Clyde Timothy Bunkley v. State of Florida

MARSHAL: PLEASE RISE. PLEASE BE SEATED.

CHIEF JUSTICE: JUSTICE QUINCE ISNi RECUSED ON THIS CASE. SHE WILL BEco PARTICIPATING IN THE LAST CASE ON THE DOCKET THIS MORNING. J]SGICE PARIENTE WILL BE EXCUSED ON THE LAST CASE, BUT SHE WILL PARTICIPATENi IN THIS CASE AND WILL REMAIN ON THE BENCH WHEN WE HAVE THAT CHANGE IN THE PANEL. I APPRECIATE YOU ALL BEING READY. WITHOUT ANY FURTHER ADD DO, YOU MAYNi PROCEED.

THANK YOU, YOUR HONOR. I AM JOHN COALQi. I REPRESENT THE PETITIONER COLLIDE TIMOTHY BUNKLEY. WE ARE HERE ON A -- CLYDE TIMOTHY BUNKLEY. WE ARE HERE ON A REMAINED FROM THE STRENGTH SUPREMEnr COURT OF THE UNITED STATES, ASKING THE COURT TO RECONSIDER ITS FIRST SDRIINGS IN BUNKLEY, WHICH WAS FIRST -- TO RECONSIDER ITS FIRST DECISIONconr IN BUNKLEY, WHICH WAS FIRST DECIDED LAST YEAR.nr

CAN YOU GIVE US ANNi THENTO ANSWER7snnr THAT ANSWERED IN

YenrNcins&UdAT --c THE CASE LAWco ITS IN THE-ENTERED.

YOU TALKOCKETKNIFE. THIS THIS TESTIMONY THAT THE KNIFE USED LEAST COULDhBM DETERMINED A REASONABLE,jROR, NOT TO BE A COMMON POCKETKNIFE. THERE WAS TEST MOPE BY A POLICE OFFICER THAT THISnr WAS A BUCK KNIFE THAT,Ni CONTRARY TO A COMMON POCKETKNIFE,nr IT LOCKED IN ITS POSITION. THE HANDLE WAS LARGER. THE KNIFE, ITSELF, WAS A LITTLE LARGER THAN A COMMON POCKETKNIFE, SO AT THEnr TIME OF MR. BUNKLEY'S TRIAL, COULD A JURY HAVE DETERMINED THAT THIS WAS NOT A COMMON POCKETKNIFE, AND WAS THERE FOR A DANGEROUS WEAPON?

NO. COULD NOT IN MY OPINION.

WHY NOT?

SIMPLY STATED, THIS COURT'S DECISION IN LVNi, CLARIFIED THE LAW OF THIS STATE, WHICH AS THE COURT SAID IN BUNKLEY, HAD BEEN EVOLVING OVER 100 YEARS OR SO THAT A COMMONnr POCKETKNIF/ WAS ONE WITH A BLADE OF LESS THAN FOUR INCHES THAT FOLDED WITHIN ITSELF AND CAN BE CARRIED WITHIN ITS POCKET. MR. BUNKLEY'S KNIFE, AND I BELIEVE IN THE SUPPLEMENT THAT WAS PROVIDED TO THE COURT, THERE IS A PICTURE OF THE KNIFE AT THIS POINT. THE BLADE OF THAT KNIFE IS THREE INCHES. IT FOLDS INTO A HANDLE, AND IT HAS NONE OF THE HILTS THAT W$!"Wj](aRaED IN SOME OF THE OTHER CASES THAT WE HAVE CITED IN OUR BRIEF, AND I THINK THIS CASE IS CITED IN HER BRIEF, THAT PROTECT THE HAND FROM SLIDING DOWN ON TO THE KNIFE. ALSO THE FACT THAT IT COULD HAVE BEEN USED AS AY]8ne WEAPON, PERHAPS IS THE SITUATION THAT EXISTED IN SOME OF THE EARLIER CASES, BUT THIS KNIFE IN THIS CASE, WAS NOT USED AT ALL IN THE CASE IN ANY FASHION, AS A WEAPON, AND IN FACT, AT THE TIME OF MR. BUNKLEY'S ARREST IT WAS FOUND FOLDED IN HIS POCKET AND HAD NEVER BEEN OUT.

WHAT WAS THE JURY INSTRUCTED AS TO, THERE WAS A COMMON POCKETKNIFE EXCEPTION ALWAYS. WHAT WAS THE JURY INSTRUCT,Ni AS TO THE DEFINITION OF A COMMONnr

POCKETKNIFE?

AS I RECOLLECT, THEY WERE ONLY INSTRUCTED RELATING TO THE DANGEROUS WEAPONS CASES AT ISSUE.

TO ME THAT IS SORTnr OF AN IMPORTANT ISSUE, BECAUSE BUNKLEY MADE THE ARGUMENT THAT, AS A MATTER OF LAW, THAT THIS WAS ANi COMMON POCKETKNIFE. THE PROBLEM IN LB WASco RAISED BY THE SECOND DISTRICT AS ONE OF BEING VAGUE. IN OTHER WORDS, THE JURY, REALLY, SHOULDN'T BE FREE JUST TO FIGURE OUT WHAT A COMMON POCKETKNIFE IS. WE NEED SOME DEFINITIONS. SO YOU --

I THINK THAT IS WHAT THIS COURT DID IN ITS DECISION.

SO WAS THE JURY TOLD, THOUGH, THAT AN EXCEPTION TO THE DANGEROUS WEAPON WAS, WOULD BE FOR A COMMON POCKETKNIFE?

THE JURY, I DON'T BELIEVE[5 NOT HAVE THE RECORD IN FRONT OF ME, SO I AM GOING FOR RECOLLECTION OF ABOUT A MONTH AGO WHEN I FIRST READ IT, WAS TOLD, WAS THE BASIC DEFINITION AFTER WEAPON BUT WAS NOT CLEARLY DEFINED WHAT A COMMON POCKETKNIFE WAS.

co BUT WAS TOLD THAT A mMMON POCKETKNIFE WAS AN EXCEPTION.

I BELIEVE SO. I DO NOT HAVE THE RECORD, AND I APOLOGIZE, I DID NOT READ IT LAST NIGHT IN PREPARING FOR THIS, BUT I BELIEVE THAT THENir COURT'S DECISION IN LVNi WASco VERY CLEAR THAT NOco KNIFE WITH LESS THAN A FOUR-INCH BLADE, AS OFnr 1951 --

WHAT ABOUT THE FACT, THOUGH, THAT JUSTICE CANTERO'S QUESTION INCLUDED, THAT IS THE FACTOR THAT, ONCE THIS BLADEco WAS OPENED, THAT IT LOCKED IN PLACE, BUT IT DID NOT COLLAPSE ON CONTACT, AND THAT THERE WAS TESTIMONY BY SOMEONE, IN THE TRIAL OF THIS CASE, THAT, BECAUSE OF THAT FACTOR, AND PERHAPS OTHERS, BUT BECAUSE OF THAT FACTOR, THAT THIS CAME OUTSIDE THE CATEGORY OF A COMMON POCKETKNIFE? WHY, I KNOW YOU, IN ANSWERING HIS QUESTION, YOU CAME BACK TO THE WAY THIS COURT DEFINED A COMMON POCKETKNIFENi IN OUR OPINION, BUT WHAT ABOUT THAT FACTOR THAT CERTAINLY WASN'T DISCUSSED IN OUR OPINION, ANDNi WE DIDN'T DSXUSS THE FACT THAT SOMEONE MAY TESTIFY THAT, BECAUSE OF A DIFFERENCE LIKE THAT, THAT IT MIGHT PUT THIS WEAPON OUTSIDE THE CATEGORY OF A COMMON POCKETKNIFE?

