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State of Florida vs Stanley V. Muggins

NEXT CASE ON THE COURT'S CALENDAR IS THE STATE OF FLORIDA VERSUS STANLEY HUGGINS.
MR. BEHIND MAN?

GOOD MORNING. MAY IT PLEASE THE COURT. I AM DANIEL BEHIND MAN. I -- HINDMAN. I
REPRESENT THE PETITIONER, THE STATE OF FLORIDA IN THIS CASE.

HOLD ON A SECOND. I GAVE YOU THE GO-AHEAD BEFORE MS. ERLY LICK WAS ABLE TO BE -- MS.
EHRlich WAS ABLE TO BE SEATED. THANK YOU.

MAY IT PLEASE THE COURT. I AM DANIEL HINDMAN, AND I REPRESENT THE PETITIONNER THIS
CASE. IN THIS CASE, THE RESPONDENT, MR. HUGGINS, PLED GUILTY TO THE TRIAL COURT, TO THE
CHARGE OF BURGLARY OF A DWELLING. THE STATE SOUGHT TO HAVE MR. HUGGINS CLASSIFIED
AS A PRISON RELEASEE REOFFENDER. HOWEVER, THE TRIAL COURT REFUSED TO CONSIDER THIS,
BECAUSE FACTUALLY, THERE WAS NOBODY IN THE DWELLING AT THE TIME MR. HUGGINS
COMMITTED THE BURGLARY. THE FACTS WERE THAT THE VICTIM WAS AT WORK AT THE TIME OF
THE BURGLARY, AND A NEIGHBOR WITNESSED THE CRIME. THE FOURTH DCA AFFIRMED, IN A
DECISION OF THE TRIAL COURT, FINDING THAT THE PRISON RELEASEE REOFFENDER PUNISHMENT
ACT DOES NOT APPLY TO BURGLARY OF A DWELLING WHICH IS CURRENTLY UNOCCUPIED. IN
REACHING THIS DECISION, THE FOURTH DCA RECEDED FROM ITS THREE PRIOR DECISIONS, IN THE
CASES OF SCOTT, LITTON, WALLACE, AND CERTIFIED CONFLICT WITH THE SECOND DCA IN THE
WHITE DECISION. SINCE HUGGINS, THERE HAS BEEN TWO SUBSEQUENT SECOND DCA DECISIONS,
FOLLOWING -- EXCUSE ME -- THREE SECOND DCA DECISIONS FOLLOWING THE WHITE DECISION.
CHAMBERLAIN, MEDINA AND HUNTER. ALSO, SINCE HUGGINS, THE FIRST DCA HAS ALIGNED
ITSELF WITH THE SECOND DCA, IN THE FLOORET -- IN THE FLOORES TAKE DECISION AND OTHERS.
-- IN THE FLORESTA DECISION AND OTHERS.

ISN'T THERE INTERPRETATION HERE OR ISN'T THE LANGUAGE PRETTY CLEAR --

MR. JUSTICE --

-- OCCUPIED BUILDING. IS THERE MUCH ROOM LEFT FOR INTERPRETATION THERE?

JUSTICE SHAW, IT IS THE STATE'S POSITION THAT, IF YOU LOOK AT THE PLAIN LANGUAGE OF THE
STATUTE AND LET ME JUST STATE THAT, NOW, IT STATES, IN PERTINENT PART, THAT THE PRISON
RELEASEE REOFFENDER, MEANS ANY DEFENDANT WHO COMMENTS OR ATTEMPTS TO COMMIT
BURGLARY OF AN OCCUPIED STRUCTURE OR DWELL DWELLING WITHIN THREE YEARS OF BEING
RELEASED FROM A STATE CORRECTIONAL FACILITY.

THE WORDS "BEING OCCUPIED STRUCTURE"?

OCCUPIED MODIFIES THE WORD STRUCTURE. DWELLING IS UNMODIFIED, AND THAT IS, REALLY, IS
THE PROBLEM. THAT IS WHY THE DECISION OF THE LOWER COURT IS WRONG AND SHOULD BE
REVERSED FOR TWO BASIC REASONS. FIRST OF ALL, THE FOURTH DCA'S INTERPRETATION IS
CONTRARY TO THE PLAIN LANGUAGE OF THE STATUTE. SECONDLY, THE FOURTH DCA CREATES A
DISTINCTION BETWEEN BURGLARY OF AN OCCUPIED DWELLING AND BURGLARY OF AN
UNOCCUPIED DWELLING, WHEN IT IS CLEAR THAT THE LEGISLATURE NEVER INTENDED SUCH A

DISTINCTION.

WHAT MAKES IT SO CLEAR? WHAT TELLS US, CLEARLY, THAT THE LEGISLATURE DID NOT INTEND FOR THE WORD "OCCUPIED" TO MODIFY DWELLING?

JUSTICE QUINCE, I THINK THERE IS TWO REASONS. THE STRUCTURE OF THE PHRASE, ITSELF, THE WORD --

OCCUPIED STRUCTURE OR DWELLING.

OCCUPIED STRUCTURE OR DWELLING, AND WE JUST KNOW, I GUESS, FROM RULES OF GRAMMAR, WE HAVE AN ADJECTIVE. OUR ADJECTIVE IS OCCUPIED, AND ADJECTIVES MODIFY THE WORDS THAT THEY ARE MOST NEAR, AND IN THIS CASE IT IS NEAR THE WORD STRUCTURE, NOT DWELLING. DWELLING IS SEPARATED BY THE DISJUNCTIVE "OR", AND THAT WAS THE REASONING OF THE OTHER DISTINCT COURTS. NOW, WHY DO WE KNOW THAT IT DOESN'T MODIFY DWELLING? BECAUSE, AGAIN, THERE IS NO LEGAL DISTINCTION BETWEEN BURGLARY OF AN OCCUPIED DWELLING AND BURGLARY OF AN UNOCCUPIED DWELLING. IN FACT, THERE IS NO SUCH CRIME AS BURGLARY OF AN UNOCCUPIED DWELLING.

DO WE, EVEN, NEED TO GET TO THE CONCEPT OF WHAT OCCUPIED MEANS OR DOESN'T MEAN, BECAUSE DOESN'T 810.011 SPECIFICALLY DEFINE WHAT A DWELLING IS?

