

SUPREME COURT PONDERES QUESTION OF CARS AS WEAPONS

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June 6, 2018

TALLAHASSEE --- Florida Supreme Court justices appeared skeptical Wednesday of arguments that a car should not be considered a weapon in helping determine the sentence of a man convicted of fatally driving into another man after an altercation at a Jacksonville Beach bar.

The court heard an appeal from Adam Lloyd Shepard, who was convicted on a charge of manslaughter with a weapon after fatally striking Spencer Schott in January 2011. Under state law, the use of a weapon bumped up the manslaughter charge from a second-degree felony to a first-degree felony, carrying a longer prison sentence.

Shepard's attorney, Matthew Kachergus, focused heavily Wednesday on a 1995 court decision that dealt with what can be considered a weapon in reclassifying sentences. He said a car could not be considered a weapon under that court precedent and that any change in the definition of weapons should be made by the Legislature.

But justices raised repeated questions about Kachergus' arguments, including whether items such as a baseball bat, a hammer, a rock --- or even a toaster thrown into a bathtub --- could be considered weapons. Chief Justice Jorge Labarga said the key is the intent in how items are used.

"Let's say a roofer drops a hammer from the roof and it lands on some poor guy walking underneath picking up debris, the intent is not there to enhance the sentence. However, if he picks up the hammer and throws it at him, that's another thing," Labarga said, adding that the court "can't lose common sense here."

"You've summarized my position admirably," Assistant Attorney General Kaitlin Weiss, who was arguing to uphold Shepard's sentence, quickly responded to Labarga, drawing laughter in the courtroom.

Justice Charles Canady acknowledged that the court might have to back away from the 1995 precedent in a case known as *State v. Houck*. But like Labarga, Canady and Justice Alan Lawson focused on intent in how items are used.

"If someone takes a baseball bat to a fight and beats someone with it, common understanding, would that be a weapon?" Lawson asked.

Shepard and Schott were University of Kansas basketball fans who watched a game at the Jacksonville Beach bar before getting into the altercation. Shepard, now 37,

received a 30-year sentence on the charge of manslaughter with a weapon. A second-degree felony could carry a sentence of 15 years.

The 1st District Court of Appeal rejected Shepard's arguments last year about the car being considered a weapon but said its conclusion differed from a ruling by the 2nd District Court of Appeal in a separate case. Shepard then took the issue to the Supreme Court, which agreed in January to hear it.

While other justices repeatedly questioned the arguments made by Kachergus, Justice Barbara Pariente raised concerns about too broadly defining weapons in reclassifying sentences. She said the law deals with reclassifying sentences, not whether crimes have been committed.

"My concern is, after this decision, the reclassification becomes automatic if we allow this definition for anything except for passive objects," Pariente said.

Similarly, Kachergus raised a concern about a "Pandora's box" getting opened by a broad definition of weapons.

Canady, however, disputed that argument.

"Why is that a Pandora's box? That escapes me," Canady said. "If someone uses an instrument as a weapon, why shouldn't it (the sentence) be enhanced?"