

WE WILL NOW PROCEED TO THE
SECOND CASE ON TODAY'S DOCKET.

VELAZCO VERSUS THE STATE.

>> GOOD MORNING, CHIEF JUSTICE
AND GOOD MORNING JUSTICES.

IT'S A MORE TO BE HERE BEFORE
THE COURT TODAY.

MY NAME IS MICHAEL MEYER AND I
REPRESENT THE PETITIONER

MR. VELAZCO IN THIS CASE.

MR. VELAZCO WAS CONVICTED IN THE
TRIAL COURT OF 3 DIFFERENT

CHARGES.

COUNT ONE WAS LEAVING THE SCENE
OF AN ACCIDENT INVOLVING SERIOUS
BODILY INJURY AND COUNT WAS DUI
WITH SERIOUS BODILY INJURY AND
COUNT 3 DUI WITH PROPERTY
DAMAGE.

THE ISSUE FRAMED BEFORE THIS
COURT IS REALLY ABOUT THE COUNTS
OF DUI WITH SERIOUS BODILY
INJURY AND DUI WITH PROPERTY
DAMAGE.

AND THE REASON THIS COMES BEFORE
THIS COURT IS BECAUSE THERE IS A
CONFLICT IN THE DISTRICTS.

WE APPEARED BEFORE THE THIRD
DISTRICT COURT OF APPEAL AND THE
THIRD DISTRICT COURT OF APPEAL
FELT THAT THE DUI WITH PROPERTY
DAMAGE WAS AN OFFENSE THAT WAS
NOT DOUBLE JEOPARDY WITH RESPECT
TO THE DUI WITH SERIOUS BODILY
INJURY.

THE ANGILY COURT FELT THAT THAT
PARTICULAR OFFENSE, DUI WITH
PROPERTY DAMAGE WAS, IN FACT, A
DEGREE VARIANT OF THE DUI
STATUTE.

>> COUNSEL, CAN YOU DIRECT US TO
ANY PLACE IN OUR STATUTES WHERE
DAMAGE TO PROPERTY AND DAMAGE TO
A PERSON ARE DIFFERENCES OF
DEGREE, DEGREE VARIANTS AND NOT
DIFFERENT INJURIES IN MIND,
ANYWHERE OTHER THAN THE DUI
STATUTE?

SO CONSIDER ARSON, ROBBERY, IS
THERE ANYWHERE ELSE IN THE
STATUTE WHERE YOU GET AN OUTCOME
LIKE THE ONE YOU'RE ADVOCATING
IN THIS COURT?

>> JUDGE, I'M NOT FAMILIAR WITH ANY OTHER STATUTES THAT DO REQUIRE OR DO SEPARATE THE DISTINCTION BETWEEN SHADOW AND/OR A PERSON.

>> AS DEGREE VARIANTS OF EACH OTHER?

>> AS A DEGREE VARIANTS OF EACH OTHER.

>> WHY SHOULD WE TREAT AND SAY IN THIS CASE INJURY TO PROPERTY CAN SOMEHOW BE SUBSUMED IN INJURY TO A PERSON WHERE OBVIOUSLY INJURY TO PROPERTY IS NOT AN ELEMENT IN ESTABLISHING INJURY TO A PERSON.

>> WHEN THE COURT LOOKS AT THE DUI STATUTE 316.193 IT SPECIFICALLY -- FIRST OF ALL, THE ELEMENTS OF A DUI ARE SIMPLY THAT AN INDIVIDUAL IS DRIVING A VEHICLE OR AN ACTUAL PHYSICAL CONTROL, THE SECOND ELEMENT IS THAT THEY WERE UNDER THE INFLUENCE OF EITHER CONTROLLED SUBSTANCE AND/OR THEIR BREATH OR BLOOD ALCOHOL WAS GREATER THAN .08.

WE THEN GO DOWN TO SUBSECTION 2 WHICH CREATES THE AGGRAVATORS, IF YOU WILL, OF THE DUI STATUTE AND WHEN THE DUI STATUTE SPECIFICALLY TALKS ABOUT WHETHER IT IS DAMAGE TO A PERSON OR PROPERTY OF ANOTHER, SO IT SPECIFICALLY INCLUDES DAMAGE TO A PERSON AND/OR PROPERTY OF ANOTHER AND WHEN THE COURT LOOKS AT 316.193 RAND GOES THROUGH THE STATUTE, IT ESSENTIALLY IS A DEGREE OF VARIANTS THAT WOULD ENHANCE THE PENALTIES ON THE HARM THAT WAS CAUSED AND IF THE COURT LOOKS AT THE STATUTE, IT SPECIFICALLY TALKS ABOUT A DUI, A SIMPLE DUI, PUNISHABLE BY SIX MONTHS IN THE COUNTY JAIL. DUI TO PROPERTY OR A PERSON PUNISHABLE BY A YEAR AND JAIL. DUI SERIOUS BODILY INJURY PUNISHABLE BY 5 YEARS IN PRISON. DUI HA CAUSES DEATH OF UNBORN CHILD 15 YEARS IN STATE PRISON AND THERE'S A DEGREE VARIANT

THAT I BELIEVE THE STATUTE ITSELF IS -- IS SET UP IN SUCH A WAY THAT IT IS NOT, WHEN THE COURT LOOKS AT THE TEST AND OBVIOUSLY THE JUSTICES KNOW THAT THE TEST HAS BEEN CODIFIED --

>> SO IF I'M HEARING YOUR ANSWER TO THE QUESTION RIGHT, WHAT YOU'RE SAYING THE STATUTE TELLS US THAT THESE ARE DEGREE VARIANTS BECAUSE THEY ARE ESCALATING PENALTIES BUT THAT CAN'T REALLY BE THE ANSWER BECAUSE THEY'RE OFTEN ESCALATING PENALTIES IF OFFENSES THAT HAVE DIFFERENT ELEMENTS HAVE DIFFERENT IMPACTS THAT THE LEGISLATOR HAS DECIDED TO TREAT DIFFERENTLY.

CONSIDER THE FOLLOWING, IMAGINE THAT THERE IS AN ACCIDENT AND THE OWNER OF THE VEHICLE HAS SUSTAINED SERIOUS BODILY INJURY, BROKEN FEMUR BUT THE VEHICLE IS A LIMITED EDITION CAR, YOU KNOW, A 1952 MERCEDES WORTH \$2 MILLION.

YOUR READING OF THE STATUTE WOULD SAY THAT VICTIM IS OUT OF LUCK IN TERMS OF RECOVERING ANYTHING FOR THE DAMAGE TO THE PROPERTY IF FROM A RESTITUTION STANDPOINT AND THE STATE IS OUT OF LUCK FROM THE STANDPOINT OF PROSECUTING THAT AS A CRIME AGAINST PROPERTY IF INSTEAD THE STATE ELECTS TO PUT THE DEFENDANT IN JEOPARDY OF HAVING CAUSED SERIOUS PHYSICAL INJURY TO THIS PERSON.

AM I RIGHT OR AM I MISSING SOMETHING?

>> I DON'T THINK YOUR MISSING SOMETHING.

I THINK THE LAW IS CLEAR THAT WE DON'T LOOK TO THE ACCUSATORY PLEADING AND IN THE STATUTE ITSELF IT SPECIFICALLY SAYS DAMAGE TO THE PROPERTY OR PERSON AND WHAT WE HAVE IN THIS CASE IS UNFORTUNATELY MR. RODUS WAS THE OWNER OF THE SCOOTER THAT WAS INJURED, HE WAS ALSO INJURED HIMSELF.

BUT THE STATUTE SPECIFICALLY SAYS AND -- AND I THINK IF THE LEGISLATIVE INTENT WAS THAT SHOULD BE A SEPARATE PENALTY, IF YOU WILL, OR A SEPARATE CRIME, I CERTAINLY DON'T THINK THAT THE LEGISLATURE WOULD HAVE WRITTEN THE STATUTE TO INCLUDE PROPERTY TO A PERSON OR PROPERTY OF ANOTHER.

AND THAT'S WHERE I BELIEVE THE DEGREE VARIANT COMES INTO PLAY.