JUSTICE LEWIS, THAT IS EXACTLY CORRECT.

AND IT SEEMS TO GIVE US THE CONCEPT THAT IT IS SOMETHING THAT IS DESIGNED TO BE OCCUPIED. AND IF WE ARE LOOKING AT THE STATUTORY SCHEME, AND WE ARE SAYING IT IS DESIGNED TO PROTECT THOSE CIRCUMSTANCES WHERE SOMEONE MAY BE PLACED IN HARM'S WAY, STRUCTURES ARE NOT NECESSARILY TO BE OCCUPIED, SO THE LEGISLATURE SAID OCCUPIED STRUCTURE, WITH A DWELLING, STATUTORILY, IT IS INTENDED THAT IT IS SOMETHING THAT IS DESIGNED TO BE OCCUPIED, SO WHY DO WE EVEN NEED TO GET INTO ALL OF THOSE OTHER THINGS?

WELL, BECAUSE TO MAKE IT CLEAR THAT THERE IS NO SUCH THING. WHEN YOU SAY OCCUPIED DWELLING, UNOCCUPIED DWELLING, IT, REALLY, DOESN'T MEAN ANYTHING. DWELLING DOESN'T NEED TO BE MODIFIED, CANNOT BE MODIFIED BY OCCUPIED OR UNOCCUPIED, BECAUSE PART OF THE DEFINITION OR IT IS NOT PART OF THE DEFINITION THAT OCCUPANCY HAS ANYTHING TO DO WITH DWELLING.

BUT ISN'T THERE A SECTION OF THE BURGLARY STATUTE, 810, WHERE THE LEGISLATURE DOES, IN FACT, USE THE TERM "OCCUPIED OR UNOCCUPIED DWELLING"?

JUSTICE QUINCE, WHAT THEY DO, THEY DON'T ACTUALLY USE THE WORD OCCUPIED. IT SAYS BURGLARY OF A DWELLING, AND THERE IS SOMEBODY INSIDE THE RESIDENCE OR INHIBITED -- INHABITED BY PERSONS OR NOT.

WHAT ABOUT SUBSECTION 2 [C] IT SAYS ENTERED AN OCCUPIED OR UNOCCUPIED DWELLING OR STRUCTURE.

WELL, THE DEFINITION, I THINK WHAT IT IS, IT IS BROKEN DOWN, ACTUALLY, THEY NOT SEPARATE CRIMES. I WOULD SAY THEY WILL ARE SEPARATE FACTUAL SUBSETS OF THE CRIME BURGLARY OF A DWELLING.

I AM NOT TRYING TO DECIDE WHETHER OR NOT WE ARE TALKING ABOUT SEPARATE CRIMES, HERE, BUT WHAT WE ARE ACTUALLY TALKING ABOUT IS THE USE OF THE MOD FIRES HERE AND THE LEGISLATE -- OF THE MODIFYERS HERE, AND THE LEGISLATURE DOES, IN FACT, IN THAT

SUBSECTION, USE "OCCUPIED OR UNOCCUPIED" IN FRONT OF THAT WORD DWELLING, WHICH INDICATES, IT TO ME, THAT THERE IS SOME DIFFERENCE BETWEEN AN OCCUPIED OR AN UNOCCUPIED DWELLING.

AGAIN PEN IT COVERS ALL DWELLINGS. OCCUPIED AND UNOCCUPIED WOULD COVER ALL DWELLINGS, WHICH IS CONSISTENT WITH THE DEFINITION OF DWELLING, WHICH HAS NOTHING TO DO WITH OCCUPANCY.

AND IN THAT SUBSECTION YOU HAVE "OR STRUCTURE".

OR STRUCTURE. RIGHT, AND STRUCTURE, WELL, THAT MAKES ALL OF THE DIFFERENCE IN THE WORLD, IF WE ARE TALKING STRUCTURES. THE OCCUPANCY OR LACK OF OCCUPANCY OF A STRUCTURE, THAT IS A TOTALLY DIFFERENT CRY. THE SAME THING WITH CONVEYANCE.

LET ME ASK YOU, YOU WOULD AGREE THAT, IF IT SAID DWELLING OR OCCUPIED STRUCTURE, WE WOULDN'T BE HERE. IF IT SAID THE PROHIBITION IS THE LISTED CRIME IS EITHER DWELLING OR OCCUPIED STRUCTURE. CORRECT?

WE PROBABLY WOULDN'T BE HERE, UNDER THIS PARTICULAR ARGUMENT. THAT CERTAINLY, YES, JUSTICE PARIENTE THAT, IS THE RESPONDENT'S ARGUMENT.

I AM JUST ASKING, IF WE ARE LOOKING AT DERIVING INTENT FROM THE LANGUAGE OF THE STATUTE, WHAT I AM HAVING TROUBLE, WITH AND I AM TRYING TO THINK BACK TO MY ENGLISH RULES, IS YOUR STATEMENT THAT IT MUST ONLY MODIFY THE FIRST WORD, THINKING OF SOMETHING LIKE, IF WE ARE GOING TO SAY WE ARE GOING TO GIVE AN AWARD TO AN OUTSTANDING MAN OR WOMAN. WE ARE NOT GOING TO GIVE AN AWARD TO AN OUTSTANDING MAN AND A WOMAN. WE ARE GOING TO BE GIVING AN AWARD TO AN OUTSTANDING MAN OR A OUTSTANDING WOMAN. WE DON'T REPEAT THE ADJECTIVE TWICE. WOULD YOU AGREE THAT THAT IS LOGICAL?

THAT IS LOGICAL. AND I AM NOT STRICTLY RELYING ON THE RULES OF GRAMMAR. I THINK THE RULES OF GRAMMAR IS VERY STRONG ARGUMENT. WHAT I SAID, AND, ALSO, WE GET SOME HELP FROM THE DOCTRINE OF LAST ANTICIPATION, THE WORDS THAT ARE CLOSE TO THE WORDS THEY MODIFY. WE ARE NOT JUST LOOKING AT THE STRUCTURE OF THE SENTENCE. WE ARE NOT JUST LOOKING AT THIS FROM A STRICTLY GRAMMATICAL POINT OF VIEW. THAT IS PART OF THE STATE'S ARGUMENT. THAT IS NOT THE ENTIRE ARGUMENT. WE HAVE TO LOOK INTO THE SUBSTANCE AND THE CONTEXT OF THIS PHRASE.