I THINK THE PROBLEM WITH TRYING TO DO THAT IS, ONE, IN THE LAW OF THIS CASE, THE WAY THIS CASE HAS GONE DOWN, THE FACTS HAVE ALWAYS BEEN RELATED TO THIS AS A COMMON POCKETKNIFE AND IN FACT, THIS COURT SO HELD, AS DID THE SUPREME COURT OF UNITED STATES. WE REVISIT, I GUESS FOR THE FOURTH OR FIFTH TIME, THIS ISSUE, AND I THINK THE LOCKING NATURE OF THIS WAS RAISED, I THiNwN THE FIRST CASE IN THIS COURT IN BUNKLEY, IN POISE TAN-ISSUE IN THAT -- IN THE POISE I TAN-ISSUE -- THE POISITANO ISSUE IN THIS CASE. IT DEFINITELY DOESN'T TAKE THAT FEATURE OUT OF A COMMON POCKETKNIFE. IT HAS THAT FEATURE AND I THINK IF THE COGrV LOOKS AT OTHER OPINIONS THAT ARE OUT THERE, WHERE THEY ARE TRYING TO DEVIATE FROM COMMON POCKETKNIFE INNi DEALING WITH THE TYPE OF GRIP, HILTS, PROTECTIVEco FEATURES AROUND THE BLADE, THOSE MIGHT BE MORE SPECIFIC, AND I THINK JDR DEALS WITH THAT ISSUE OR ONE OF THE OLDER DECISIONS.

ISN'T IT THAT, AT THE TIME THAT BUNKLEY'S CASE WAS TRIED, THAT THE ISSUE OF WHETHER THIS WAS A DANGEROUS WEAPON, WAS AN ISSUE TO BE RESOLVED BY THE JURY?

I DON'T BELIEVE THAT IS WHAT THE CASE LAW HELD, JUSTICE WELLS.

ISN'T THAT WHAT THE DISTRICT COURT HELD? I MEAN, STRAIGHT UP, THE U.S. DISTRICT COURT, ON A HABEAS, SAID THAT FLORIDA LAW SIMPLY REQUIRED THAT THE JURY CONSIDER THE LIKELIHOOD OF THEok KNIFE PRODUCING DEATxr OR GREAT BODILY INJURY, CITING STATE VERSUS NIXON, BASS VERSUS STATE, AND THAT WAS THE EVIDENCE CONCERNING THE NATURE OF THE BUCK KNIFE THE PETITIONER CARRIED, CLEARLY PROVIDED SUFFICIENT EVIDENCE FOR THE JURY TO FIND THAT, AND ACTUALLY, WE DIDN'T SAY THAT THAT WAS AN ERROR, WHEN WE DECIDED LB. WE SIMPLY SAID THAT, IN LB, WE HOLD THAT THAT KNIFE, UNDER ANY DEFINITION, THEg.JTt THAT LB USED, WAS, FIT WITHIN THE EXCEPTION.

WELL, JUSTICE WELLS, I THINK, AND I CITED ARROYO AND THE CASES AROUND IT DEALING WITH THE ISSUE, THAT THE ABILITY TO USE THE KNIFE AS A DANGEROUS WEAPON AND ACTUALLY USING IT AS A DANGEROUS WEAPON WERE WZaV THE COURTS WERE FOCUSED ON IN THE 1989, 1987 ERROR. IN FACT THERE WERE NO CASES THAT I FOUNDNi WHERE A KNIFE CARRIED IN THE POCKET FOLDEr, NOT USED IN ANY FASHION, NOT, IFhYGU WILL, BRANDISHED ABOUT, EVERco CAME INTO DEFINITION FORNi ENHANCEMENT PURPOSES, AND THAT IS WHAT THIS IS.

ISN'T ITnr TRUE THAT THE SECOND DCA, IN THE LAW AT THE TIME THAT BUNKLEY WASNi TRIED AND CONVICTED IN THE 1997 OPINION OF THE SECOND DCA, THEY SAID AND I QUOTE, THAT NO TRIAL COURT COULD DETERMINE THAT A TEST COULD BE APPLIED TO DETERMINE WHETHER A KNIFE FELL WITHIN THE EXCEPTION, AND THEY CITED THEIR OPINION IN 1997 IN ORIS, SO THE UNDISPUTED OPINION OF THE SECOND DCA AT THAT TIME WAS THAT CASE, ISN'T THAT TRUE?

FIRST, LETTING THENi STATE DEVELOP ALL OF ITS FACTS VERSUS HAVING A DECISION MADE, IT DID NOT BAR AND SEEMED ALMOST THE OTHER WAY, THAT IT PERMITTED THE JUDGE TO MAKE THAT DECISION AFTER THE FACTS WERE ADDUCED ON A JUDGMENT OF ACQUITTAL. IT NEVER SAID THAT WE WANT EVERY CASE OF THIS TYPE TO GO TO THE JURY, WHERE THERE IS NOT A DANGEROUS WEAPON.

ISN'T THE STATUTE, I AM NOT SURE WHAT THE SUPREME COURT ASKED AND MAYBE WE WILL HAVE A DISPUTE HERE AS TO MAYBE THE ISSUE AS TO WHAT WERE JURIES DOING, BUT WAS THERE ANYTHING IN THE LANGUAGE OF THE STATUTE THAT CHANGED FROM THE 1980s TO THE 1990S?

NO. AND THE ISSUE THAT THIS WASco A --

AND THE ISSUE THAT THIS WAS A COMMON POCKETKNIFE WAS SOMETHING THAT BUNKLEYNi ALWAYS RAISED, BOTH BEFORE THE TRIAL COURT ANDco ONnr APPEAL TO THE SECOND DISTRICT?

Inr AGREE THATNi IS TRUE.

THE SECOND DISTRICT PCA + CASE, AS FAR AS WHETHER THERE HAD BEEN AN OPINION AND WHETHERNi IT HAS COME UP TO HERE, WOULD BE SPECULATING AS TO WHAT THE COURT IN 1987 WOULD DO. DOESNi FIORI DEAL WITHco WHETHER, IN FIORI, IF THE LAW HASN'T CHANGED AND THEco HIGH COURT, FOR THE FIRST TIME, STATES THIS IS WHAT THE LAW IS, IS THAT, INNinrco YOUR VIEW, UNDER CLAIM AS WE HAVE INTERPRETED FIORI. WHAT WE SHOULD BE LOOKING AT?