>> SORRY TO INTERRUPT YOU, CAN I ASK YOU A QUESTION ABOUT THAT BECAUSE I KNOW THAT YOU'RE NOT PROCEEDING UNDER 4A BUT IT SEEMS LIKE WE COULD AVOID ALL OF THE DEGREE VARIANTS STUFF IF WE LOOKED AT 4A AND IT SAYS THAT OFFENSES ARE SEPARATE IF EACH OFFENSE REQUIRES PROOF OF AN ELEMENT THAT THE OTHER DOES NOT AND IT SEEMS LIKE SINCE THIS IS WRITTEN AS PROPERTY DAMAGE OR BODILY INJURY AND IT TELLS US THE -- THE STATUTE TELLS US THAT WE ARE NOT SUPPOSED TO LOOK AT THE FACTS OF THE CASE OR THE ACCUSATORY PLEADING THAT IT DOESN'T REQUIRE IT BECAUSE IT COULD BE PROVEN EITHER WAY AND IT SEEMS LIKE YOU'VE, YOU KNOW, YOU'VE WAIVED THAT AND WE COULDN'T REVERSE THE THIRD DISTRICT ON THAT GROUND BUT AS FAR AS JUST OUR OVERALL JUS PRUDENCE, I'M WONDERING WHY RELYING ON 4A ISN'T THE MOST STRAIGHTFORWARD WAY TO GETTING TO THE RIGHT ANSWER HERE.

>> AGAIN, I DON'T THINK THAT THE INJURY IS AN ELEMENT OF THE CRIME.

I THINK IT'S AN AGGRAVATOR OF THE CRIME.

SO I THINK THAT THE ELEMENTS OF THE CRIME ARE SET OUT IN -- IN 319 -- 316.193, SUBSECTION 1 AND IT GOES ONTO SAY THAT THE PENALTIES WILL, YOU REFERRED TO SUBSECTION 2 OF THE DUI STATUTE. SO THE POINT BEING IS THAT IT IS -- FROM OUR VIEW, THESE ARE ALL AGGRAVATING FACTORS THAT STEP UP

IN DEGREE BASED UPON WHATEVER IS USED AT TRIAL AND WITHOUT LOOKING TO THE ACCUSATORY PLEADING IT DOES BECOME A DEGREE VARIANT OF THE ACTUAL DUI ITSELF.

IN OTHER WORDS, IF YOU HAVE A DUI AND IT'S YOUR SECOND DUI, THE ELEMENTS ARE GOING TO BE THE SAME.

THE PUNISHMENT IS GOING TO BE GREATER BECAUSE THERE'S AN AGGRAVATOR, IF YOU WILL, OR IF IT'S A THIRD DUI OR FOURTH DUI, IT COULD BE THIRD --

>> BUT AS FAR AS WHAT WE ARE COMPARING, I THOUGHT THAT THE WHOLE -- THIS WHOLE THING HAS BEEN LITIGATED AS IF THE TWO THINGS THAT ARE BEING COMPARED ARE TREATING, YOU KNOW, THE ONE CRIME OF THE SERIOUS BODILY INJURY WITH THAT AS AN ELEMENT AND THEN LOOKING AT THE PROPERTY DAMAGE/REGULAR BODILY INJURY IS THAT THOSE ARE THE TWO THINGS THAT ARE BEING COMPARED NOT -- NOT THAT THERE'S JUST SORT OF ONE CRIME IE DUI WITH THE DIFFERENT AGGRAVATORS.

I THOUGHT THE WHOLE LOGIC OF THIS THAT THE COMPARISON POINT OR ARE THOSE TWO THING?

>> JUDGE MUÑOZ, FOR EXAMPLE, IF SOMEBODY IS CONVICTED OF A DUI WITH PERSONAL INJURY, WE KNOW THAT THEY CANNOT ALSO BE CONVICTED OF DUI WITH SERIOUS BODILY INJURY AND THE STATUTE THAT REFERS TO PERSONAL INJURY IS THE SAME STATUTE THAT DEALS WITH PROPERTY.

IT'S THE SAME PART OF THE STATUTE BECAUSE IT SAYS PROPERTY OR PERSON.

>> RIGHT.

THAT'S WHAT I'M SAYING.

IT SEEMS -- I DON'T UNDERSTAND WHY YOU DIDN'T RELY ON 4A AND THAT WAY YOU DON'T HAVE TO GET INTO THE DEGREE VARIANT THING.

>> I UNDERSTAND -- I UNDERSTAND WHAT THE COURT IS SUGGESTING BUT FROM -- WHEN THE COURT LOOKS AT

THE BLOCK CODIFICATION WE BELIEVE IT'S THE SECOND PRONG OF THE CODIFICATION WHICH DEALS WITH IT'S A DEGREE OF THE SAME OFFENSE AS PROVIDED BY THE STATUTE.

IT JUST -- AND I THINK ANOTHER POTENTIAL EXAMPLE IS THE BATTERY ON A POLICE OFFICER OR A SIMPLE BATTERY.

IT'S AN UNLAWFUL TOUCHING OF SOMEBODY AND IT JUST GETS ELEVATED BECAUSE OF THE TOUCHING TO SAY A LAW ENFORCEMENT OFFICER OR A FIREFIGHTER THAT THE PENALTY BECOMES AGGRAVATED BECAUSE OF THE NATURE OF THE OFFENSE AND YOU HAVE TO LOOK TO THE ACCUSATORY PLEADING BUT IT'S A DEGREE VARIANT OF THE SAME CRIME.

SO YOU CAN'T BE CONVICTED OF BOTH.

YOU COULDN'T BE CONVICTED OF BOTH BATTERY ON A POLICE OFFICER AND SIMPLE BATTERY.

JUST LIKE YOU COULDN'T BE CONVICTED ON DRIVING WITH A SUSPENDED LICENSE AND DRIVING AS A HABITUAL TRAFFIC OFFENDER.

I THINK THOSE ARE DEGREE VARIANTS OF THEMSELVES.

SO WE ARE ASKING THE COURT TO RELY UPON THE ANGILI --

>> COUNSEL, CAN I ASK YOU A QUESTION, IN JUSTICE'S HYPOTHETICAL, NOT CAN RESULT FROM DUI, CORRECT?

>> I THINK IT'S VERY BROAD AND IT'S RESTITUTION TO THE PERSON AND WHATEVER RESULTED FROM THE CRIME.

I THINK THAT'S PROBABLY FAIR.

>> AND JUST SLIGHTLY DIFFERENT SET OF FACTS, IF LET'S SAY THE PERSON COMMITTING THE DUI RAN INTO A PERSON ON THE SIDEWALK IN FRONT OF THEIR HOUSE AND SAY YOU HAD AN INJURY, BUT THEN THEY ALSO RAN INTO THE MAILBOX THAT BELONGED TO THE SAME PERSON WOULD YOU CHANGE YOUR VIEW OF THINK IN ANYWAY SO NOT NECESSARILY THE PERSON WAS IN

THE CAR OR ON THE SCOOTER AS WE
HAVE HERE BUT STILL ONE VICTIM
THE TWO KIND OF SEPARATE
INSTANCES OF DAMAGE.
WOULD THAT CHANGE AT ALL FOR
YOU?

>> YOUR HONOR, I DON'T BELIEVE
SO.

IT'S THE PERSON OR PROPERTY OF
ANOTHER, IT'S IN THE A SEPARATE
VICTIM.

THERE IS MANY CASES OUT THERE
THAT INVOLVE MULTIPLE VICTIMS
WHICH IS NOT THE CASE HERE.

WE HAVE A SITUATION WHERE IT IS
THE SAME VICTIM, SO IN THAT
SCENARIO WHERE YOU HAVE A
MAILBOX THAT BELONG TO THE
VICTIM, MAYBE HE -- HE CAN, I
THINK YOU'RE RIGHT WITH THE
RESTITUTION, I THINK THAT DOUBLE
JEOPARDY AND THE CODIFICATION
PRECLUDES THE PROSECUTION, IF
YOU WILL, OF THE PROPERTY.

>> BUT IN THIS CASE IF THE
SCOOTER HAD BEEN JOINTLY OWNED

--

>> RIGHT.