I GUESS WHAT I WANT TO ASK, IN THE REAL-LIFE WORLD OF JUDGES SENTENCING, WHICH JUDGES SENTENCE FOR BURGLARY, AND YOU HAVE GOT SOMETHING WHERE SOMEONE IS A WAY AND IT IS AN UNOCCUPIED DWELLING AND THERE IS A BREAK-IN THERE, VERSUS A DWELLING THAT IS BEING BURGLARIZED AT NIGHT, WHEN PEOPLE ARE ASLEEP, ARE THERE, FOR EITHER THE SENTENCING GUIDELINES OR ANYTHING ELSE, ARE YOU SAYING THAT JUDGES OUT IN THE FIELD MAKE NO DISTINCTION BETWEEN IN TERMS OF WHETHER IT IS A THREAT OF HARM BETWEEN DWELLINGS THAT ARE OCCUPIED OR UNOCCUPIED?

JUSTICE PARIENTE, LET ME ANSWER YOUR QUESTION. CERTAINLY, IN EVERY CASE, THERE ARE CERTAIN FACTUAL NUANCES, WHICH MIGHT AFFECT SENTENCING, BUT LOOKING AT IT GENERICLY, IN A GENERAL SENSE, WE HAVE BURGLARY OF A DWELLING. IT IS A SECOND-DEGREE FELONY, WHETHER OR NOT THERE ARE PEOPLE INSIDE OF IT, AND, ALSO, THEY ARE BOTH LEVEL SEVEN. ALL BURGLARY AFTER DWELLING IS A LEVEL SEVEN OFFENSE, SO IT WOULD BE TREATED, I WOULD SUBMIT, THAT IT WOULD BE TREATED EXACTLY THE SAME, FOR SENTENCING PURPOSES, FOR EXACTLY THAT REASON. BOO BUT WE ARE HERE ON A STATUTE THAT IS PROTECTING AGAINST VIOLENT FELONY OFFENDERS, AND SO ALL OF THE CRIMES, AND, YOU SAID ARSON DOESN'T INVOLVE THREAT OF HARM, BUT ARSON, IF YOU SAID A FIRE, THERE IS A LIKELIHOOD OF

THAT FIRE SPREADING, ARE WHAT WE WOULD COMMONLY THINK OF AS VIOLENT FELONIES. KIDNAPPING AND, YOU KNOW, EVERYTHING LIKE THAT. IT IS JUST -- IT STRIKES ME THAT IF YOU TOOK SOMEBODY THAT IS BURGLARIZING UNOCCUPIED DWELLINGS THAT, THERE WOULD BE A VERY GOOD REASON FOR THE LEGISLATURE NOT TO WANT TO INCLUDE THAT TYPE OF A CRIME, BECAUSE IT IS NOT ALL CRIMES THAT ARE PREDICATE FELONIES IN THIS.

THAT'S CORRECT.

AND GIVEN THAT, THAT, YOU KNOW, AGAIN, I GUESS WE HAVE GOT TO, FIRST, GET TO WHAT -- IF WE ALL THINK IT IS CLEAR AND UNAMBIGUOUS, THEN THE QUESTION IS WHICH WAY, BUT IF IT IS NOT, THEN WHY ISN'T THE POLICY BEHIND THE ACT, AND THE FACT THAT THE LEGISLATURE DOES BREAKDOWN THE BURGLARY STATUTE, AN APPROPRIATE REASON TO GIVE THAT CONSTRUCTION THE APPROPRIATE -- TO DEAL WITH THAT CONSTRUCTION AND SAY, I GUESS, THE RULE OF LIENITY, WOULD ALLOW THAT TO OCCUR?

JUSTICE PARIENTE, TWO RESPONSES, IF I MAY. FIRST OF ALL, WE KNOW, FROM JUST LANGUAGE OF THE ACT, ITSELF, THAT IT APPLIES TO TELL NIECE INVOLVING FORCE. WE, ALSO, KNOW THAT BURGLARY, ALL BURGLARIES, ARE, ACTUALLY, DEFINED, ARE FORCIBLE FELONIES, BURGLARY IS INCLUDED AS A FORCIBLE FELONY IN THE STATUTE, SO I THINK THERE IS SOME INTENT, THERE, THAT ALLBURG LAYERS ARE FORCIBLE FELONIES, AND THE PRISON RELEASE REOFFENDER ACT DOES APPLY TO ALL FORCIBLE FELONIES, SO THAT WOULD, IN FACT BE COVERED. SECONDLY, AGAIN, WHAT WE ARE TALKING ABOUT IS BURGLARY OF A DWELLING, WHICH IS DWELLINGS ARE UNIQUE FROM STRUCTURES AND CONVEYANCES. THIS COURT --

DO YOU CONCEDE THAT THE STATUTE IS AMBIGUOUS?

JUSTICE SHAW, NO. I DON'T. I FIND --

YOU THINK THERE IS NO AMBIGUITY AT ALL?

NO. THERE IS NO A.M. DPUT IN THE STATUTE, BECAUSE OF THE SENTENCE STRUCTURE AND BECAUSE WHAT WE ARE TALKING ABOUT, BECAUSE THERE IS, AGAIN, NO LEGAL DISTINCTION, BETWEEN BURGLARY OF A DWELLING, WHETHER OR NOT THERE IS PEOPLE IN THERE OR NOT, BUT JUST TO FINISH ANSWERING JUSTICE PARIENTE'S QUESTION, I WOULD BRING THIS COURT'S ATTENTION TO YOUR 1996 PERKINS CASE, WHERE THIS COURT RECOGNIZED THE BROAD PROTECTION THAT DWELLINGS RECEIVE UNDER THE LAW, AND THE COURT WAS ANALYZING THE SAME BURGLARY STATUTE THAT WE ARE ACTUALLY ANALYZING TODAY, AND THIS COURT CONCLUDED BY SAYING AN EMPTY HOUSE IN A NEIGHBORHOOD IS EXTENDED THE SAME PROTECTION AS ONE PRESENTLY OCCUPIED, SO DWELLINGS ARE DWELLINGS. THAT IS WHY, JUSTICE SHAW, WE KNOW THAT IT IS NOT AMBIGUOUS, NOT JUST BECAUSE OF THE SENTENCE STRUCTURE BUT BECAUSE ALL DWELLINGS ARE DWELLINGS. THERE IS NO LEGAL DISTINCTION.