YES. I WOULD SAY THAT, IT WAS CLEARLY RELATING BACK IN LB, IF YOU WILL, CITING THE 1951 ATTORNEY GENERAL'S OPINION AND CITE ADD 1956 DICTIONARY FOR DEFINING THEco COMMON TERM POCKETKNIFE, SO IT IS DEALING, IF YOU WILL, WITH THE LANGUAGE OF 1986, WHICH IS HELPFUL TO MR. BUNKLEY AS HISco CASE AROSE IN 1987 AND BECAME FINAL IN 1979, THIS COURT IN YOUR DISSENTING OPINION, YOU EVEN POINTED TO THE LAW HAS NOT CHANGED IN THAT PERIOD OF TIME AND THEREFORE MR. BUNKLEY SHOULD HAVE THE BENEFIT OF THE FIORI ANALYSIS APPLIED TO HIM IN THIS CASE.

SINCE LB HAS BEEN DECIDED HAS THE STATUTE CHANGED? HAS THE LEGISLATURE SAID THAT IS

NOT THE DEFINITION WE INTENDED?

NO.

SO IF WE ACCEPT YOUR ARGUMENT AS BASICALLY ACCEPTING THE ARGUMENT TO REVERSE THE OPINION IN BUNKLEY.

I THINK IT IS ASKING THE COURT TO MAKE A SECOND ANALYSIS IN BUNKLEY THAT JUSTICE PARIENTE SUGGESTED, THAT FIORI CONTROLS AND THEREFORE UNDER CLAIMANT, WHICH WAS DECIDED TWO WEEKS LATER, IT SHOULD HAVE BEEN APPLIED TO MR. BUNKLEY. HE SHOULD BE RELEASED AND CONVICTED OF THE THIRD DEGREE FELONY THAT HE ACTUALLY COMMITTED. ANOTHER QUESTION THAT THE COURT ASKED, AND I AM READING FROM THE SUPREME COURT OPINION TO US, THE PROPER QUESTION, UNDER FIORI. IS NOT JUST WHETHER THE LAW CHANGED, RATHER IT IS WHEN THE LAW CHANGED. THE FLORIDA SUPREME COURT HAS NOT ANSWERED THIS QUESTION. SO OTHER THAN THE LB CASE, WOULD YOU ARGUE THATNi THE LAW CHANGED WHEN?

I THINK CERTAINLY IN 1951, THE LAW WAS THAT THIS WAS A COMMON POCKETKNIFE AND HE SHOULD NOT HAVE BEENNTae0@6HCJ% GUILTY OF AN ARMED MURDER.

Ba&Yb GENERAL'S OPINIYh

BASED ON THE ATTORNEY GENERAL'S OPINION, THAT THERE ARE NO CONFLICT CASES WITHIN THE DISTRICT COURTSNi ACTUALLY FINDING DIFFERENTLY, BECAUSENi AGAIN, WE ARE TALKING ABOUT A TOLDED IN THE POCKET UNUSED KNIFE HERE. WE ARE NOTco TALKING ABOUT EVEN AS A A ROYco YOnr -- AS IN ARROYO, WHERE A GUY WAS STANDING IL3 THE APARTMENT WITH A POCKETKNIFE INNi HIS HAND. YOU ARE USINGNi A 1956 DICTIONARY TO DEFINE IN 1986, WHAT THE TERM COMMON POCKETKNIFE MEANT.

DOESN'T THAT BRING US FULL CIRCLENi, BACK TO THE QUESTION THAT WE WERE POSING TO BEGIN, WITH AND THAT IS WHSt"WAS THE INSTRUCTION TO THIS JURY, AT THE TIME THIS CASE WAS TRIED?

IT IS MY, Ico DO NOT BELIEVE, AND, AGAINnr, I AM GOING BYNi RECOLLECTION ONLY, THAT THEY WERE NOT INSTRUCTED AS TO A DEFINITION OF WHAT WAS A COMMON POCKETKNIFE.

OKAY. AND SO THIS JURY MADE A DETERMINATIONnr THAT WHAT BUNKLEY HAD WAS A DEADLY WEAPON, UNDER THIS STATUTE.

I THINK WHAT THE JURY PROBABLYco DETERMINED WAS WITHOUT PROPER GUIDANCE FROM THE COURT, THAT REALLY SHOULD HAVE TAKEN THE ISSUE AWAY FROM THE JURY, ANYWAY.

BUT THAT ISSUEnr WAS CERTAINLY DEALT WITHcony WITH SOME DEGREE, WITH FINALITYcoNi BY THE DCA, DECIDING THAT IT WOULDNi AFFIRM THE JUDGMENT OF THE TRIAL COURT.

I CAN'T SPEAK TO WHAT THE PROCURIUM AFFIRMED OPINION OF THE DCA MEANT AT THAT TIME. INiN@EON'T REALLY KNOW AND CAN TELL THE COURT THAT HE WAS REPRESENTED BY THE SAME PERSON WHO REPRESENTED HIM AT TRIAL.

IT MEANT UNDER THIS CONDITION THAT THE CONVICTION WAS FINAL.

I WOULD AGREE WITH THAT, BUT, AGAIN, I DON'T THINK IF I OR I -- FIORI REQUIRES OR DOESN'TNpe INTO THE RECIPROCITY OF APPLYING TO SOMEONE WHO WAS BEING HELD FOR A CRIME THEY DID NOTNi COMMIT, AND THAT,u THINK, IS WHERE MR. BUNKLEY S HEco CLEARLY IS GUILTY OF A THIRD-DEGREE FELONY. HE CLEARLY IS GUILTY OF A THIRD-DEGREE BURGLARY OF A STRUCTURE BUT NOT ARMED BURGLARY.Cy THAT IS THE MATTERco OF HE HAS BEENw3co OVER

CONVICTED AND THEREFORE OVER INCARCERATED, LOCKED UP NOW, FOR ITsRgK 17 OR 18 YEARS, FOR TODAY WHATco WOULD BE AND WHAT SHOULD HAVE THEN BEEN TREATED AS AnrNi THIRD-DEGREE FELONY.

IN TRYING TO ANSWER THENiNi U.S. SUPREME COURT'S DECISION, I GUESS ON ONE HAND I WOULD SAY, WELL, IF THE ISSUE IS THEY KNOW WHENco WEnr DECIDED LB, SO IF THAT IS WHEN WE SAID THE LAW CHANGED, THAT IS NOT THE COMPLETE ANSWER TO THE QUESTION, SO I AM TRYING TO FIGURE OUT WHAT, FROM THE U.S. SUPREME COURT'S VIEW, WAS MISSING IN THE MAJORITY'S OPINION IN BUNKLEYnr, THAT WE SHOULD BE ANSWERING, AND YOU KNOW, IN LOOKING AND REREADING THE SHORT OPINION, IT SAYS BY HOLDING, BECAUSE THEY SAID THAT THE PROPER QUESTION ON FIORI IS NOT WHETHER THE LAW CHANGED. RATHER IT IS WHEN THE LAW (R)@cNGED. IF THE ANSWER TO THAT IS IT CHANGED WHEN THE LB DECISION CAME OUT, THEY DIDN'T NEEDco US TO ANSI THAT BECAUSE THE DATE THE OPINION SPEAKS FOR ITSELF, BUT BY HOLDING WHAT THE SUPREME COURT HEARD WAS A CHANGE LIKE WEISS WOULD HAVE -- LIKEWISE WOULD HAVE CONSIDERED THAT @ POCKETKNIFE WAS NARROWERNi AT THE POINT BUNKLEY WAS CONVICTED AND YOU ARE SAYING THAT, AT THE TIME OFNi CONVICTION BY A JUDGE, IT WASN'TnrNi NARROWER AT THE TIME THAT BUNKLEY WAS CONVICTED.