>> THERE COULD HAVE BEEN TWO
CHARGES UNDER YOUR ANALYSIS?

>> IF THE SCOOTER WAS JOINTLY
OWNED AND THERE WAS A SEPARATE
VICTIM, I THINK, YOU'RE CORRECT.

I THINK YOU'RE CORRECT.

THEN IT IS NOT NECESSARILY
DEGREE VARIANT BECAUSE THERE'S A
SEPARATE VICTIM AND SO I WOULD

-- I WOULD AGREE WITH THAT
PROPOSITION.

I WOULD AGREE WITH THAT
PROPOSITION.

IF I MAY, I'D LIKE TO PIVOT TO
AN ISSUE THAT WAS BRIEFED AND
THAT DEALS WITH THE
CONFRONTATION CLAUSE.

IN THIS PARTICULAR CASE, THE --

>> THE MORE SIGNIFICANT ISSUE
FOR YOUR CLIENT?

>> CHIEF JUDGE, IT IS THE MOST
SIGNIFICANT ISSUE FOR MY CLIENT.
IT IS THE MOST SIGNIFICANT
ISSUE.

IN THIS CASE, WE HAVE NO ISSUES
WITH THE TRIAL COURT GRANTING

THE MOTION FOR THE PERPETUATION OF TESTIMONY.

THAT'S NOT THE ISSUE BEFORE THE COURT.

THE ISSUE BEFORE THIS COURT IS WHAT WE BELIEVED WAS AN ABUSIVE DISCRETION IN DETERMINING WHETHER OR NOT A WITNESS WAS UNAVAILABLE ON THE DAY OF TRIAL AND SIMPLY THE RECORD DOES NOT IN OUR HUMBLE OPINION PROVE BY A PREPONDERANCE OF THE EVIDENCE WHICH IS THE STANDARD, THE STANDARD IS THAT THE TRIAL COURT MUST FIND BY THE PREPONDERANCE OF THE EVIDENCE THAT THE WITNESS WAS, IN FACT, UNAVAILABLE ON THE DAY OF TRIAL.

AND IF THE COURT LOOKS TO THE TRANSCRIPT OF THE DAY OF WHEN THE TRIAL PROCEEDED, THERE WAS AN ASSISTANT STATE ATTORNEY THAT STOOD BEFORE THE COURT AND SAID, WELL, SHE'S HAD SURGERY THREE WEEKS PRIOR, SHE WAS IN AND OUT OF THE HOSPITAL AND I SPOKE TO HER THIS MORNING AND SHE SAID THAT SHE WAS SICK AND SHE WAS ON STEROIDS.

THERE'S NOTHING THE RECORD'S VOID OF WHAT DOES SICK MEAN, DID SHE HAVE A COLD, DID SHE NOT FEEL WELL.

>> THE TRIAL COURT, THOUGH, MADE SEVERAL FINDINGS ABOUT HER PAST SURGERY, HER FUTURE SURGERY. ON THAT RECORD, HOW CAN WE SAY THAT NO REASONABLE TRIAL JUDGE WOULD HAVE DISAGREED WITH YOU, HOW ARE WE ABLE TO SAY THAT THERE'S AN ABUSIVE DISCRETION WHERE THERE ARE THE JUDICIAL REASONS FOR THE OUTCOME?

>> JUDGE, I THINK PREVIOUS SURGERIES WAS ONE OF THE REASONS THAT THEY PERPETUATED THE TESTIMONY AND THAT SHE WAS ON DIALYSIS 3 DAYS A WEEK. BUT REALLY THE ISSUE IS UNAVAILABILITY ON THE DAY OF TRIAL.

IT'S NOT I HAD SURGERY 3 WEEKS AGO AND I COULDN'T -- I COULDN'T POSSIBLY HAVE -- HAVE BEEN

AVAILABLE 3 WEEKS AGO.

THE ISSUE IS THE CONFRONTATION
CLAUSE AND MY CLIENT'S ABILITY
TO CONFRONT A WITNESS IN COURT
WHEN SHE'S THE LYNCHPIN TO THE
CASE AND THERE IS NOTHING TO
SUGGEST OTHER THAN SHE HAD
SURGERY 3 WEEKS AGO THAT --

>> IT DOES SAY SOMETHING ABOUT
FUTURE SURGERY.

I'M HEARING A VERY PERSUASIVE
ARGUMENT WHY THEY GOT THIS WRONG
AND WHY THEY ABUSED DISCRETION,
CAN YOU MAKE THE ARGUMENT?

>> YOUR HONOR, I THINK THAT THE
ANALYSIS THAT JUDGE MIRANDA HAD
MADE AT THE TRIAL COURT LEVEL
TALKING ABOUT THINGS THAT
HAPPENED TO THIS -- TO THIS
WITNESS PREVIOUSLY DOES NOT
ADDRESS THE ISSUE OF WHETHER OR
NOT SHE COULD BE PROCURED AS A
WITNESS TODAY.

I MEAN, THAT'S REALLY THE ISSUE
THAT WE HAVE TO DEAL WITH TODAY.
WHAT IS WRONG WITH HER TODAY?
WHY CAN'T SHE NOT COME TO COURT
TODAY?

FORGET ABOUT -- THERE'S PLENTY
OF SCENARIOS WHERE SOMEONE HAS
SURGERY --

>> LET ME ASK YOU BECAUSE I
SERVED IN TRIAL COURT FOR 13
YEARS AND DEALT WITH THIS
CONSTANTLY, PEOPLE GET SICK,
TAKE A SITUATION THAT I HAD, NOT
JUST ME PERSONALLY, I DID BUT A
WITNESS, CANCER AND THE PERSON
IS TAKING CHEMOTHERAPY AND
ANYONE HAS GONE THROUGH THAT
WILL TELL YOU THAT YOU WILL HAVE
GOOD DAYS AND YOU WILL HAVE
HORRIBLE DAYS.

STATE ATTORNEY'S OFFICE, I WAS
ONCE ONE, THEY HAD WITNESS
COORDINATORS.

IT'S NOT THE PROSECUTOR WHO IS
CALLING THE WITNESS, IT'S THE
COORDINATOR WHO IS DELIVERING
THE WITNESSES AND THEY CALL THE
WITNESSES AND I THINK WHAT YOU
ARE SUGGESTING IS THAT THE JUDGE
SHOULD HAVE ASKED THE QUESTION,
WELL, HOW DOES SHE FEEL TODAY

WHEN SHE'S GOING TO TESTIFY AND
-- BECAUSE SHE COULD HAVE BEEN
HAVING GOOD DAY THAT DAY AND
SAID, I FEEL FINE, IF YOU SEND
SOMEBODY TO PICK ME UP AND THE
NEXT DAY SHE MAY HAVE TAKEN A
TURN FOR THE WORSE.

IT'S NOT A QUESTION OF HAVING
ALL OF THESE CONDITIONS THAT MAY
LEAD TO THE PERSON NOT FEELING
WELL, IT'S HOW THE PERSON FEELS
ON THE DAY THAT THE PERSON'S
TESTIMONY IS REQUIRED.

I THINK THAT'S WHAT YOU'RE
SAYING.

>> JUDGE, I THINK THAT'S EXACTLY
WHAT I'M SAYING AND HEALTH CAN
WANE AND SOME DAYS IT CAN BE
GOOD AND SOME DAYS IT CAN BE
BAD.

THE LADY HAD SOME ISSUES AND THE
TRIAL COURT JUDGE WAS WHETHER OR
NOT SHE COULD HAVE BEEN PROCURED
TO COME THAT DAY AND WHAT WAS
WRONG WITH HER AND THE RECORDS
VOID OF THAT AND WHEN YOU HAVE A
WITNESS WHO IS THE ONLY REAL
WITNESS TO THIS CASE, THAT'S THE
PART THAT IS MOST TROUBLING AND
THAT'S THE PART THAT I BELIEVE
THE COURT SHOULD AND -- AND HAD
A DUTY TO DO MORE FOR MY
CLIENT'S RIGHT --

>> COUNSEL, YOU HAVE USED ALMOST
ALL OF YOUR REBUTTAL TIME AND WE
HELPED YOU WITH THAT SO YOU HAVE
30 SECONDS LEFT.