YOU SEEM TO HAVE ONE OR TWO JUSTICES QUESTIONING WHETHER OR NOT THE MOD FIRE MODIFIES BOTH OR -- THE MOD I PHIER MOD -- MODIFYER MODIFIES JUST ONE CLOSEST TO IT.

THAT IS WHY THE LANGUAGE CHANGED AROUND OF THE LEGISLATURE, AND I THINK AS PRACTITIONERS, AS JUDGES, WE CAN LOOK AT A STATUTE AND SAY, MAYBE STYLISTICALLY IT WOULD LOOK BETTER THIS WAY OR THAT WAY, BUT REALLY, LOOKING AT THIS STATUTE, THE PLAIN LANGUAGE, BECAUSE, AGAIN, THE STRUCTURE OF THE PHRASE, ITSELF, BURGLARY OF AN OCCUPIED STRUCTURE OR DWELLING, AGAIN, OCCUPIED IS NEAR STRUCTURE. THAT IS WHAT IT MODIFIES, AND WE ARE NOT JUST TALKING ABOUT, INJUSTICE PARIENTE'S EXAMPLE. WE ARE NOT TALKING ABOUT PEOPLE, MEN OR WOMEN, DESCRIPTIONS THAT WAY. WE ARE TALKING ABOUT VERY SPECIFIC THINGS. WE ARE TALKING ABOUT BURGLARY OF A STRUCTURE. WE ARE TALKING ABOUT BURGLARY OF A DWELLING.

WELL, THE FACT THAT A DISTRICT COURT READ IT DIFFERENTLY, WOULDN'T THAT, AGAIN, LEAD SOME CREDENCE TO THE FACT THAT THERE MIGHT BE SOME AMBIGUITY THERE?

JUSTICE, THAT IS AN ARGUMENT AND IT IS SOMETHING TO CONSIDER, BUT IT IS NOT. WE HAVE THE FOURTH DISTRICT COURT READING IT THAT WAY. WE HAVE THE SECOND DISTRICT COURT READING IT A DIFFERENT WAY AND WE HAVE THE FIRST DISTRICT COURT READING IT, BASICALLY, THE SAME WAY THAT THE STATE IS READING IT. CERTAINLY IT IS AN ARGUMENT FOR DISCUSSION, BUT AT THE END OF THE DAY, AT THE END OF THIS ARGUMENT, I THINK THE PLAIN LANGUAGE OF THE STATUTE SHOULD PREVAIL.

YOU, REALLY, AGAIN, I THINK YOU ARE RELYING PRETTY HEAVILY ON THE FACT THAT THERE IS NO LEGAL SIGNIFICANCE, BECAUSE, AGAIN, PLAYING AROUND WITH THE WORDING, IF IT SAID OCCUPIED DWELLING OR STRUCTURE, WOULD YOU SAY THAT THE LEGISLATURE HAD INTENDED IT ONLY TO BE IF IT IS AN OCCUPIED DWELLING BUT NOT A STRUCTURE? IS IT KNOWING THAT -- SO IN OTHER WORDS WE DO HAVE TO LOOK AT THE BURGLARY STATUTE, IN ORDER TO, REALLY, COME UP WITH --

THAT IS REALLY, I THINK, IN SEPARABLE FROM THE ANALYSIS FROM MR. CHIEF JUSTICE, I WOULD RESERVE THE REMAINDER OF MY TIME FOR REBUTTAL.

YOU MAY DO SO. MS. EHRLICH

THANK YOU. MAY IT PLEASE THE COURT. MY NAME IS KAREN EHRLICH. I REPRESENT THE RESPONDENT. MY MOTION POSITION IS THAT IT IS PLAIN. OCCUPIED MODIFIES STRUCTURE AND IT MODIFIES DWELLING.

IS THERE A PLACE IN THE FLORIDA STATUTES THAT DEFINES THE WORD DWELL SOMETHING.

YES, THERE IS.

WHERE DO WE FIND THAT?

812.

WHAT DOES IT TELL US ABOUT THAT?

IT SELLS US THAT A DWELLING -- TELLS US THAT A DWELLING -- IT TELLS US THAT A DWELLING SHOULD -- IS -- IT IS CONTEMPLATED THAT PEOPLE WILL BE IN IT IN THE EVENING.

AND IS IT REASONABLE TO ASSUME THAT, IF WE ARE TRYING TO PROTECT PEOPLE, AND THAT IS WHAT THIS ENTIRE LEGISLATION IS ABOUT IS THAT WE ARE NOT GOING TO PERMIT IT TO BE DETERMINED UPON THE HAPPENSTANCE, WHEN SOMEONE ENTERS A DWELLING, WHETHER THERE SOMEONE IS THERE OR NOT, AND SO THEREFORE WE WOULD PROTECT AGAINST THAT ACT OF ENTERING A DWELLING, WHICH WE CONTEMPLATE AS HAVING SOMEONE THERE, BECAUSE IT IS DESIGNED TO HAVE SOMEONE THERE, AND WE JUST LOOK AT THE STATUTE FOR THE DEFINITION.

I DON'T HAVE ANY QUIBBLE WITH THE DEFINITION OF THE STATUTE. IN THE PERKINS CASE THAT PETITIONER JUST MENTIONED, WHAT THE COURT WAS LOOKING AT WAS THE STATUTORY DEFINITION VERSUS THE COMMON LAW DEFINITION, AND IT WASN'T, THE DISTINCTION WASN'T IS THE HOUSE EMPTY AT THAT TIME. IS IT DESIGNED TO BE A HOME? I DON'T HAVE ANY QUIBBLE WITH THE DEFINITION. ABOUT -- BUT THE LEGISLATURE, AT THE SAME TIME, HAS THE PREROGATIVE TO CREATE ALTERNATIVE WAYS OF COMMITTING SECOND-DEGREE BURGLARY, AND TWO OF THOSE WAYS ARE IF THE DWELLING IS OCCUPIED, AND IF IT IS UNOCCUPIED. BEFORE 1995, THERE WAS NO DISTINCTION. IN 1995, THE LEGISLATURE WROTE IN THAT DISTINCTION. THEY HAD TO HAVE WRITTEN IT IN FOR A REASON, AND THEY DO USE THAT LANGUAGE AGAIN. WHEN

YOU GO TO THE CRIMINAL PUNISHMENT CODE AND THE RANKING, NOW, THEY ARE, BOTH, LISTED SEPARATELY. THEY USE THE WORDS OCCUPIED AND UNOCCUPIED. I THINK JUSTICE QUINCE WAS ASKING ABOUT THE USE OF THAT WORD AND WHERE IT SHOWS UP. IT SHOWS UP, AGAIN, IN THE SEVERITY RANKING LIST.