THERE WAS NO DEFINING OPINS4n FROMc(aHISNi COURT AT THIS POINT, BUT I WOULD SUGGEST TOnr THE COURT THAi,!AT HAPPENED THERE IS EXACTLY WHAT THE CLAIMANT DEALS WITH, THIS COURTNi, AND THE TRIALNi COURT IN BUNAle, ESSENTIALLYNi PERMITTED HIM TO BE CONVICTED AFTER CRIME HE DID NOT COMMIT AND COULD NOT HAVE BEEN CONVICTEDNi, UNDER THENi DEFINITION OF COMMON POCKETKNIFE, ASNpa SHOULD HAVE BEEN KNOWN BY ANY COURT,nr USING WHAT THIS COURT DID IN LB AS ANALYSIS. THE CASES AT THAT TIME, AGAIN, GOING WITH THE THEORY THAT THE CASES AT THAT TIME ARE THE FACT THAT NONE OF THEM DEAL WITH THIS TYPE OF KNIFE. THEY DEAL WITH NOT A KNIFE IN A POCKET. THEY DEAL WITH A KNIFE IN A HAND. THEY DEAL WITH THE BRANDISHING OF THE KNIFE, AND IN FACT, THE ONE CASE WHERE HE HAD THE LITTLE PEN KNIFE, IF YOU WILL, ON A KEYnr CHAIN, THE LAWYER DIDN'T RAISE IN AN ARMED ROBBERY PRTION,co WAS EFFECT --nr ROBBERY PROSECUTION, WAS EFFECTIVELY ISSUED IN REVERSE BY TRIAL COUNSEL, FOR FAILURE TO PRESERVE IT IN THE TRIAL COURT. MARSHAL HAS INDICATEDNi -- ISLAND LIKE TO RESERVE THE RESTnr OF MY TIME.co THANK YOU. -- O THENi MARCH HALL HAS INDICATED --

I WOULD LIKE TO RESERVE THE REST OF MY TIME. THANK YOU.

YOUR HONOR, MAYaia PLEASE THE COURT. YOUR HONOR, MY NAME IS KATHERINE BLANCO, I AM ASSISTANT ATTORNEY GENERAL AND JUSTICE PARIENTE, IF I MAY ADDRESS THE QUESTION BECAUSE I KNOW THAT YOU ARE ANXIOUS TO GET TO IT, THE QUESTION FRAMED BY THE UNITED STATES SUPREME COURT IS WHETHER, IN LIGHT OF THIS LB DECISION, BUNKLEY'S POCKETKNIFE FIT WITHIN THENiNi SECTION 7.90010, AT THE TIME THAT BUNKLEY'S FINAL CONVICTION BECAME FINAL. THE ANSWER IS NO AND I WOULD LIKE TO EXPLAIN WHY. IN ORDER TO ANSWER THIS QUESTION, FIRST WE MUST LOOK TO LB, BECAUSE THE CONSTRUCTION DEPENDS INITIALLY ON WHAT THIS COURT DID IN THE LB CASE. YOUR HONORS, IN LB, AND I WOULD LIKE TO QUOTE FROM THE OPINION, BECAUSE IT IS SIGNIFICANT, A REPRESENTATION WAS MADE THIS MORNING BY OPPOSING COUNSEL, AND I BELIEVE THAT IT WAS INACCURATE, BUT INADVERTENTLY SO, WHEN THE REPRESENTATION WAS MADE THAT THE DEFINITION OF COMMON POCKETKNIFE, THAT THE DECISION WAS MADE TO APPLY THE AGO'S OPINION FIRST, THE FOUR-INCH-PLAYED LIMITATION, AND WHAT I WOULD LIKE TO DO, YOUR HONORS, IS TO GO BACK TO THE BEGINNING THATco THIS COURT SET THE ANALYSIS OF THEnrNi BACK>OUND OF THE COMMON POCKETKNIFE, THE EXPLANATION FOR IT AND WHAT EXACTLY DOES IT MEAN. IN CONDUCTING THAT ANALYSIS, THE FIRST THING THIS COURT DID WAS SAY, WHEN TERMS ARE NOT DEFINED, WE WILL LOOK TO THE COMMON, ORDINARYNi MEANING OF THOSEnr TERMS.

THE CONTEXTNi OF LB,nr THOUGH, WAS THAT THE SECOND DISTRICT ON THEnr SAME LAW THAT

EXISTED BACK INnr 1987,Ni FOUND A COMMON POCKETKNIFE EXCEPTION UNCONSTITUTION A HE WILL VOID FOR VAGUENESS.

THAT'S CORRECT -- UNCONSTITUTIONALLY VOID FOR VAGUENESS.

THAT'SNi CORRECT, JUSTICENY PARIENTE.

SO IN ORDER TO SAVE IT FROM BEINGconr UNCONSTITUTIONAL, WE THEN WENT TO THENinrNi 1986 DEFINITION OF A POCKETKNIFE.

ACTUALLY, YOUR HONOR, THE SEQUENCE IN LB SHOWS THAT NOT TO BE THE CASE. THE SEQUENCE OF THE COURT'S ANALYSIS IN LB, SHOWS THAT FIRST DICTIONARY DEFINITION WAS LOOKED TO WITH RESPECT TO COMMON POCKETKNIFE --

AND YOU AGREED THAT WAS ANi 1986 DEFINITION.

THE DEFINITION OF COMMON.Ni AND THEN FROM THIS, THIS COURT SAYS FROM THE DISTINCTION AREA -- DICTIONARY DEFINITIONS OF BOTH COMMON AND POCKETKNIFE, WE CAN INFER THAT THE LEGISLATURE'S INTEND DEFE$TION OF COMMON POCKETKNIFE WAS, QUOTATION, A TYPE OF KNIFE OCCURRING FREQUENTLY IN THE COMMUNITY, WHICH HASco A BLADE THAT FOLDS INTO THEco HANDLE AND THAT CAN BE CARRIED IN ONE'S POCKET, ANDco>xUdIS IS CRITICAL, YOUR HONOR. THISnr COURT WENT ON TOc!.iUt BELIEVE THAT HaD MAJORITY OJr CASES, IT WILL BE EVIDENT TO CITIZENS AND FACT FINDERS, WHETHER A COMMON POC. t,co INTENDED DEFINITION OF THAT TERMNi.

COMMON IS IN QUOTES. WHETHERcoRJn

THAT'S CORRECT. AND THAT IS As/ FIRE, YOUR HONOR, BECAUSE IF YOU TAKE COMMON OUT OF THENiNi EQUATION, THEN IT LEADSNi ONE44 AND ACTUALLYnr THERE IS A POINT IN YOUR DISSENTING OPINION AND IN THIS COURT'S PRIORnr BUNKLEY OPINION, YOUR HONORnrNi, IN DISSENT, YOUR HONOR, YOU FIND WITHi RESPECT TO THE WIDTH ANALYSIS -- THE WHITT ANALYSIS, IT WAS NOT FOUND THATnr IT WAS UNCOMMONLY VAGUE.nr IN ADDITION,co THIS COURT HELD IN FLORIDA CONSTITUTIONAL LAW, THAT ANY KNIFE WITH LESS THAN A BLADE O3 FOURnrNi INCHESnr WASco NOT A KNIFE WITHIN THE MEANING OF THAT STATUTE, AND I CERTAINLY DONc BELIEVE THAT THAT IS WHAT LB SAID. ADDRESSED --

SO YOU ARE SAYING THAT, IF TODAY, IF A DEFENDANT SAYS THAT I HAD A FOLDED KNIFE AND IT WAS LESSo FOUR INCHES.