BUT I WILL AWARD YOU 3 MINUTES
ANYWAY IF --

>> THANK YOU, SIR.

IF THE COURT HAS NO FURTHER
QUESTIONS, THANK YOU.

>> NO, GO AHEAD.

>> SO I COULD TAKE YOU BACK TO
THE FIRST ISSUE --

>> YES, SIR.

>> BUILDING ON JUSTICE'S
QUESTION.

WE HAVE -- WE HAVE THE
STATEMENTS IN OUR PRIOR CASES
WHERE WE SAY, YOU KNOW, WE DON'T
NEED TO SEE THE MAGIC WORD
DEGREE AND THEN IT SAYS THERE
ARE OTHER STATUTORY DESIGNATIONS

THAT CONVINCED THE RELATIONSHIP OF DEGREE, FOR EXAMPLE, WHEN A CRIME MAY HAVE AGGRAVATED FORMS OF THE SAME BASIC OFFENSE.

SO IF WE WERE TO ADOPT THAT AS KIND OF THE, YOU KNOW, OUR INTERPRETATION OF -- OF DEGREE VARIANTS, WHY WOULDN'T ONE WAY OF LOOKING AT THIS THE SAME, QUOTE, UNQUOTE BASIC OFFENSE WOULD BE, YOU KNOW, CAUSING INJURY TO A PERSON VERSUS THAN AN AGGRAVATED FORM IS SERIOUS BODILY INJURY BUT WHEN YOU'RE TALKING ABOUT THE PROPERTY DAMAGE THEN YOU'RE NO LONGER REALLY TALKING ABOUT THE SAME QUOTE, UNQUOTE BASIC OFFENSE?

>> WELL, I THINK IT IS JUDGE MUÑOZ, I BELIEVE IT IS THE SAME OFFENSE BECAUSE WHEN THE COURT LOOKS AT THE STATUTE, THEY -- THE STATUTE PROGRESSIVELY GETS MORE DIFFICULT, THE PENALTIES BECOME HARSHER AND AGGRAVATOR EVERY TIME YOU GO THROUGH THE STATUTE.

IT'S ALMOST LIKE THE GRAND THEFT STATUTE EVEN THOUGH IT DOESN'T SAY DEGREE BUT WHEN YOU TALK ABOUT THE GRAND-SHIFT STATUTE, IF IT'S MORE THAN A -- THEY JUST CHANGED IT, BUT IF IT'S MORE THAN A THOUSAND DOLLARS THEN IT BECOMES A FELONY AND IF IT'S UNDER A THOUSAND IT'S A PETTY THEFT.

>> RIGHT.

AND I THINK JUSTICE COREAL'S POINT THAT AN EXAMPLE LIKE THAT YOU'RE JUST TALKING ABOUT THE SAME TYPE OF HARM AND YOU'RE JUST -- THE MORE OF THAT TYPE OF HARM THAT YOU CREATE, THE MORE CULPABLE YOU ARE, THE GREATER THE PUNISHMENT BUT HERE WE'VE INTRODUCED SORT OF A DIFFERENT CATEGORY OF HARM AND IS IT -- SO TO APPLY THIS DEFINITION, IT SEEMS LIKE FOR YOU -- FOR THIS DEFINITION TO APPLY TO YOU, THE BASIC OFFENSE HAS TO BE DUI, BUT IF WE SAY THAT THE QUOTE, UNQUOTE BASIC OFFENSE IS DUI

THAT CAUSES PHYSICAL HARM TO SOMEONE, THEN MAYBE YOU SEE THE DEGREE VARIANT RELATIONSHIP BUT NOT IF YOU CONSIDER THIS PROPERTY DAMAGE TO BE KIND OF A SEPARATE TYPE OF OFFENSE. YOU'RE NO LONGER TALKING ABOUT THE SAME BASIC OFFENSE AND I GUESS I DON'T -- ONCE WE GET AWAY FROM SORT OF THE LITERAL, A DEGREE RELATIONSHIP EXPLICITLY LAID OUT IN THE STATUTE, IT SEEMS LIKE IT'S NOT OBVIOUS HOW YOU DEFINE WHAT THE QUOTE, UNQUOTE BASIC OFFENSE IS.

>> I THINK WHAT YOU'RE SUGGESTING IS THAT IT'S AN ELEMENT, A SEPARATE ELEMENT SO THEREFORE IT WOULD -- IT WOULD NOT VIOLATE BLOCKBURGER IF THAT'S WHAT I UNDERSTAND THE COURT TO MEAN.

FROM OUR PERSPECTIVE AND MY REVIEW OF THE STATUTE AND MY READING OF THE STATUTE, I BELIEVE THE ANGILI COURT GOT IT RIGHT AND I BELIEVE JUDGE EMIS IN HIS DECENT GOT IT RIGHT WHICH WAS ELOQUENTLY WRITTEN.

COUNSEL ALSO GIVE YOU THREE MINUTES FOR REBUTTAL.

>> THANK YOU.

>> MAY PLEASE THE COURT, MY NAME IS KSENIYA SMYCHKOUSKAYA, ASST. ATTORNEY GENERAL, MIAMI, AND IF YOU'RE IN THE PAY HALF OF THE STATE OF FLORIDA AND THE CONVICTIONS IT DO NOT VIOLATE DOUBLE YOUR JEOPARDY PROPERTY DAMAGE IN DUI IS BODILY INJURY AND NOT A DEGREE OF VARIANCE IN THE DETERMINATION AS TO WHETHER THIS OFFENSES ARE DEGREE VARIANCE AND THE COURT SHOULD LOOK AT THE TEXT OF THE STATUTE THEY SCHEME AND HOW DIFFERENTLY DOES THE STATUTE TREAT BODILY INJURY AND PROPERTY DAMAGE AND THE STATUTE CLASSIFIES DUI PROPERTY DAMAGES MISDEMEANOR AND IT ONLY INCLUDES AND THAT SECTION 331 REGARDLESS OF THE VOLUME OF THE PROPERTY DAMAGE, IN OTHER WORDS, REGARDLESS OF

WHETHER A DEPENDENT IT'S A SCOOTER OR A MASERATI WITH MONO LISA IN IT, HE CAN ONLY BE CHARTED ON THE DUI PROPERTY DAMAGE OR PROVISION. THERE IS NO GREATER OR LESSER VALUE OF THE PROPERTY DAMAGE IN THE STATUTORY LANGUAGE, THEN WE LOOK AT THE DUI, THE SERIES BODILY INJURY, AGAIN THERE IS NO SERIOUS PROPERTY DAMAGE LANGUAGE UNIT.

>> CAN I ASK YOU TO TURN TO THE DISCUSSION THAT WE BEEN HAVING, THE RESTITUTION FOR A MOMENT, SO USING A MASERATI MONA LISA UNIT, SO LET'S SAY DRIVING IT I HAVEN'T HAVE THE MONA LISA IN THE BACKSEAT, AND I'M IN AN ACCIDENT AND A BREAK MY FEMUR, BUT I HAVE SUFFERED RESTING SUITABLE FINANCIAL HARM. THE HANDS OF THAT WE GOT FROM COCOUNSEL IN YOUR OPPOSING COUNSEL WAS THERE'S NO PROHIBITION ON MY SEEKING AN YOU'RE SEEKING PETITIONER FOR THE VICTIM AS A STAGE, AND HE RESPONDED THAT BECAUSE IT WOULD SEEM LIKE THAT IS A VERY STRONG ARGUMENT FOR TRYING TO READ THE STATUTE IN A WAY THAT MAKES THE PROPERTY DAMAGE A DEGREE VARIANCE.

LIKE IF THAT HARM, IS STILL REMEDIED BY RESTITUTION, THEN DO YOU AGREE THAT HELPS OPPOSING COUNSEL AND IF SO, HOW DO YOU RESPOND.