BUT OUR DEFINITION, UNDER FLORIDA LAW, AFTER STRUCTURE, IS ONE THAT IS NOT DESIGNED TO BE OCCUPIED. CORRECT? SO IF WE REALLY WANT TO DEFINE WHAT KIND OF STRUCTURE, TO SAY IT IS OCCUPIED, IT MAKES GOOD SENSE. FOR EXAMPLE, WHAT IF I WOULD USE THE PHRASE SUGAR, SWEET OR SOUR? DOES SUGAR MODIFY SOUR AS WELL? WE HAVE TWO DIFFERENT THINGS HERE. WE HAVE STRUCTURE AND A DWELLING.

NO. WE HAVE SUGAR, SWEET, OR SOUR, AND ALL OF THEM ARE ALTERNATIVES BUT BECAUSE THE STRUCTURE THAT WE ARE DEALING WITH HERE, AND JUST LET ME SAY, JUSTICE LEWIS, ALL OF THIS CONVERSATION WE ARE HAVING ABOUT THE DEFINITION OF STRUCTURE, THE DEFINITION OF DWELLING, INDICATES THAT THOSE PEOPLE WHO ARE HAVING THAT CONVERSATION THINK THERE IS A AMBIGUITY. IF THERE IS AN AMBIGUITY --

JUST BECAUSE SOMEONE TAKES A POSITION ON SOMETHING DOESN'T MEAN THERE IS AN AMBIGUITY. WHERE DO WE LOOK, USUALLY, TO FIND THE ANSWER?

WE LOOK TO THE PLAIN LANGUAGE.

WHERE DO WE GO, ON A STATUTE, TO UNDERSTAND WHAT THAT WORD MEANS? WHERE DO WE GO?

WHERE I WOULD GO, WITH THIS STATUTE?

YOU DON'T GO TO THE STATUTE AND SEE IF THAT WORD IS DEFINED SOMEWHERE IN THE FLORIDA STATUTES?

WHERE I GO WITH THIS STATUTE IS I DO WHAT JUSTICE PARIENTE WAS ASKING. SHE WAS ASKING ABOUT GRAMMAR. A PENAL STATUTE NEEDS TO BE WRITTEN IN A MANNER THAT GIVES ORDINARY PEOPLE OF COMMON INTELLIGENCE NOTICE OF WHAT IS PROHIBITED. AND THIS STATUTE ACTUALLY QUITE LUCKILY, IS WRITTEN VERY SIMPLY, USING A COMMON GRAMMATICAL STRUCTURE, RATHER THAN SOMETHING QUITE MORE CONVOLUTED, LIKE THE CIVIL RULE THAT IS IN BROWN VERSUS BROWN, WHERE PETITIONER FOUND THE RULE OF THE NEAREST ANTECEDENT. THAT DOESN'T APPLY HERE. WE ARE DEALING WITH A COMMON, SIMPLE PHRASE, AND -- OR, JUSTICE PARIENTE, IS A COORDINATING CONJUNCTION. A COORDINATING CONJUNCTION, ALWAYS, SIGNALS THE NEED FOR PARALLELISM, AND WE KNOW THAT WE USE THAT SORT OF FORM ALL THE TIME. HE GAVE US ONE OF THE EXAMPLES. ANOTHER EXAMPLE WOULD BE THE OUTFIT SHOULD INCLUDE RED SHOES OR SOX. THE PERSON WOULD KNOW I HAVE TO PUT ON MY SOX OR MY SHOES NEED TO BE RED.

IF WE GO JUST GET OURSELVES OUT OF THE STATUTE BOOKS, WOULD IT BE A COMMON UNDERSTANDING THAT A DWELLING IS A TYPE OF A STRUCTURE?

YES.

OKAY. AND SO, IF THERE WAS NOT AN INTENT TO -- FOR THERE TO BE SOMETHING DIFFERENT ABOUT USE OF THE WORD DWELLING, IF IT ONLY SAID AN OCCUPIED STRUCTURE, THAT WOULD INCLUDE DWELLING, TOO, WOULDN'T IT? SO YOU WOULDN'T -- SO THE WORD DWELLING WOULD BE SUPERFLUOUS?

I WOULD NEED TO, REALLY, LOOK CLOSELY AT THE DEFINITIONS TO ANSWER THAT QUESTION FOR YOU. I AM SORRY. I HADN'T ANTICIPATED THAT QUESTION.

WELL, IN COMMON PARLANCE, EVERY DWELLING IS A STRUCTURE. WE AGREE ON THAT.

YES. YES.

AND SO, IF YOU ARE GOING TO USE OCCUPIED STRUCTURE OR DWELLING --

A DWELLING IS A MORE SPECIFIC TYPE OF STRUCTURE. IS THAT WHAT YOU ARE SAY SOMETHING.

AND WHAT IS BEING INTENDED IS CON NOTING SOMETHING THAT IS DIFFERENT THAN MERELY AN OCCUPIED STRUCTURE. CORRECT?

I AM SORRY. I AM LOSING --

ARE YOU USING A SUPERFLUOUS WORD, IF YOU ARE USING THE WORD DWELLING, UNLESS YOU ARE INTENDING SOMETHING DIFFERENT?

I UNDERSTAND. YOU COULD BE. YES. YES.

IN ANSWER TO JUSTICE SHAW'S QUESTION, YOU WOULDN'T ASSERT, HERE, WOULD YOU, THAT SILVERLY BECAUSE THE DISTRICT COURT CAME UP WITH ONE ANALYSIS OF THIS OR -- THAT IT MEANS THAT THERE IS NECESSARILY AN AMBIGUITY?

WHAT I AM SAYING IS THAT, WHEN WE BEGIN TO HAVE TO LOOK AT OTHER STATUTES, IN THE MANNER THAT THEY ARE BEING USED HERE, I THINK IT INDICATES AN AMBIGUITY.