UM-HUM.

THATnr THE ISSUE AS TO WHETHER THE KNIFE WAS A COMMON POCKETKNIFE ORco ANco UNCOMMON POCKETKNIFE, WOULD BE A QUESTE Ju THE JURY?

IT REMAINS A QUESTION FOR THE JURY, YOUR HONOR, BECAUSE IT IS THATNi CRITICAL MOD FIRE COMMON, THE TYPE OF KNIFE OCCURRING FREQUENTLY IN THE COMMUNITY, WHICH HAS A BLADE THAT FOLDS INTO THE HANDLENi AND CAN BE CARRIED IN ONE'S POCKET.co

AND WHO HAS PROVED HOW COMMON DOES IT HAVE TO BE?nr HOW WOULD THE JURYnr --

THAT IS SUBJECT TO PROOF. YOU CAN BRING IN SEARS ROEBUCK REPRESENTATIVES THAT SAY WE SELL THE SWISSN)o ARMY KNIFE.co THJc@%M OUR BIG SELLER. WE SELL 400 OFNi THESE THAT AREi, BUT WITH US RESPECT TO COMMON, WHO

DON'T YOU END UP WRITING THEco EXCEPTION OUT ATUTE?

NO, NOT AT qL co.

IF YOU ARE TALKING ABOUT WHO BETTER THANn2HaHE JURY YOU KNOW, TO DECIDE THIS,co BECAUSE IN YOUR CASE, IF I UNDERSTAND IT CORR@LYNi, THE JURY WAS TOLD THAT THE FACT THAT THE DEFEeLpgT DOES NOTNi ACTUALLY EMPLOYEE THE WEAPON, IS NOT THE GRAPH A MEANT OF THIS ENHANCED OFFENSE. THERE IS NO REQUIREMENT THAT THE STATE MUST SHOW THE PERSON CHARGED INTENDED OR WAS WILLING TO USE SUCH WEAPON IN FURTHERANCE OF THE CRIME BEING KPLITED. IS THAT CORRECT -- BEING COMMITTED. IS THAT CORRECT?

THAT IS TRUE, YOUR HONOR.

ISN'T THAT WRITING OUT OF THE STATUTE, AND THAT IS THAT IF YOU APPLY THAT LATER, TO THIS EXCEPTION, THEN THE EXCEPTION WOULD NEVER APPLY, WOULD IT?

IT WOULD APPLY, YOUR HONOR, AND IT WOULD CONTINUE TO APPLY, BECAUSE IT IS THE MOD FIRE COMMON POCKETKNIFE. IT IS NOT JUST A KNIFE. WE HAVE A BIG WORLD OF KNIVES. WE HAVE A SMALLER WORLD OF POCKETKNIVES. WE HAVE AN EVEN SMALLER WORLD OF WHAT IS A COMMON POCKETKNIFE. THAT IS THIS --

IN LB, IT WAS THAT SHE HAD A FOLDING KNIFE.

YES, YOUR HONOR.

WITH A 3.75-INCH BLADE AND AN APPROXIMATE OVERALL LENGTH OF 8 AND-A-HALF INCHES. THERE WAS NO TESTIMONY AND NO REFERENCE IN THE 1997 OPINION, AS TO HOW COMMON THE KNIFE THAT LB HAD, WAS IN THE COMMUNITY.

I KNOW THAT THE RESULT THIS COURT REACHED IN LB, WAS REACHED AFTER FINDING, FIRST OF ALL, THAT THE STATUTE WAS NOT UNCONSTITUTIONALLY VAGUE. AS A MATTER OF FACT, THE FIRST THING YOU DID, WE HOLD THAT SECTION 790.01-13 IS NOT VOID FOR VAGUENESS.

WE ARE REALLY DEALING WITH POCKETKNIFE. WE WEREN'T DEALING WITH THE DEFINITION OF COMMON.

YOU CERTAINLY ADDRESSED COMMON, IN YOUR EXPLANATION, YOUR HONOR. YOU ADDRESSED, THE LEGISLATURE EXEMPTED COMMON POCKETKNIFE. THEY COULD HAVE SAID KNIFE WITH FOUR INCHES. WE DON'T NEED A JURY TO HE WILL US IF SOMETHING IS FOUR INCHES. WE DON'T NEED A JURY TO TELL US IF SOMETHING FOLDS. WE NEED A JURY TO TELL US IF SOMETHING IS COMMON, IF IT IS FREQUENTED IN THE COMMUNITY, AND THAT CAN BE THE FACT --

WHY CAN'T WE CONSTRUE LB THAT THE ATTORNEY GENERAL GOT IT RIGHT BACK IN THE '50s, WHEN YOU, THE ATTORNEY GENERAL, RENDERED AN OPINION, SO WHY ISN'T THAT WHAT WE DID IN LB?

IF YOU GO BACK TO THE ATTORNEY GENERAL'S OPINION UPON WHICH THIS COURT CITED, AFTER SAYING THAT WE FIND THAT THIS POCKETKNIFE MEETS ANY INTENDED DEFINITION, AND LOOK WHAT THE ATTORNEY GENERAL SAID. NOW, WHAT DID THE ATTORNEY GENERAL SAY BACK IN 1951? FOR THAT PROPOSITION, THE ATTORNEY GENERAL, FIRST OF ALL, IT IS A FIVE PARAGRAPH OPINION IN TOTAL, AND IT AGREES THAT THIS COURT HAS NOT PASSED ON THE QUESTION. THEY GENERALLY TALK ABOUT OTHER JURISDICTIONS AND SPECIFY THAT PEOPLE WHO NORMALLY WOULD CARRY LARGER THAN AVERAGE KNIVES, SHOULD NOT BE CONVICTED OF OTHERWISE INNOCENT CONDUCT. FOR EXAMPLE, FISHERMAN, INDIVIDUALS THAT ARE ICE DELIVERY MEN. THEY CITE, IN THAT AG OPINION, YOUR HONOR, BOTH A MICHIGAN CASE AND THE WEB SISTERS DICTIONARY.

-- WEBSTER'S DICTIONARY.

WHAT DID THE COURT CONCLUDE?

BOTH WEBSTER'S DICTIONARY AND ORDINARY POCKETKNIVES, AND I WOULD DRAW AN ASSUMPTION THAT COMMON MEANS COMMON AND ORDINARY MEANS COMMON, AND THEREFORE A POCKETKNIFE WITH A BLADE OF FOUR INCHES LONG IS A COMMON POCKETKNIFE, AND THE JURY SETS OUT IN THE ABSENCE THAT IT WAS USED OR CARRIED FOR USE AS A WEAPON, THAT CONCLUSION IS REACHED AFTER TWO THINGS, AFTER CITING THE DEFINITION JUST FOR POCKETKNIVES AND NOT FOR COMMON OR ORDINARYANT MICHIGAN CASE THAT DECIDED THAT HOLD -- ORDINARY, AND THE MICHIGAN CASE THAT DECIDED THAT HOLDING IT WAS ORDINARY POCKETKNIFE.