>> IF THE DRIVER IS THE ONE SUSTAINING PROPERTY DAMAGE, THE DRIVER CANNOT BE CHARGED UNDER THE PROVISION BECAUSE THE PROPERTY DAMAGE OF ANOTHER'S PROPERTY SO THE DRIVER IF THEY ARE THE ONE WHOSE PROPERTY IS DAMAGED CANNOT BE CHARGED. ANOTHER PERSON WOULD BE ABLE TO

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>> CAN SO I BELIEVE THAT WE ARE ASKING IS IF THE DRIVER HIT A CAR THAT ENTERED THE OTHER PERSON, AND ALSO INJURED THE MASERATI WITH THE MONA LISA AND

YOU CHARGED SERIOUS BODILY INJURY WOULD YOU STILL AS THE STATE BE ABLE TO SEEK RESTITUTION FOR THE MASERATI IN THE MONA LISA IN THE MEDICAL RESTITUTION ALL.

>> UNDER THE RESTITUTION STATUTE RIGHT NOW, YES.

>> AND I HAVE A QUESTION FOR YOU, HUNDRED STATE THEORY, WOULD YOU BE ABLE TO CHARGE IT TO SEPARATE OFFENSES, DUI WITH PROPERTY DAMAGE AND HAD A DUI WITH BODILY INJURY, SERIOUS BODILY INJURY, JUST UNDER THAT SAME SUBSECTION.

>> BECAUSE IT'S NOT UNDER THE STATUTE, I BELIEVE SO SO IT WOULD BE JUST NOT CHARGES BASED ON NOT TO COUNSEL.

>> YOU COULD NOT BRING SO IF THE PERSON WAS MODERATELY ENTERED AND DID NOT RISE TO THE LEVEL OF SERIOUS BODILY INJURY, THE STATES POSITION THAT YOU CAN ONLY BRING ONE CHARGE, THE PROPERTY DAMAGE OR INJURY TO A PERSON, DAMAGE TO A PERSON.

>> BECAUSE IN THE STATUTE AND IT IS THE SAME VICTIM, I BELIEVE THE READING OF THE ALTERNATIVE STATUTE WOULD ALLOW THE STATE TO CHARGE ONLY HAS ONE COUNT HOWEVER, THIS IS NOT OVER HERE FOR, WE DO HAVE A DIFFERENT CHARGES WHICH IS DUI PROPERTY DAMAGE AND UI SERIOUS BODILY INJURY AND THERE TO DIFFERENT SUBSECTIONS IN TWO DIFFERENT STATUES WHICH PETITIONER DOES NOT DISPUTE PAST THE BLOG BERG IN THIS LEGISLATURE AND THAT DOES ALLOW THE STATE TO CHARGE AND CONVICTED FOR TWO SEPARATE OFFENSES SO THAT IS WHY IS DIFFERENT FROM THE HYPOTHETICAL.

>> AND VALDES, THE COURT DEFINES BECAUSE THEY SAID IT DOES NOT HAVE TO SAY THE MAGIC WORD DEGREE AND THEY DEFINE THE DECREE IS A LEVEL BASED ON THE SERIOUSNESS OF THE OFFENSE AND THAT IS HOW ABOUT AS SO THIS IS HOW WE DETERMINE IF THESE ARE

DEGREES AND WHAT IS YOUR BEST ARGUMENT IS NOT WHAT WE HAVE IN THE DUI STATUTE AND THAT WE DO NOT HAVE DIFFERENT LEVELS BASED ON THE SERIOUSNESS OF THE OFFENSE.

>> IT IS STATES POSITION, TWO. DIFFERENT IN THAT THEY OVERLAP AND HOW DO WE COMPARE THE PROPERTY DAMAGE IT AND SERIOUS BODILY INJURIES BECAUSE AS TO RESULT IN INCOMPARABLE TYPE OF HARMS NOT EVEN A AGREED WITH ONE ANOTHER BECAUSE SERIOUS BODILY INJURY IS NOT IN A FORM GREATER FORM OF A PROPERTY DAMAGE AND THEN AND VALDES, THIS COURT DID HELD THAT THERE WAS A LEGISLATURE AND ATTEMPT TO DISALLOW SEPARATE PUNISHMENTS FOR CRIMES ARISING OUT OF THE SAME TRANSACTION ONLY WHEN THE STATUTE ITSELF PROVIDED FOR DEGREES WITH MULTIPLE OFFENSES IN OTHER WORDS, WHEN THE STATUTE OF EXPRESSLY CLASSIFIED THEM AS SUCH, AND IN THIS CASE, THE LEGISLATURE CHOSE NOT TO CLASSIFY THAT DUI RELATED CRIMES BY DEGREES.

>> IT JUST SEEMS TO BE KIND OF A HIGHLY FORMALISTIC VIEW OF IT BECAUSE YOU JUST LOOK AT THE WAY THIS HAS STRUCTURED, YOU HAVE THE OFFENSE OF DUI, ANY OF THESE ESCALATING PENALTIES OF BASED ON PARTICULAR HARMS ASSOCIATED WITH THE OFFENSE.

THEY UNDER DIFFERENT DEGREES ARE REFERRED TO IN A SOCIALLY MISDEMEANOR IN THE FIRST DEGREE, AND THEN HE GOES TO A FELONY OF THE THIRD DEGREE AND THEN ONLY THE SECOND DEGREE AND THEN FELONY OF THE FIRST DEGREE AND SO THAT IS JUST PART OF THE STRUCTURE HERE NOW THERE'S NO QUESTION THAT IF THE LEGISLATURE WANTED TO PUNISH THESE DIFFERENT HARMS, AS DISTINCT OFFENSES, THEY COULD DO THAT I'M HAVING A HARD TIME SEEING HOW IN THE STRUCTURE, THE FORMAL STRUCTURE OF THIS PARTICULAR STATUTE, THAT

WE WOULD CONCLUDE THEY HAVE DONE THAT AS OPPOSED TO DEFINING THIS DUI OFFENSE AND THEN SAYING, OKAY, WE HAVE THESE AGGRAVATING CIRCUMSTANCES WHICH WILL AFFECT THE LEVEL OF PUNISHMENT THAT WOULD BE IMPOSED ON THE DUI OFFENSE.

>> BUT ALSO IF WE LOOK AT THE DUI PROPERTY DAMAGE AND THE PENALTY IMPOSED AND THEN WE GO DOWN, THERE IS NO DUI SERIOUS PROPERTY DAMAGE AND SO FOR DUI PROPERTY DAMAGE, THERE'S NO PENALTY GOING DOWN.

THE ONLY VIDEOTAPE FOR DUI PROPERTY IS THAT THE MISDEMEANOR AND PENALTY ACCORDING TO THAT SPECIFIC LOCATION, SO FOR THE DUI PROPERTY THERE'S NO ENHANCED PENALTY IF WE GO DOWN AND SO WITH THIS BEING SAID, THERE IS ONLY ONE DUI PROPERTY DAMAGE IN THE STATUTE.

>> WILL THE STATUTE IS WITH THE STATUTE IS.

>> RIGHT, SO ALTHOUGH IT IS IMPORTANT TO SEE HOW THE LEGISLATURE STRUCTURED THE STATUTE IN TERMS OF THE PENALTY INCREASES, STILL NOT NECESSARILY THIS FACTOR WHEN IT COMES TO DETERMINATION WHETHER THE 2 DEGREES FALL UNDER THAT DEGREE OF EXCEPTION.

AND I WOULD ALSO LIKE TO ADDRESS THE POINT THAT THE PETITIONER MADE REGARDING THE PROHIBITION IT TO LOOK AT THE ACCURACY OF PLEADING BECAUSE THE ONLY HARM IN THIS CASE WAS THE DUI PROPERTY DAMAGE, NOT PERSONAL INJURY THAT IF WE LOOK AT THE SUBSECTION 48, THE BLOG BURGER TEST, THE LIMITING LANGUAGE IS INCLUDED ONLY IN SUBSECTION A, SPECIFICALLY THE STATUTE SAYS FOR THE PURPOSE UP THIS SUBSECTION IT OFFENSES ARE SEPARATED EACH OFFENSE REQUIRES PROOF OF HOW LIMITED THE OTHER DOES NOT REGARD TO THE PLEADING AND SO THE LIMITING LANGUAGE IS INCLUDED ONLY IN THE BLOG BURGER

STATUTE AND WE LOOK AT THE
SUBSECTION EXCEPTION STATUTES,
THERE'S NO SUCH LIMITATION THERE
BUT WITH THIS BEING SAID, HIS
RELEVANT TO LOOK AT THE PLEADING
AS A INFANCY WITH THE ACTUAL
CHARGES IN THE ALTERNATIVE
STATUTE WHICH IS AGAIN THE ONLY
HARM PLAN HERE IS PROPERTY
DAMAGE.