BUT SIMPLY BECAUSE THE FOURTH DISTRICT CAME UP WITH ONE VIEW AND THE SECOND DISTRICT CAME UP WITH ANOTHER VIEW THAT, DOESN'T, IN AND OF ITSELF, MEAN THAT THERE IS AN AMBIGUITY?

I THINK THAT -- I THINK IT INDICATES AN AMBIGUITY. IT COULD INDICATE AN AMBIGUITY. I THINK, YOU KNOW, ALSO, WE ARE TALKING ABOUT THE DEGREE OF THE AMBIGUITY.

I THINK THAT IS SORT OF AN INTERESTING ANALYSIS TO KIND OF -- THE KIND OF ASSERTION THAT I MADE IN RESPECT TO THE THOMPSON CASE, WHERE FOUR DISTRICT COURTS WENT ONE WAY ON A DEFINITION THAT GOT US INTO SINGLE-SUBJECT ANALYSIS ON THE HABITUAL OFFENDER ACT, BUT THAT WAS SIMPLY BECAUSE FOUR DISTRICT COURTS WENT THAT WAY DIDN'T MEAN THERE WAS AN AMBIGUITY.

BUT YOU ARE NOT RELYING ON --

I AM NOT TRYING TO SAY -- MY FIRST POSITION IS IT IS NOT AN AMBIGUITY, AND I THINK THAT, WHEN THE STATE'S ANALYSIS IS SHOWING THAT THEY ARE HAVING TO RELY ON AMBIGUITYS, IN ORDER TO MAKE THEIR POSITION, THEY ARE CREATING AMBIGUITIES, IN ORDER TO MAKE THEIR POSITION.

THIS COURT HAS RULED, 4-3 BEFORE, THAT LANGUAGE WAS CLEAR AND UNAMBIGUOUS.

I UNDERSTAND. JUSTICE QUINCE.

DOES IT HELP YOU OR WHAT DOES IT DO TO YOUR ARGUMENT THAT, IN SUBSECTION THREE OF THE BURGLARY STATUTE, WHEN YOU ARE TALKING ABOUT THE OFFENDER NOT MAKING ANY KIND OF ASSAULT OR NOT BEING ARMED WHEN HE ENTERS, AND A, UNDER THAT, TALKS ABOUT A DWELLING WHERE THERE IS ANOTHER PERSON THERE, AND B TALKS ABOUT A DWELLING WHERE THERE IS NO OTHER PERSON THERE. THE FACT THAT THE LEGISLATURE BROKE DOWN DWELLING, IN THAT PARTICULAR STATUTE, IN THAT SUBSECTION, DOES THAT HELP AT ALL, IN YOUR

ARGUMENT HERE?

I THINK THAT ABSOLUTELY HELPS MY ARGUMENT, BECAUSE THE LEGISLATURE RECOGNIZED THAT THERE ARE ALTERNATIVE WAYS TO COMMIT THAT CRIME.

IS THERE ANY HISTORY AS TO WHY THEY, IN 1995, DID THAT, AND IF IT IS NOT TO HAVE -- WHERE IS THERE -- WHERE DOES IT BECOME LEGALLY SIGNIFICANT? I ASKED ABOUT THE QUESTION, AS TO WHETHER JUDGES WILL SENTENCE DIFFERENTLY, BASED ON WHETHER A DWELLING IS OCCUPIED OR NOT.

I THINK THEY ABSOLUTELY WOULD SENTENCE DIFFERENTLY.

THERE IS NOTHING IN THE SENTENCING GUIDELINES OR WHATEVER NOW --

NO. THERE IS NOT IN THE CRIMINAL PUNISHMENT CODE. NO, THERE IS NOT ANYTHING IN THAT, BUT TRIAL COURTS ARE GIVEN DISCRETION IN SENTENCING, EXCEPT WHERE THE LEGISLATURE DRAWS A LINE AND SAYS, YOU KNOW, THIS IS TOO SERIOUS. THERE IS NO DISCRETION. I WANT TO JUST GO TO POINT OUT ONE THING ABOUT THE PRR STATUTE. I THINK, LOOKING AT THE BURGLARY STATUTE, TELLS US LESS ABOUT IT THAN IF WE WERE TO LOOK AT THE FORCIBLE FELONY STATUTE. IF WE WANT TO KNOW WHERE THEY GOT THIS FROM. IF YOU PICK UP THE FORCIBLE FELONY STATUTE, IT, REALLY, IS THE PRR STATUTE. THEY TOOK THE FORCIBLE FELONY STATUTE, WHICH HAPPENS, AND THEY MADE ONE CHANGE IN THE ENUMERATED FELONIES. ONE FELONY THEY CHANGED WAS BURGLARY. THE FORCIBLE FELONY STATUTE SAYS BURGLARY. THE LEGISLATURE, WHEN THEY WROTE THE PRR STATUTE, THEY REMOVED BURGLARY, AND AT THE END OF THE FELONY, FORCIBLE FELONY STATUTE, THEY WROTE ARMED BURGLARY, AND THEY WROTE BURGLARY OF AN OCCUPIED STRUCTURE OR DWELLING, AND THEN THEY INCLUDED FOUR MORE FELONIES THAT FIT THE DEFINITION OF A FORCIBLE FELONY. I THINK THAT TELLS US MORE ABOUT WHAT THE LEGISLATURE INTENDED TO INCLUDE AND WHAT THEY DID INCLUDE THAN LOOKING AT BURGLARY. I THINK IT IS VERY IMPORTANT. IT TELLS US WHAT THEY -- WHAT THEIR CLEAR INTENT WAS, AND THIS COURT EXAMINED --

AND THE CLEAR INTENT WAS?

THAT -- THEIR CLEAR INTENT WAS THAT THE PRR STATUTE WOULD INCLUDE OFFENSES THAT WERE VIOLENT OR THAT CARRIED THE RISK OF HARM OR VIOLENCE TO PERSONS. BECAUSE THEY WOULD -- THEIR INTENTION WAS TO PUNISH VIOLENT FELONY OFFENDERS, WHICH IS WHAT THEY SAID IN THEIR PREAMBLE.