WHAT DID WE DECIDE IN LB?

I THINK A FUNDAMENTAL ASSUMPTION THAT IT WAS A COMMON POCKETKNIFE ALL ALONG, THAT IT WAS ORDINARY ALL ALONG. WHAT HAPPENED IN LB WAS IT A -- IN LB WAS IT WAS AVOID FOR VAGUENESS CHALLENGE AND THIS COURT HELD IT CONSTITUTIONAL ON AVOID FOR VAGUENESS CHALLENGE, AND I DON'T KNOW WHAT EVIDENCE CAME IN AT THE TRIAL LEVEL WITH RESPECT TO LB. I CAN TELL YOU, HOWEVER --

WHO FILED THE PICTURE THEN?

I AM SORRY. IES TALKING ABOUT THE LB KNIFE. -- I WAS TALK BTH LB KNIFE. YOUR HONOR, THIS IS A -- I WAS TALKING ABOUT THE LB KNIFE. YOUR HONOR, THIS IS A KNIFE THAT WAS STATED BY THE SUPREME COURT.

ARE YOU SAYING THAT THE ATTORNEY GENERAL GOT IT RIGHT?

WE AGREE WITH THE OPINION IN THIS CASE AND NOW WE DON'T KNOW IF IT WAS A LOCKING BLADE, WHICH MAKES IT MORE LIKE THE 1987 LAW UNDER ORTIZ, THAT JUSTICE BELL CITED TO EARLIER. WHAT WE HAVE IN THIS PARTICULAR CASE, WAS EVIDENCE PRESENTED AT TRIAL.

YOUR ATTENTION TO FOOTNOTE FOUR OF LB.

YES, YOUR HONOR. MY FOOTNOTES ARE OUT OF SEQUENCE. OKAY. WE NOTE THAT NEITHER THE ATTORNEY GENERAL NOR THIS COURT MAINTAINS THAT FOUR INCHES IS A BRIGHT LINE CUT OFF TO DETERMINING WHETHER A PARTICULAR KNIFE IS A COMMON POCKETKNIFE. WE MERELY HOLD THAT AN APPELLANT'S KNIFE FITS UNDER THE DEFINITION OF WEAPON UNDER THAT SECTION.

SINCE WE CAME OUT WITH LB --

YES, YOUR HONOR.

-- WHAT, HAS A STANDARD JURY INSTRUCTION BEEN CHANGED?

NO, YOUR HONOR, NOT TO MY KNOWLEDGE ON THAT, WITH RESPECT. IT WOULD --

YOU HAVE CASES IN WHICH THERE IS THE, THAT CONTINUE TO BE AN ISSUE DECIDED BY THE JURY, AS TO WHETHER --

UNDER BOTH, WELL BIRTION THE FINDER OF -- WELL, BY THE FINDER OF FACT, UNDER BOTH JDLA AND RS, WHERE THE KNIVES HAVE PARTICULAR WEAPON LIKE CHARACTERISTICS, AND THAT IS WHAT MAKES IT AN ISSUE THAT WE HAVE BEEN HERE BEFORE IN THIS SENSE THAT THIS DEFENDANT WAS GIVEN AN OPPORTUNITY --

HOLD IT. I JUST WANT TO MAKE SURE THAT I UNDERSTAND JUSTICE WELLS'S QUESTION. IF THERE IS EVIDENCE THAT THE KNIFE IS NOT IN THE PERSON'S POCKET BUT IS, ARE YOU SAYING THAT THERE ARE CASES WHERE BLADES ARE FOUR INCHES AND THERE ARE CASES THAT STILL GO OFF ON WHETHER IT IS COMMON OR NOT?

WELL, THAT THEY HAVE WEAPON LIKE CHARACTERISTICS. THE ISSUE OF WHETHER IT IS FOLDED IN THE POCKET, THEN, WOULD DRAW A DISTINCTION BETWEEN AN INERT POCKETKNIFE AND ONE THAT IS FLAT IN THE POCKET THAT IS JUST SET DOWN IN THE POCKET. IT IS STILL A POCKETKNIFE IF IT IS IN THE POCKET OR IF IT IS FOLDED AND THEN YOU MAY SAY, WELL, IS THAT CARRIED IN A COMMON MANNER? IN THIS PARTICULAR CASE, THIS WAS A JACKKNIFE USED BY THIS PARTICULAR DEFENDANT TO CUT ROOFING MATERIALS. IT DID HAVE THE FIXED BLADE. BUNKLEY TESTIFIED AT THE TIME OF TRIAL, HE ADMITTED THAT HE USED IT TO CUT, THAT IT WAS LARGER THAN A NATURAL KNIFE IS HOW HE DESCRIBED IT, AND THAT IT WAS USED TO CUT THROUGH VERY THICK MATERIALS, INCLUDING ROOFING MATERIALS.

WHEN A DEFENDANT GOES TO TRIAL, HAS A KNIFE THAT APPEARS TO MEET THE DEFINITION THAT IS IN LB, WOULD THAT DEFENDANT BE ENTITLED TO A DIRECTED VERDICT RESOLUTION ON THAT ISSUE?

NO, YOUR HONOR, IT WOULD NOT.

WHAT EFFECT DID LB HAVE ON THE LAW?

I BELIEVE, YOUR HONOR, THAT JUSTICE PARIENTE, IN HER DISSENT, IS UNDER THE IMPRESSION THAT LB STATED A BRIGHT-LINE RULE, AND IT IS OUR POSITION THAT LB DID NOT STATE A BRIGHT-LINE RULE, AS THIS COURT HAS SAID TWICE.

WHAT HAPPENED TO LB?

WHAT HAPPENED TO LB? WE FOUND THAT HER CONVICTION WAS INVALIDATED. OKAY.

WHY?

IT WAS CARRYING A CONCEALED FIREARM, BECAUSE HERETICLAR KNIFE, AND, AGAIN, WE DON'T KNOW IF IT HAD A BLOCKING BLADE. WE DON'T KNOW IF IT HAD A BLOOD GROOVE. WE DON'T KNOW IF IT HAD A SERRATED EDGE THAT MADE IT MORE DANGEROUS. HER KNIFE WAS JUST WITHIN THE DEFINITION THAT THIS COURT HAS DETERMINED. AND THAT IS A POCKETKNIFE WITH A BLADE OF LESS THAN FOUR INCHES ARGUABLY MAY BE A COMMON POCKETKNIFE, BUT IT IS NOT NECESSARILY SO. EVERY --

SO -- EVERY FOLDING POCKETKNIFE --

SO LB WAS ENTITLED TO A DIRECTED VERDICT. THAT WAS ON APPEAL, RIGHT?

YES. THAT WAS A DIRECT APPEAL CASE THAT CAME UP --

THOSE SUBSEQUENT DEFENDANTS, EVEN THOUGH THEY BOROWED THE KNIFE FROM LB, WOULD BE ENTITLED TO A DIRECTED VERDICT AFTER LB.

WELL, IT WOULD BECOME AN ISSUE FOR THE FINDER OF FACT, AND THAT IS WHAT THIS COURT SAID IN LB, IN THE VAST MAJORITY OF CASES, IT WILL BE EVIDENT TO THE FINT FINDER OF FACT -- TO THE FINDER OF FACT, TO THE CITIZENS AND FACT FINDERS. THAT IS THIS COURT'S OPINION, YOUR HONOR.