BASED ON THAT, -

>> I'M CONFUSED HOW TO GET THE
CONVICTION FOR THE BODILY
INJURY.

>> FOR REGULAR PERSONAL INJURY?
IF IT'S CHARGE AND SO HERE WE DO
NOT HAVE DUI BODILY INJURY SO
DETERMINE IF WHETHER THE DEGREE
THAT EXCEPTION APPLIES, IF
THERE'S AN ALTERNATIVE STATUTE
HERE THERE'S NO EXPRESS
PROVISION AND THE EXCEPTION, WE
CANNOT LOOK AND SEE WHICH ONE IS
CHARGED TO DETERMINE THE
RELATIONSHIP BETWEEN THE TWO.
THE PROHIBITION LANGUAGE IS
INCLUDED IN THE SUBSECTION FOR
HAY AND THE BLOODWORK TEST,
WHERE WE TAKE THE WHOLE -

>> AND I AM, I THINK A
MISUNDERSTANDING YOU BECAUSE
THIS IS HERE THAT THE DEFENDANT
WAS CHARGED WITH BOTH DUI
SERIOUS BODILY INJURY, DUI
PROPERTY DAMAGE IT.

>> THAT IS CORRECT PRINTED THE
PETITIONER MADE A POINT THAT IN
THE MISDEMEANOR STATUTE, IS
ALTERNATIVE LANGUAGE, THE DUI
PRETTY DAMAGE OR DAMAGE TO
PERSON AND PETITIONER MADE AN
ARGUMENT THAT WE GOT SEVEN THE
BOTH AND WE MUST HAVE A DEGREE
OF VARIANCE FOR PURPOSE ANALYSIS
TO COMPARE THE ENTIRE RANGE OF
CONDUCT AND SO IT IS A STATES
POSITION IS THAT WHEN WE APPLY
BLOG BURGER TEST, WE DO HAVE TO
CONSIDER THE ENTIRE RANGE OF
CONDUCT AND WE PROHIBITED THE
EXPRESS LANE WHICH OF THIS
CENTURY TO SEVER THEM.
BECAUSE OF THE PLEADING, HOWEVER
WE ARE TRYING TO DETERMINE

WHETHER THERE IS A DEGREE OF
VARIOUS EXCEPTION IN PARTICULAR
THIS CASE, BECAUSE THERE IS
ALTERNATIVE CONDUCT.
THE INFORMATION BECOMES
RELEVANT.

IN HERE, IT IS RELEVANT BECAUSE
THE ONLY HARM UNDER THE
MISDEMEANOR IS THE PROPERTY
DAMAGE.

IN COMPARING SEE WHY PROPERTY
DAMAGE IN THE BODILY INJURIES,
THIS TO ARE NOT A DEGREE VARIES
AND THEREFORE NO DOUBT
VIOLATION.

>> I HAVE A QUESTION,
HYPOTHETICAL ENTERED
APATHETICALLY THE LEGISLATOR
JUST INTO SOMETHING UP INJURY TO
A PERSON, AND SKIPS NOT
INCLUDING PROPERTY DAMAGE IN THE
GREAT INJURY TO A PERSON, WOULD
YOU THEN YOU THIS IS A DEGREE OF
VARIANT.

>> PERHAPS, BECAUSE BOTH OF
THEM, NOT EVEN PASS THE BLOG
BURGER TEST SO WE WOULD BE AT
THE SUBSECTION A, THERE IS NO
PROPERTY DAMAGE AND FOR EXAMPLE,
A BROKEN FINGER.

>> I'M NOT TALKING ABOUT
SUBSECTION A, I AM TALKING ABOUT
THE DEGREE VARIANT I BELIEVE IT
SUBSECTION C ALTHOUGH IT
INTERPRETS WHAT THAT MEANS AND
SO YOU OR WHAT WOULD BE YOUR
ARGUMENT THAT IT WAS NOT A
DEGREE OF VARIANT STATUTE OF THE
PROPERTY DAMAGE INCLUDED IN THAT
PARTICULAR DEGREE.

>> SO THE CHARGING THE SAME
STATUTE HOWEVER, ONLY HARM WITH
THE PERSONAL INJURY AND THEN
SERIOUS BOTTLE THE INTERRATER
HYPOTHETICAL.

>> YES.

>> UNDER THOSE FACTS AND,
PERHAPS THERE WOULD BE A
STRONGER CLAIM OF DEGREE
VARIANT.

>> IS THAT THE STATES -

>> I AM WONDERING A REALLY IF
WHY THAT MAKES A DIFFERENCE,
EVEN MEETS THE TEST FOR ME

DEGREE VARIANT STATUTE, THE FACT
THE LEGISLATURE CHOSE
ALTERNATIVE CONDUCT EDITING
THINKING ABOUT THE AGGRAVATED
ENTRY STATUTE WHICH MAKES A
CRIME AND AGGRAVATED BATTERY IF
THERE IS SERIOUS BODILY INJURY
OR USE OF A DEADLY WEAPON OKAY
SO IF WERE TALKING A DIFFERENT
CRIME, THE CRIME, YOU CANNOT
CHARGE SOMEBODY WITH TWO COUNTS
OF AGGRAVATED BATTERY IF THEY
USE A WEAPON AND BECAUSE SERIOUS
BODILY HARM, THAT WOULD VIOLATE
DOUBLE JEOPARDY AND I MEAN, IF
THAT IS TRUE, PRACTICALLY
INCLUDED AN ALTERNATIVE IN THIS
SCHEME, I AM UNDER SUBSECTION C
DETERMINING WHETHER IT'S A
DEGREE VARIANT STATUTE, IT SEEMS
ALMOST LIKE A RED HERRING, IS
LAID OUT LIKE A DEGREE OF HER
EIGHT AND JUDGE DIDN'T GOOD JOB
OF EXPLAINING WHY IT IS HARD OF
DEFINITION AND WHY SHOULD IT
MATTER AT ALL WITH JUST LOOKING
AT THE DEGREE VARIANT PORTION
THERE'S AN ALTERNATIVE CONDUCT
THAT IS DIFFERENT.

>> BECAUSE THAT PARTICULAR
STATUTE, THE PROPERTY DAMAGE IS
SUCH A DIFFERENT AND DISTINCT
TYPE OF HARM THAT WAS CAUSED AND
THIS IS EXACTLY WHY I RESPONDED
THAT'S ARGUE LOOKING AT THE
ACTUAL PLEADING FOR THE PURPOSES
OF A DEGREE OF VARIOUS IS
RELEVANT WHEN IT COMES TO
ALTERNATIVE STATUTE.

>> FROM HERE YOU'RE RIGHT, WITH
YOUR ANSWER IS TO THE JUSTICE
QUESTION IS, TRULY NOT
ALTERNATIVE CONDUCT, FILTERING
OF AN ULTERIOR HARM.

>> DEFINITELY THAT IS A CRUCIAL
POINT.