LET ME ASK YOU, WHEN THEY ARE LOOKING TO SENTENCE SOMEONE UNDER THE STATUTE, AND THEY DO THE PREDICATE FELONIES, WHEN SOMEONE IS SENTENCED TO BURGLARY DOES THE SENTENCING DOCUMENTS, THEN, SHOW OCCUPIED DWELLING OR UNOCCUPIED DWELLING? IN OTHER WORDS IF THAT DISTINCTION IS TO BE MADE, IS THERE A WAY THAT A JUDGE IS GOING TO BE ABLE TO TELL THAT, IF THERE IS NO LEGAL SIGNIFICANCE?

YOU MEAN IN THE JUDGMENT?

IN THE JUDGMENT. I WOULD ASSUME THAT IS HOW IT IS PROVED UP.

WE HAVE THE INFORMATION.

IN THE INFORMATION, DOES IT GET CHARGED AS OCCUPIED OR --

I HAVE SEEN IT CHARGED. IN FACT, PENDING BEFORE THIS COURT IS ANOTHER PRR CASE THAT DIDN'T RAISE THIS ISSUE, AND I KNOW THE COURT CAN TAKE JUDICIAL NOTICE OF ITS OWN FILES. IN CARDELL ADAMS, HE WAS CHARGED WITH BURGLARY OF AN OCCUPIED DWELLING. AND THE

INFORMATION CHARGED OCCUPIED DWELLING, AND IT NAMED THE PERSON WHO WAS WITHIN THE DWELLING.

HOW, HERE, IS YOUR CLIENT ESTABLISHED THAT HIS PRIOR FELONY, ONE OF HIS PRIOR FELONIES WAS AN UNOCCUPIED DWELLING?

IT IS NOT HIS PRIOR FELONY. IT IS THE FELONY, THE CURRENT FELONY HE IS BEING SENTENCED FOR AND WE KNOW THAT FROM THE PROCEEDINGS IN COURT. WE KNOW THAT, FROM THE INFORMATION, WE KNOW THAT, FROM THE --

WHAT DO WE KNOW ABOUT THE CRIME?

WE KNOW THAT THERE WAS NOBODY IN THE DWELLING.

WHAT TIME OF DAY OR NIGHT DID IT OCCUR?

IT OCCURRED WHILE THE HOMEOWNER WAS AT WORK. I JUST WANTED TO GO BACK FOR A MOMENT, TO OTHER RULES OF STATUTORY CONSTRUCTION THAT THE STATE IS RELYING ON. THEY ARE RELYING ON THE RULE THAT "OR" INDICATES ALTERNATIVES. THAT IS TRUE, BUT IT STILL DOESN'T TELL US WHAT OCCUPIED IS MODIFYING. AND THE NEAREST ANTE SEEDENT PHRASE, IF YOU LOOK CLOSELY OR JUST LOOK AT WHAT IS BE WILLING CONSTRUED IN BROWN, WHICH IS WHERE THE STATE TOOK THAT FROM, IT IS A CIVIL RULE, WITH A VARIETY OF PHRASES, AND THE COURT NEEDED TO DETERMINE WHAT THE LAST PHRASE MODIFIED. THAT IS NOT WHAT WE ARE DEALING WITH. WE ARE DEALING WITH A SIMPLE, COMMON DRAMATICAL STRUCTURE THAT COMMON PEOPLE OF ORDINARY INTELLIGENCE WOULD KNOW WHAT THAT MEANS, AND IT, REALLY, NOT AMBIGUOUS, AND IT, REALLY, DOESN'T -- IT IS NOT AMBIGUOUS, UNTIL WE BEGIN TO BRING TO IT OTHER THINGS WE KNOW ABOUT BURGLARY OR THINK WE KNOW ABOUT BURGLARY THAT JUST DON'T APPLY. IT IS UNNECESSARY TO LOOK BEHIND THE STATUTE. THE STATUTE IS PLAIN, AND ANY AMBIGUITY SHOULD BE CONSTRUED IN FAVOR OF THE ACCUSED.

AND IN YOUR RESEARCH ON THIS PARTICULAR CASE, DID YOU FIND ANY LEGISLATIVE HISTORY ABOUT THE INCLUSION OF BURGLARY IN THE REOFFENDER STATUTE?

IN THE LEGISLATIVE HISTORY, THERE WAS A PROPOSED AMENDMENT THAT WOULD HAVE -- THERE WAS A PROPOSED AMENDMENT THAT WOULD HAVE COVERED ALL BURGLARIES.

IF YOU HAD HAD TWO.

RIGHT. THAT -- THE LEGISLATURE, OBVIOUSLY, DIDN'T ADOPT THAT AMENDMENT, BUT INTERESTINGLY THEY DID ADOPT EVERY OTHER SUGGESTION AT THAT TIME.

BUT THERE IS NOTHING IN IT THAT WOULD INDICATE WHETHER OR NOT THEY INTENDED "OCCUPIED" TO MODIFY BOTH?

JUST LANGUAGE THAT WAS USED, THAT IS USED IN EVERYDAY LIFE. IF THE COURT HAS NO FURTHER QUESTIONS, I WOULD ASK THE COURT TO AFFIRM THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL. THANK YOU.

THANK YOU, MS. EHRLICH.

MAY IT PLEASE THE COURT AGAIN. JUSTICE QUINCE, GETTING BACK TO YOUR PREVIOUS QUESTION, I THINK WHAT YOU ARE REFERRING TO IS SUBSECTION THREE OF THE BURGLARY STATUTE. THAT IS 810. I KNOW YOU ASKED MY OPPOSING COUNSEL THAT QUESTION, WHERE DWELLING STATES DWELLING, AND THERE IS ANOTHER PERSON IN THE DWELLING AT THE TIME. DWELLING, AND THERE IS NOT ANOTHER PERSON AT THE TIME. IS THAT --

YES.