DOESN'T THAT MEAN, THOUGH, THAT IT WOULD BE OBVIOUS AND THEREFORE A DIRECTED

VERDICT AS TO THE DEFINITION OF A COMMON POCKETKNIFE, AND IT WILL NOT HAVE TO GO TO THE TRIER OF FACT?

WELL, ACTUALLY --

WHY WOULD WE OTHERWISE HAVE INVALIDATED L Bs CONVICTION?

WELL, AGAIN, THE RECORD WITH RESPECT TO WHAT WAS BEFORE THIS COURT IN LB, I DON'T, I DON'T HAVE THE RECORD AND I DON'T HAVE ANYTHING IN THE LB DECISION THAT IDENTIFIES, OTHER THAN MERE BLADE LENGTH. IT COULD BE A VERY THIN BLADE LENGTH.

YOU SEEM TO BE SAYING THAT, EVEN IF BUNKLEY HAD THE SAME KNIFE THAT LB HAD, THAT IT WOULDN'T MAKE ANY DIFFERENCE? THAT IT STILL REMAINS AN ISSUE FOR THE JURY, AND EVERY CASE, EVEN THOUGH THE KNIFE INVOLVED BY A DEFENDANT NOW, SEEMS TO BE OR MEET THE SAME DEFINITION THAT WE DISCUSSED IN LB?

I AM SAYING IT HAS TO BE A JURY ISSUE, YOUR HONOR, BECAUSE IF WE ACCEPT --

WHY WASN'T THE JURY IN LB?

I THINK THE TRIAL JUDGE CERTAINLY HAD THE BENEFIT OF SEEING THE KNIFE. IT WAS A JURY CASE. BUT IF YOU HAVE THE EXCEPTION THAT LB SET A BRIGHT-LINE RULE THAT EVERY FOLDING POCKETKNIFE WHICH HAS A BLADE ALONE, OF LET'S THAN FOUR INCHES, OUGHT BECOMES A -- AUTOMATICALLY BECOMES A COMMON POCKITY KNIFE, YOU EMASCULATE THE DEFINITION THAT YOU HAVE FOUND IN THE COMMUNITY. THE COMMON DEFINITION OF FOUR INCHES IN A FOLDING POCKETKNIFE --

THE U.S. SUPREME COURT, THAT LB, EVEN IF THE MAJORITY SEND THE FACT THAT LB HAD CHANGED THE LAW, BECAUSE IF IT HADN'T CHANGED THE LAW, IF IT WAS STILL A JURY QUESTION, WE WOULDN'T EVEN REACH A WHITT ANALYSIS. IF THE ARGUMENT, WHICH I ASSUME WAS MADE ON THE FIRST TIME AROUND, WHICH IS THAT LB, NOT A QUESTION OF WHETHER IT IS RETROACTIVE, BUT LB DOESN'T AFFECT IT BECAUSE IT IS STILL A JURY QUESTION, ISN'T THAT THE LAW OF THE CASE ALREADY THAT WE HAVE ALREADY PASSED THAT IN THE FIRST BUNKLEY DECISION?

WELL, I THINK, IF YOU TAKE WHAT IS PERCEIVED AS A CHANGE TO BE THE CLARIFICATION, I SHOULDN'T USE THE TERM CLARIFICATION, BUT THE CHANGE TO BE THE CONSTRUCTION IN THE SENSE THAT UPHOLDING THE CONSTITUTIONALITY OF THE STATUTE, WHICH IS WHY THE MAJORITY IN THIS BUNKLEY DECISION SAID WE JUST CLARIFIED THE STATUTE IN LB. THAT IS WHAT WE DID. AND THE FACT THAT FACT FINDERS MAY REACH DIFFERENT CONCLUSIONS, DOES NOT RENDER A CONVICTION UNCONSTITUTIONAL. THIS COURT, ON TWO OCCASION, HAS SAID WE DIDN'T MAKE A BRIGHT-LINE RULE.

SO, WELL, WHAT IT SAID IS WE DECLINED TO CONSIDER WHETHER A POCKETKNIFE WITH A BLADE LENGTH IN EXCESS OF FOUR INCHES CAN BE CONSIDERED A COMMON POCKETKNIFE, AND THAT GOES BACK TO THE FACT THAT THAT 1951 OPINION TALKS ABOUT FISHERMEN'S KNIVES AND ALLY-Q) KINDS OF KNIVES, BUT FOR d8THOSE KNIVES UNDER FOUR INCHES THAT ARE FOLDED INTO A POCKET, IF WE DIDN'T REACH A DECISION THAT THOSE, THAT THAT IS WHAT A POCKETKNIFE IS, THEN I AM NOT SURE WHAT WE, WHAT DID WE DECIDE IN LB?

WELL, YOUR HONOR, I THINK THIS GIVES AWE CHANCE TO EXPLAIN, BECAUSE APPARENTLY THERE IS SOME CONFUSION WITH RESPECT TO WHAT LB DID AND WHY IT DID IT.

MY PROBLEM IS, IF THE ISSUE IS THAT COMMON IS A QUESTION FOR THE JURY AND WE WOULD HAVE TO HAVE EVERY CASE BE, LIKE IS IT COMMON IN FLORIDA, IN THE COMMUNITY, IN THE

UNITED STATES, IN THE WORLD? IS IT A QUESTION OF THE YEAR? WAS IT MORE COMMON? TO ME THAT, IS PROBABLY, THAT WOULD MAKE THAT STATUTE MORE VOID FOR VAGUENESS, AND WHAT WOULD YOU GIVE A JURY, AS FAR AS THE DEFINITION OF THAT?

THE SAME ONE THAT THIS COURT ANNOUNCED IN LB, YOUR HONOR, A TYPE OF KNIFE OCCURRING FREQUENTLY IN THE COMMUNITY, WHICH HAS A PLAYED THAT FOLDS INTO THE HANDLE AND THAT CAN BE CARRIED IN ONE'S POCKET. AS MIMSA SAID, YOUR HONOR, NOT EVERY POCKETKNIFE AND WE ACCEPT THAT A POCKETKNIFE HAS A FOLDING BLADE, NOT EVERY POCKETKNIFE WILL BE A COMMON POCKETKNIFE, ONE THAT OCCURS FREQUENTLY IN THE COMMUNITY, DESIGNED, CERTAINLY, TO PROTECT INNOCENT CONDUCT. THIS IS A PERFECT OPPORTUNITY FOR THIS COURT TO SAY THIS IS WHAT WE DID IN LB. WE DID NOT SET FORTH A BRIGHT-LINE RULE WITH RESPECT TO THE LAST PART OF THAT SENTENCE, JUSTICE PARIENTE THAT YOU READ, THAT SENTENCE WAS NOT INCLUDED IN THIS COURT'S BUNKLEY OPINION, AND THAT IS THAT FOOTNOTE THAT JUSTICE WELLS REFERRED TO, AND THE REASON I BELIEVE IT WAS NOT INCLUDED WAS BECAUSE IT WAS TOO NARROW IT EVEN FURTHER, SAYING WE ARE NOT SETTING FORTH BRIGHT-LINE RULE, SO THAT AS JBLR HAS DECIDED AND THAT AS RLS HAS DECIDED, YOU CAN INDEED HAVE THAT ISSUE GO TO THE TRIER OF FACT, BECAUSE YOU AGAIN DON'T NEED A JURY TO TELL YOU IF IT IS UNDER FOUR INCHES OR A JURY TO TELL YOU IF IT IS FOLDING, BUT A STRAIGHT EDGE RAZOR CAN QUALIFY, IF IT IS JUST, IF ALL YOU ARE LOOKING AT IS THE LENGTH OF THE KNIFE BLADE ALONE AND THE FACT IT FOLDS --

WE DON'T HAVE THE LUXURY OF SAYING WHETHER THE JURY GETS TO DECIDE IT OR NOT UNDER APPRENDI OR RING, IF SOMETHING IS GOING TO ENHANCE A PUNISHMENT THEN IT HAS GOT TO BE A FINDING OF FACT AS TO WHETHER THERE IS A, WHETHER IT MEETS THAT DEFINITION.