>> SO I GUESSED MY QUESTION THEN
IS, AND IT IS A SIMILAR QUESTION
TO THE QUESTION I ASKED OPPOSING
COUNSEL, WHERE ELSE IN THE
STATUTE, CAN YOU POINT US FOR
EVIDENCE OF YOUR POSITION THAT
IS HARD AT THE STATUTE FOR THE
DEGREE VARIES ARE DEGREES OF THE

SAME KIND OF HARM AND IT SEEMS TO ME WHEN WE SPEAK OF DEGREE VARIANCE, WERE TALKING ABOUT THINGS THAT CAN BE MEASURED ON THE SAME GRADY IT SOON A PROPERTY CRIME THE VALUE OF THE PROPERTY IS SUSCEPTIBLE TO THAT DEGREE MEASUREMENT WAS DIFFERENT HARMS ARE DIFFERENT AND KINDA NOT A DEGREE SO I REALLY CAN'T SAY OTHER THAN SAY THE COST OF MEDICAL CARE, SOME REMEDY AT LAW THAT THE HARM SUFFERED BY THE PERSON WITH A BROKEN NECK, IS OF SOME COMPARABLE DEGREE TO THE PERSON WHO LOST 100,000 OR FIVE AND 2000, IS NOT A DEGREE ACCEPTABLE AND I THINK THE NATURE OF THE WORD DEGREE, INCLUDES SOME SUSCEPTIBILITY TO MUTUAL COMPARISON IS ONLY QUESTION IS, HELP US LOOK AT OTHER AND I WISH THE BRIEFING WOULD'VE DONE THIS, OTHER AREAS OF STATUTE THAT DO ADDRESS DEGREE VARIANCE ALONG THE SAME GRADIENT, ARSON, BATTERY, ROBBERY, ARE THERE ANY OTHER STATUES THAT SUPPORT YOUR POSITION AT AND THAT THE WEATHER THERE HAS A CRIMINAL ACT BASED ON KIND OF HARM.

>> YOUR HONOR, I THINK THE RESPONSE WOULD BE THE STATUTE THAT WELL SO A POOR RESPONSE THE THEFT STATUTE, NOT ONLY HAS A SPECIFICATION BY DEGREE BUT ALSO EVALUATE HERE WE HAVE NO ASSIGNED VALUE.

>> BUT ISN'T IT TRUE THAT THE LEGISLATURE HAS ASSIGNED A VALUE, THEY DECIDED CERTAIN TARPS OF HARM ARE WORTHY OF A HIGHER PENALTY IN THE GO THROUGH IT VERY SYSTEMATICALLY AND THEY DESCRIBE THE TYPE OF HARM AND ASSOCIATED PENALTY IT ESCALATES SO THEY ARE MAKING A JUDGMENT ABOUT THE VALLEY OF THE HARM HAS BEEN DONE IN THE PENALTY THAT SHOULD BE IMPOSED ACCORDINGLY HAD THAT IS NOT PART OF THE STRUCTURE OF THE STATUTE.

>> THAT IS CORRECT IN DEFINITELY

A FACTOR IN CONSIDERING IT THE RELATIONSHIP HOWEVER THE RESPONDENTS POSITION THAT IT IS NOT A FACTOR WHEN IT COMES DEGREE OF DASHES WE MAKE AND SEEMS LIKE YOUR ANSWER TO THE QUESTION ABOUT WHY SOMEONE BEING CHARGED FOR NON- SERIOUS BODILY HARM PROPERTY DAMAGE, IS SEEMS LIKE THE WHOLE LOGIC OF YOUR ARGUMENT IS THEY CAN BE SEVERED AND HE WOULD SAY THAT IT IS A DEGREE.

AS THE JUSTICE WAS ASKING IF YOU ARE COMPARING NONSERIOUS BODILY INJURY TO SERIOUS AND THAT WENT TO INTRODUCE THE PROPERTY DAMAGE, YOU'RE TALKING WHOLE DIFFERENT CATEGORY AND SO ARE YOU CONCEDING THAT YOU COULD NOT BE CHARGED FOR BOTH PROPERTY DAMAGE AND NONSERIOUS BODILY HARM, IT SEEMS LIKE YOU ARE CONCEDING TO THE CHIEF IS SUGGESTING THAT REALLY THAT IS JUST ONE THING, WHEN CRIME IS THEN SORT OF AT A LOWER LEVEL AND YOU KNOW THE SERIOUS BODILY HARM.

CAN YOU HELP US UNDERSTAND THAT.

>> I THINK THAT THE ACTUAL RESPONSE POSITION THAT IS THAT THE ACTUAL CHARGE MATTERS AND WHEN WE DECIDE WHETHER THERE IS A DEGREE OF VARIOUS RELATIONSHIP WITH THE TWO CHARGES, THIS IS WHEN IT THEY WILL TRY STATUTE IN SEVERANCE AND THOSE MATTERS SET.

>> BUT IT SEEMS LIKE THOUGH THE STATUTE IS SET UP IN A WAY THAT WE ARE LOOKING AT THE FACE OF THE STATUTE, NOT WAS PLANNED OR PROVEN.

>> SO THIS THE OTHER RESPONDENT MAKING THAT IF WE LOOK AT THE SUBSECTION CORBY, THERE IS NO SUCH MANDATE OR PROHIBITION TO LOOK AT THE ACTUAL CHARGE OF.

>> WILL THE STATUTE, 77 - 014 B TO WHICH ARE OFFENSES OF THE DEGREE OF SAME OFFENSE AS PROVIDED BY STATUTE AND I JUST DO NOT SEE THE WAY THAT IT IS CHARGE, THIS IS ABOUT ANALYZING

THE STATUTE IS SEEMS TO ME AND DEATH THE WAY THAT IT WOULD BE UNDERSTOOD, JUST BASED ON THE LANGUAGE AND, THE OFFENSES WHICH AT ARE DEGREES OF THE SAME OFFENSE AS PROVIDED BY STATUTE.

>> WEDNESDAY MEETING OF THE PROVISION AND THE OPINION, THAT MEANS THAT IF THE STATUTE EXPLICITLY DEFINES OFFENSES BY DEGREE, SO AS PROVIDED BY STATUTE EXPLICITLY PROVIDED BY STATUTE DOES OFFENSES ARE NOT CLASSIFIED BY DEGREES AND THAT IS THE MAIN POSITION THAT THE STATE HIS TAKING HAND AGAIN THE PENALTY STRUCTURE IS NOT INCLUDED IN THIS PARTICULAR STATUTE SO AS PROVIDED BY THE STATUTE IN THE LANGUAGE IT WAS INTERPRETED BY DISCORD AS I EXPRESSLY EXPLICITLY CLASSIFICATION BY DEGREE THEN THERE IS LANGUAGE OF RECENT OPINIONS WHEN WEATHER THE FORCE OF ONE ANOTHER AND RESPONDENT'S ANSWER TO THAT IS THAT THEY ARE TWO DISTINCT TYPE OF HARMS AND NOT GREATER FORMS OF ONE ANOTHER AND THEREFORE NOT A DEGREE VARIANCE AND THERE'S NO JEOPARDY BUT VIOLATION.

>> AND WE ARE OUT OF TIME AND JUST TO BE CLEAR, YOU DO AGREE THAT IF HYPOTHETICALLY, THE VICTIM OF ADMIN SCRAPES, WAS NOT SERIOUS WALLY HARMON SCOOTER HAD BEEN SCRATCHED SO THERE WAS PROPERTY DAMAGE, YOU COULD NOT GET A CONVICTION FOR TWO CONVICTIONS, DUI WITH PROPERTY DAMAGE AND DO YOU WANT WITH INJURY, DO YOU AGREE THAT WOULD BE PROHIBITED BY DOUBLE JEOPARDY.

>> IT WOULD BE JUST ONE CHARGE OR MISDEMEANOR BASED ON THAT STATUTE.

>> OKAY.

>> I KNOW I'M OUT OF TIME.

>> I'M GOING TO GIVE YOU EXTRA TIME BECAUSE I'M GOING TO GIVE THE OTHER SIDE A LITTLE EXTRA TIME SO KEEP GOING FOR ABOUT A

MINUTE AND A HALF.

>> THANK YOU, JUST BRIEFLY TO ADDRESS THE SECOND POINT THAT THE BUSINESS PETITIONER ADDRESSED, THE TRIAL COURT DID NOT USE DISCRETION WHEN ALLOWED THE INTRODUCTION OF THE WITNESSES TESTIMONY. THE RECORD IS CLEAR THAT THAT WITNESS WAS NOT AVAILABLE FOR TRIAL, SHE HAD A TOOTH EXTRACTION SURGERY TWO WEEKS PRIOR TO TRIAL AND SHE WAS GOING TO DIALYSIS THREE TIMES A WEEK AND SHE HAD HEALTH ISSUES AND COMPLICATIONS AND A COMMON SURGERY, JUST A WEEK AWAY FROM TRIAL IN THE TRIAL FOR THE RECORD ALSO REFLECTS THE TRIAL COURT WAS VERY FAMILIAR WITH THE MEDICAL HISTORY AND MEDICAL CONDITION OF THAT WITNESS IT AFFECTED DEFENSE COUNSEL DID NOT JUST UNDER DISPUTE THE PHYSICAL CONDITION THAT THEN EXISTING PHYSICAL CONDITION OF THAT WITNESS AT TRIAL, BASED ON THAT THERE IS NO REVERSIBLE ERROR. AND IF THIS COURT DOES NOT HAVE FURTHER QUESTIONS, NO DOUBLE JEOPARDY QUOTE AND NO DEGREE OF VARIANCE AND APPROVE THE DISTRICT DECISION AND THANK YOU.