JUSTICE QUINCE, THAT WAS YOUR QUESTION. ACTUALLY, I THINK, THAT DOES NOT HURT THE STATE'S POSITION, AN IN THIS CASE, AND -- IN THIS CASE, AND THAT IS BECAUSE THIS IS AN EMPHASIS THIS. IS A MESSAGE FROM THE LEGISLATURE THAT DWELLING IS A DWELLING, WHETHER OR NOT THERE ARE PEOPLE IN IT AT THE TIME. THE STATUTE WAS CHANGED IN 1995. THE BURGLARY STATUTE CHANGED, STYLISTICALLY BUT NOT SUBSTANTIVELY. IF YOU GO BACK TO 91993, 1994 STATUTES -- TO THE 199, 1994 STATUTES, YOU WILL -- TO THE 1993, 1994 STATUTES, YOU WILL SEE THAT THE LANGUAGE IS EXACTLY SAME. IT IS ORDERED STYLISTICALLY. DWELLING STILL REMAINS DWELLING, AND ALL THIS IS A STYLISTIC CHANGE, WHICH, AGAIN, THE STATE SUBMITS EMPHASIZES THE PORT ABS OF THAT -- THE IMPORTANCE THAT DWELLINGS SHOULD BE TREATED AS DWELLINGS, WHETHER OR NOT PEOPLE ARE IN THEM AT THAT PARTICULAR TIME.

WHAT IS YOUR RESPONSE TO YOUR OPPONENT'S ASSERTION CONCERNING THE FACT THAT THE -- ONE OF THE HOUSES HAD AN AMENDMENT WHICH WOULD HAVE SAID "OCCUPIED" OR "ALL DWELLINGS" AND DIDN'T ADOPT THAT AMENDMENT?

JUSTICE WELLS, I CONSIDERED THAT. I DON'T THINK WE CAN, REALLY, DRAW ANY DEFINITIVE CONCLUSION FROM THAT. INTERESTINGLY, I THINK, IN THE PREAMBLE TO THE ACT, IT DOES MENTION BURGLARY. JUST BURGLARY, IF THE PERSON HAS COMMITTED TWO PRIOR FELONIES, AND THAT ACTUALLY MADE IT INTO THE PREAMBLE OF THE ACT, ITSELF, AND IT IS NOT ONE OF THE ENUMERATED OFFENSES. WE JUST DON'T GET ENOUGH GUIDANCE FROM THAT. I DON'T THINK IT IS OF ANY ASSISTANCE. I DON'T THINK WE CAN DRAW ANY CONCLUSION FROM THAT WHATSOEVER.

WELL, WHAT ABOUT HER ARGUMENT THAT -- I BELIEVE HER ARGUMENT WAS THAT THE OTHER CRIMES ENUMERATED UNDER THE PRISONER RELEASEE STATUTE SEEMED TO INCLUDE CRIMES THAT ARE VIOLENCE AGAINST PERSONS. AND SO IT WOULD LOGICALLY FOLLOW THAT, IN THE BURGLARY SECTION, WE ARE TALKING ABOUT VIOLENCE AGAINST PERSONS, ALSO?

ACCEPT, AND THAT IS NOT A BAD ARGUMENT, EXCEPT THAT THERE ARE EXCEPTIONS TO. THAT WE HAVE THE ARSON STATUTE, WHICH MAY NOT INVOLVE VIOLENCE AGAINST PERSONS. THAT MAY STRICTLY INVOLVE VIOLENCE AGAINST PROPERTY, IF YOU WILL, SO WE HAVE AN EXCEPTION, AND THE BRIEFS, I BELIEVE THERE IS TWO OTHER EXCEPTIONS MEN'SED TO THAT. I AGREE THAT -- MENTIONED TO. THAT I AGREE IT DOES CLOSELY FOLLOW THE FORCIBLE FELONY STATUTE, BUT IT DOES FOLLOW THAT SO I DON'T THINK THEY CAN TAKE COMPLETE COMFORT IN THE FACT THAT THE LEGISLATURE MAY HAVE LIMITED, WHEN IT CAME TO BURGLARY, LIMITING IT TO STRUCTURES WHICH WERE OCCUPIED, IN ADDITION TO ALL DWELLINGS.

HOW ARE THE INFORMATIONS AND IN DILTS CHARGED? ARE THEY CHARGED -- INDICTMENTS CHARGED? ARE THEY CHARGED AS BURGLARY OF A DWELLING, OR DO THEY MAKE THE DISTINCTION, OR DOES IT JUST DEPEND ON LOCAL PRACTICE?

I CAN'T SPEAK TO LOCAL PRACTICE. I CAN SPEAK TO MR. HUGGINS' CASE HERE. HE WAS CHARGED BURGLARY OF A DWELLING. THE VICTIM LISTED. HE WAS NOT HOME AT THE TIME. WE KNOW, FACTUALLY, THAT HE WAS NOT HOME, BUT, NO, THE INFORMATION SAID THAT MR. HUGGINS WAS CHARGED WITH BURGLARY AFTER DWELLING.

AND THE JURY INSTRUCTIONS LIKEWISE DO NOT MAKE THE DISTINCTION?

YES, THAN IS AN INTERESTING POINT. FURTHER EVIDENCE, FURTHER PROOF, I SHOULD SAY, THAT DWELLINGS ARE DWELLINGS IS THAT, IN THE JURY INSTRUCTIONS, A JURY IS ASKED TO DECIDE WHETHER A STRUCTURE IS A DWELLING. IF THEY MAKE THE DECISION THAT A STRUCTURE IS A

DWELLING, THEN THEIR ANALYSIS DOESN'T GO ONE STEP FURTHER, SAYING, WELL, THERE ARE PEOPLE IN THERE OR NOT. THAT IS IT. IF EVERYTHING ELSE IS PROVED, THE DEFENDANT IS GUILTY OF BURGLARY OF A DWELLING.

THAT IS FOR THE BURGLARY STATUTE.

THAT IS THE BURGLARY STATUTE, YES.

HAVE THEIR BEEN OTHER DETERMINATIONS? THE JUDGE WOULD HAVE TO MAKE THAT DETERMINATION, AS TO WHETHER IT WAS OCCUPIED OR NOT, IF WE WERE TO ADOPT THE FOURTH DISTRICT'S INSTRUCTION?

CONTRARY TO, YES, IT IS NOT THE JURY'S DETERMINATION. IT IS, ACTUALLY, THE STATE ATTORNEY'S DETERMINATION. I SEE THAT MY TIME HAS EXPIRED. I WOULD SIMPLY CONCLUDE, BY ASKING THIS COURT TO REVERSE THE DECISION OF THE LOWER COURT. THANK YOU.

THANK YOU. AND THANKS TO BOTH OF YOU. WE WILL BE IN RECESS FOR 15 MINUTES.