THE  
RECLASSIFICATION STATUTE.

SO THEY CHECKED THE BOX THAT  
SAID WE FIND THE DEFENDANT USED,  
THREATENED TO USE OR ATTEMPTED  
TO USE A WEAPON DURING THE  
COMMISSION OF THE OFFENSE.

>> BUT THEY HAVEN'T FOUND, THE  
WEAPON WAS, THE DEFINITION THAT  
WE JUST USED WHICH IS ANYTHING  
THAT COULD BE USED TO INFLICT  
DEATH WITHOUT REGARD TO INTENT.

>> BUT I THINK THAT, I THINK  
THAT THE FACTS IN THIS CASE  
DON'T SUPPORT ANYTHING ELSE.  
THE FACTS IN THIS CASE THAT THE  
DEFENDANT FLICKED HIS LIGHTS,  
LURED THE VICTIM THERE,  
DELIBERATELY RAN HIM OVER.

THE PHOTOGRAPHS PUT INTO  
EVIDENCE BY THE STATE SHOWED A  
FAIRLY WIDE AREA, IF HE WAS  
TRYING TO GET AWAY, COULD HAVE  
MANEUVERED HIS CAR.

THE FACTS WERE STRONGLY IN  
SUPPORT OF NOT ONLY AN  
OFFENSE BUT ALSO OF MANSLAUGHTER  
BY ACT AND I THINK THE FINDING  
THAT HE USED THE WEAPON IS  
SUFFICIENT IN THIS CASE TO  
JUSTIFY THE RECLASSIFICATION,  
THE FACT THAT THE JURY  
SPECIFICALLY MADE THAT FINDING.  
IF THERE ARE NO OTHER QUESTIONS.  
THANK YOU.

>> OKAY.

COUNSEL, TWO MINUTES, PLEASE.

>> WITH RESPECT TO JUSTICE  
QUINCE'S QUESTION ABOUT THE  
OBJECTION TO THE LANGUAGE OF THE  
INSTRUCTION.

THERE WAS NO OBJECTION WITH  
RESPECT TO THE LANGUAGE, IT WAS  
LODGED OF INCLUSION OF WEAPON IN  
THE JURY INSTRUCTION PERIOD.

IT SHOULDN'T BE THERE.  
IT DOESN'T GO DOWN THE PATH OF  
THE LANGUAGE.  
>> NOTHING WAS OFFERED WHEN THE  
OBJECTION WAS OVERRULED, I  
GUESS?  
DEFENSE DIDN'T ATTEMPT TO OFFER  
ANY OTHER POSITION?  
>> THE DEFENSE INTENTION THERE  
WAS NO WEAPON WAS ERRED BY THE  
TRIAL COURT.  
GETTING BACK TO JUSTICE CANADY'S  
POSITION DIE COTTY LONGSTANDING  
LAW WHERE OTHER OBJECTION ARE  
CONSIDERED DEADLY WEAPONS, IN  
BURRESS, THE COURT NOTED AT THAT  
WE HAVE NOT QUESTIONED WHETHER  
AUTOMOBILES ARE HELD TO BE  
DEADLY WEAPONS IN CRIMINAL  
STATUTES, THE NATURE OF  
UNDERLYING OFFENSES PUNISHED BY  
THOSE STATUTES CLEARLY PERMIT  
SUCH INTERPRETATION.  
HERE THIS CASE IS DIFFERENT FOR  
THE REASON JUSTICE PARIENTE  
POINTED OUT.  
>> WHAT THEY'RE TALKING ABOUT,  
IN BURRESS THEY'RE TALKING ABOUT  
WHETHER AN AUTOMOBILE CAN BE  
CARRIED, OKAY?  
THAT IS WHAT WAS AT ISSUE THERE.  
YOU HAVE TOE LOOK AT EVERYTHING  
THEY SAY IN THE CONTEXT OF THAT.  
I THINK BURRESS WAS ABSOLUTELY  
RIGHT, I WILL SAY THAT RIGHT  
HERE IN DECIDING THAT AN  
AUTOMOBILE CAN NOT BE CARRIED AS  
A WEAPON.  
IT MAY CARRY A PERSON.  
I THINK IT, I THINK ARGUABLY THE  
ISSUE HERE CAN IT BE USED AS  
WEAPON BUT BEING CARRIED AS A  
WEAPON IS A FAR DIFFERENT THING.  
>> IN BURRESS, THAT IS  
FUNDAMENTAL AND ITS NARROW  
HOLDING GOES ON TO TALK IN  
LARGER SCOPE NATURE OF WHAT IS A  
WEAPON AND THIS CASE THE NATURE  
OF THE UNDERLYING OFFENSE, THE  
JURY RETURNED A VERDICT FOR

MANSLAUGHTER.

THERE WAS NO INTENT TO KILL.  
THERE HAS BEEN NO FINDING BY THE  
JURY WHETHER HE INTENDED,  
SHEPARD INTENDED TO USE THIS AS  
A WEAPON OR NOT AND GIVEN THAT  
POSTURE OF THE CASE YOU CAN'T  
CONCLUDE HE INTENDED TO USE IT  
AS A WEAPON AND THE DEFINITION  
THAT WAS GIVEN TO THE JURY BY  
THE COURT, A WEAPON IS LEGALLY  
DEFINED TO MEAN ANY OBJECT THAT  
COULD BE USED TO CAUSE DEATH.

>> BUT YOUR ARGUMENT HERE IS NOT  
ABOUT THE SUFFICIENCY OF THE  
JURY FINDING.

YOUR WHOLE ARGUMENT IS AN  
AUTOMOBILE CAN NOT BE A WEAPON.  
THAT IS THE WHOLE DEFINITIONAL.  
YOU HAVE NOT MADE AN ALTERNATIVE  
ARGUMENT ABOUT, WELL, EVEN IF IT  
COULD BE THIS FINDING, THIS JURY  
FINDING WASN'T SUFFICIENT,  
DIDN'T HAVE SUFFICIENT FINDINGS  
OF INTENT TO USE IT AS A WEAPON.  
THAT IS NOT PART OF YOUR  
ARGUMENT?

>> NO.

OUR ARGUMENT IS SHOULD HAVE  
NEVER BEEN SIT SUBMITTED TO THE  
JURY.

>> I UNDERSTAND.

>> THANK YOU FOR YOUR ARGUMENTS.  
THE COURT IS IN RECESS UNTIL  
TOMORROW.