BACK IN 1987, THE STATE ALREADY PRESENTED ITS CASE AT TRIAL WITH RESPECT TO THE ELEMENTS OF THIS PARTICULAR OFFENSE. NOW, AT THAT TIME, THE DEFENSE DID, INDEED, ARGUE THAT THIS WAS A COMMON POCKET, THAT CAME WITHIN A COMMON POCKETKNIFE EXCEPTION. THEY ARGUED IT IN MOTION FOR JUDGMENT OF ACQUITTAL AND THEY ARGUED THAT THEY RENOVED NUDE IT. -- RENEWED T THE TRIAL COURT, IT WAS ARGUED TO THE -- RENEWED IT. IT WAS ARGUED TO THE JURY. THE TRIAL COURT IN 1991, ADDRESSED THE FACT THAT THE JURY INSTRUCTION ON THE DANGEROUS WEAPONS ISSUE AND ALSO TO HAVE THE OPPORTUNITY TO CITE TO THE CASES THAT WERE THE LAW IN EFFECT AT THAT TIME, AND AT THE TIME OF THIS DEFENDANT'S CONVICTION, THERE WAS NO CASE LAW OUT THERE SAYING THAT A FOUR-INCH BLADE ALONE, MEBT THAT IT WAS A -- MEANT THAT IT WAS A COMMON POCKETKNIFE. IF THE FOUR-INCH BLADE ALONE, MEANS THAT IT IS A COMMON POCKETKNIFE MR. CHIEF JUSTICE

YOU HAVE GONE OVER WITH OUR HELP. WE APPRECIATE YOUR RESPONDING TO OUR QUESTION. THANK YOU VERY MUCH.

THANK YOU VERY MUCH. HOW MUCH TIME LEFT ON REBUTTAL? 3 AND-A-HALF MINUTES. COUNSEL.

FIRST, I NOTE THAT THE FOOTNOTE IN LB DOES CARRY THE BRIGHT LINE ESTABLISHMENT THAT IT WAS FOUR INCHES OR LESS, BUT THE COURT WAS DECLINING TO DETERMINE WHETHER A KNIFE WITH A BLADE LONGER THAN FOUR INCHES WOULD FALL INTO THE SAME CATEGORY OF A COMMON POCKETKNIFE, SO I THINK THAT LB WOULD ATTEMPT TO ESTABLISH A BRIGHT-LINE RULE. IS IT YOUR OPINION THAT YOU HAVE A FOLDING RAZOR BLADE TYPE OF KNIFE AND UNDER FOUR INCHES, AS A MATTER OF LB, IT IS A COMMON POCKETKNIFE?

I DON'T KNOW THAT A RAZOR BLADE FALLS INTO THE CATEGORY OF A KNIFE. I DON'T KNOW IF WE ARE TALKING ABOUT A BUTTERFLY KNIFE, WHICH IS SOMETHING DIFFERENT THAN A COMMON POCKITY KNIFE PERHAPS, BUT A RAZOR BLADE, I BELIEVE, IS CERTAINLY DIFFERENT FROM COMMON POCKET KNIVES. I DON'T SEE THEM IN THE SAME CATEGORY, AND I DON'T SEE

THEM BEING USED AS A KNIFE.

DO YOU SEE THE EMPHASIS ON THE WORD COMMON?

I THINK THE EMPHASIS IS ON BOTH COMMON AND POCKETKNIFE IN LB AND IN THE AG'S OPINION. YES. I DON'T THINK YOU COULD IGNORE ONE, JUSTICE BELL, FOR THE OTHER, AND I THINK THE KEY IS THAT THIS IS, IN THE CASE, MORE OR LESS THE LAW. THE CASE HAS BEEN ESTABLISHED THAT THIS WAS A COMMON POCKETKNIFE, THAT THIS CASE HAS GONE ALL OF THE WAY TO THE SUPREME COURT OF THE UNITED STATES, BASED ON THE FACT THAT THIS WAS A COMMON POCKETKNIFE. IT IS IN THE FIRST BUNKLEY DECISION AND IN THE SUPREME COURT'S BUNKLEY DECISION. IT IS THE FACTS OF THE CASE AS I KNOW THEM, AT LEAST AS THEY WERE ESTABLISHED HERE, AND THE PICTURE THAT IS IN THE SUPPLEMENTAL RECORD DOESN'T CHANGE. THAT THE BLADE IN THE SUPPLEMENTAL RECORD IS THREE INCHES LONG, CLEARLY WITHIN THE LB DEFINITION AND THE BLADE IS ONLY FOUR INCHES LONG, CERTAINLY SHORTER THAN IT WAS IN LB. AS TO THE CASE THAT WAS SQEN SUBSEQUENT, LNLS WAS OUT OF THE SECOND -- THAT WAS SUBSEQUENT, LNLS WAS THE SECOND DISTRICT. TAKE THE CASE SUBSEQUENT TO THAT. IT WAS HOW IT CAME OUT AND THIS COURT SUBSEQUENTLY DENIED THE FACT THAT LB, AND IF YOU TAKE A LOOK AT THIS IN LIGHT OF THE ISSUE IN LB ACCORDINGLY.

IF LB SUGGESTED TO THE LEGISLATURE THAT THEY BE MORE PRECISE, HAS THE LEGISLATURE DONE ANYTHING?

NO, NOT TO MY KNOWLEDGE IN THE LAST 45 YEARS. IT IS THE SAME LAW. LB IS THE SAME LAW, AND I THINK THE BRIGHT-LINE TEST IS NOT FOR THE JURY, AT LEAST AT THIS POINT OF INITIAL DETERMINATION. IT SHOULD BE AT THE SAME TIME AS WELTHS WE GET TO THE JUDGMENT OF ACQUITTAL, IF WE GET TO, I AM NOT SURE IF ORTIZ IS THE CORRECT LAW, BECAUSE ALL OF THE DECISIONS THAT HAPPENED BEFORE LB CLARIFIED WHAT THE LAW WAS SINCE 1989 AND THEORETICALLY SINCE 15951. -- SINCE 1951.

CHIEF JUSTICE: THANK YOU VERY MUCH. JUSTICE PARIENTE WILL BE RECUSED ON THE NEXT CASE AND JUSTICE QUINCE WILL BE REJOINING US