>> THANK YOU.

>> REBUTTAL.

>> THANK YOU FOR ALLOWING NEED ADDITIONAL TIME, JUDGE, WHILE I WAS LISTENING IN, I GOT A COUPLE SCENARIOS THAT I THINK ANSWER THE COURSE QUESTION, IS IN ANY OF THE STATUTE AND I THINK THAT LEAVING THE SCENE, ACCIDENT, ADDRESSES THAT EXACT ISSUE BECAUSE I DO NOT THINK THAT IS A DEGREE COMING IT IS NOT EXPLICIT IN THE STATUTE THAT THERE ARE DEGREES BUT I THANK YOU SO VERY SIMILAR TO THE DUI STATUTE WHICH IS LEAVING THE SCENE OF AN ACCIDENT INVOLVING PROPERTY DAMAGE IT, IS A MISDEMEANOR. IN LEAVING THE SCENE AN ACCIDENT INVOLVING INJURY, MISDEMEANOR, SERIOUS BODILY INJURY, FELONY SO I THINK THIS IN THE SAME AS THE

DUI STATUTE BECAUSE IT INVOLVED JUST HARM, THE CRIME IS LEAVING THE SCENE OF THE ACCIDENT WITHOUT RENDERING AID OR PROVIDING YOUR INFORMATION AND THEN YOU HAVE THE AGGRAVATION IF YOU WILL, AS TO WHAT WAS THE CAUSE.

I THINK IT'S A SIMILAR ISSUE AND I THINK DRIVING WITH A SUSPENDED LICENSE STATUTE ALSO PLACED DUCK TALES INTO THAT AS WELL BECAUSE YOU HAVE AGAIN DEGREES OF THE CRIME BUT IT IS CERTAINLY AGGRAVATION FACTORS OF SOMEBODY'S INJURED AS A RESULT OF DRIVING WITH A SUSPENDED LICENSE AND THAT I ALSO WOULD LIKE TO BRING UP THE POINT WHERE THE VALDES COURT, THIS COURT, AND THE VALDES DECISION SPECIFICALLY SAID IT IS NOT NEED TO EXPRESSLY SAY THAT IT IS A DEGREE, I'M IN LOOKS AT THE DUI STATUTE, THE LANGUAGE ITSELF, FRAMEWORK IS A DEGREE OF RELATIONSHIP AND PROVIDING GRADUATED IMPRISONMENT SENTENCES BASED ON THE HARM RESULTED FROM THAT PARTICULAR CONDUCT OF THE CANDIDATE.

>> SO HOW IT AFFECTED CASE OF THE LEGISLATURE CHOSEN INSTEAD OF DOING WRITING IS GOING TO DID IN THE ALTERNATIVE DAMAGE TO THE PROPERTY, YOUR PERSON OR ANOTHER IS A MISDEMEANOR THING IT'S A DAMAGE TO THE PROPERTY OF ANOTHER IS A MISDEMEANOR, AND IN A SEPARATE SUBPARAGRAPH OR WHATEVER WOULD BE DAMAGE SO ONCE A DAMAGE TO THE PROPERTY NEAR THE WINDS OF DAMAGE TO THE PERSON IS A MISDEMEANOR, WITHOUT CHANGE BECAUSE THEN YOU CAN REALLY SEE THAT THE DEGREE VARIANCE RELATE TO THE PERSONAL-INJURY AND ARGUABLY PROPERTY WOULD BE IN A COMPLETELY SEPARATE CATEGORY NOT NECESSARILY INTUITIVE BLINKING OF IT.
BECAUSE OF.

>> YOU WOULD FIT IN LESS BUT I

DO BELIEVE MESILLA VARIANT OF THE HARM BY THEN HAD CAUSED BY THE UNDERLYING DUI AND SO, I DO BELIEVE THAT IT STILL WILL BE VERY VARIANT OF THE ACTUAL DUI BECAUSE IT IS THE SAME VICTIM AND THAT WOULD BE THE POINT.

>> AND OF THE STATUTE WERE WRITTEN SUCH THAT THEY WERE SEPARATED KIND OF SUBSECTIONS OR WHATEVER CAN THE PERSON BE CHARGED FOR BOTH OF PROPERTY DAMAGE AND DAMAGE TO THE PERSON BUT NOT SERIOUS BODILY INJURY.

>> FOR THINK ANYBODY COULD BE CHARGED WITH THE QUESTION IS -

>> BUT LAWFULLY CONNECTED.

>> I THINK THAT IT WOULD BE PRECLUDED BY BLOCK BURGER IN THE QUALIFICATION OF THE FLORIDA STATUTE TO PREDICT BASED ON THAT.

>> THERE'S A WAY THE LEGISLATURE COULD SEPARATELY PUNISH THESE HARMS AND YOU WOULD ADMIT THAT.

>> OF COURSE AND SURE, YES, I THINK THEY CERTAINLY COULD IF THEY WORK TO REWRITE THE STATUTE BUT I THINK THE STATUTE AS A WRITTEN IS A DEGREE.

>> PERHAPS I MISS UNDERSTOOD THE QUESTION, IF IT SUGGESTED A STRUCTURAL CHANGE IN THE STATUTE.

>> IF THERE WAS A STRUCTURAL CHANGE, SUCH AS A VARIANT BASED UPON HARM OF SURE BUT WHAT WE HAVE HERE, I THINK PAUL'S UNDER; SEEMS LIKE WERE TRYING TO CHOOSE BETWEEN WHICH HYPER FORMALISM YOU WANT TO BE WELL DO WE WANT TO LOOK AT THE NON- USE OF THE MAGIC WORD DEGREE OR DO WE WANT TO RELY ON THE FACT THAT THEY LUMPED TOGETHER IN THE ALTERNATIVE BECAUSE IT SEEMS LIKE IT TO THE WAY THAT EVERYBODY'S BEEN TALKING ABOUT THIS, MIGHT REALLY MAKE A BIG DIFFERENCE IF THEY HAD SEPARATED THE TWO INTO DIFFERENT SECTIONS.

>> I DO BELIEVE BUT EVEN IF YOU SEPARATED JUST LIKE THEY DID WITH BODILY INJURY, THEY

SEPARATE INJURY, SERIOUS BODILY
INJURY STILL SUFFERS AND IN OUR
POSITION IS STILL THE REEVE
MARIANNE TUB THE SAME THING.
>> I DON'T THINK ANYBODY
DISPUTES THAT IF YOU TAKE A
PROPERTY DAMAGE OUT IN THE WORSE
IS STATUTE TO THE SENATE IS A
MISDEMEANOR TO HARM SOMEBODY'S
THIRD-DEGREE FELONY TO CAUSE
SERIOUS BODILY HARM AND I THINK
EVERYBODY WOULD AGREE THAT THERE
WAS A DEGREE OF VARIOUS.
>> THINK THE TRIGGER COURT
JUDGES THE PROPERTY OR INJURY TO
ANOTHER AND SO I THINK WHEN YOU
LOOK AT THE LANGUAGE OF THE
STATUTE, AND IT SAYS ANOTHER, I
THINK THAT IS THE LEGISLATURE OF
INTENT THAT IF IT IS ONE VICTIM,
IT IS ONE CRIME AND THAT IS OUR
POSITION.
>> THANK YOU, WE THINK OF YOU
FOR THE ARGUMENTS IN THIS CASE
TODAY AND THAT CONCLUDES TODAY'S
DOCKETS OF THE COURT WILL NOW
STAND IN RECESS.