

>> NOW MOVE TO THE THIRD AND  
FINAL CASE ON OUR DOCKET.  
TODAY --  
STATE OF FLORIDA VERSUS GEISS.  
MAY I PLEASE THE COURT?  
>> MY NAME IS CHRISS DAVENPORT  
AND THE REPRESENT OF STATE OF  
FLORIDA.  
>> LET ME TRY TO GET SOMETHING  
STRAIGHT THE OUTSET.  
THE STATE WON IN THIS APPEAL IS  
THAT CORRECT?  
>> THE STATE WON BASED ON GOOD  
FAITH.  
>> OKAY.  
BUT --  
SO THE JUDGMENT THAT YOU WERE  
SEEKING TO HAVE AFFIRMED WAS  
AFFIRMED.  
>> THE JUDGMENT WE WERE SEEKING  
TO HAVE REVERSED WAS REVERSED.  
>> SO THE EXCLUSION OF THE  
EVIDENCE THAT HAD TAKEN PLACE  
WAS UNDONE.  
SO YOU -- YOU LEFT IN TERMS OF  
THIS PARTICULAR DEFENDANT, YOU  
LEFT THE APPELLATE COURT WITH  
TOTAL VICTORY.  
>> IN TERMS OF THIS PARTICULAR  
DEFENDANT, YES.  
>> OKAY.  
NOW WHY WOULD I BE WRONG IN  
THINKING THAT YOU'RE SIMPLY HERE  
TO ASK US FOR AN ADVISORY  
OPINION.  
>> BECAUSE THE SPECIFIC HOLDING  
OF THE COURT WAS YOU CANNOT DO  
THIS, YOU CANNOT GET A WARRANT  
FOR BLOOD IN A MISDEMEANOR CASE.  
>> NOTHING TO DO WITH THE  
RESULT IN THIS CASE.  
WHAT I --  
ARE YOU FAMILIAR WITH THE  
CONCEPT OF STANDING?  
>> YES.  
>> HOW DOES THE STATE AND  
AGGRIEVED PARTY HAVING STANDING  
IN THIS CASE WHERE YOU WON?  
>> WELL WE'RE IN AGGRIEVED  
PARTY BECAUSE OF THE HOLDING OF  
THE CASE.  
>> SOMETHING IN THE CASE.  
YOU HAVE THE STATUS OF AN AGREED  
PARTY BECAUSE THE COURT, THE  
REASONING OF THE COURT DID NOT

SUIT YOU.

>> WE HAVE THE STATUS AND  
AGGRIEVED PARTY BECAUSE WE LOST  
ON THE LEGAL ISSUE ALTHOUGH WE  
WON ON THE JUDGMENT WAS -- I  
MEAN, THE JUDGMENT WAS TRIAL  
COURT WAS REVERSED.

WHICH IS WHAT WE'RE SEEKING.  
BUT WE LOST ON THE LEGAL ISSUE.  
AND THIS IS A REOCCURRING LEGAL  
ISSUE.

>> WELL, COME UP IN SOME OTHER  
CASE, AND THEN WHEN IT'S REALLY  
AN ISSUE, IT CAN BE DEALT WITH.

>> YOU'RE ASSUMING THAT A  
POLICE OFFICER IS GOING TO GO  
GET A WARRANT OR A JUDGE WILL  
ISSUE A WARRANT WHEN HE CAN'T  
UNDER THIS CASE LAW.

IT CAN'T COME UP AGAIN BECAUSE  
NO JUDGE WOULD REASONABLY ISSUE  
A WARNING IN THESE CIRCUMSTANCES  
WHEN THE OTHER LIE IS YOU CAN'T  
DO THAT.

SO IT IS INCAPABLE.

WE CAN'T GET THIS -- THIS  
FACTUAL SITUATION TO REPEAT  
ITSELF NOW.

>> YOU MEAN, NO WAY FOR YOU TO  
GET REVIEW IF YOU SEEK A WARRANT  
AND THAT'S DENIED.

>> NO.

I CAN'T THINK OF A WAY THAT WE  
COULD GET REVIEW OF THAT.

THE WARRANT WOULD BE DENIED.  
AND NO JUDGE WILL ISSUE A  
WARRANT NOW BECAUSE, YOU KNOW,  
EVEN IN ANOTHER DISTRICT,  
BECAUSE THE ONLY OPINION WE HAVE  
AND A THAT'S CONTROLLING.

ON ALL OF THE TRIAL COURTS IS  
THE DISTRICT COURTS' OPINION IN  
THIS CASE THAT SAYS YOU CANNOT  
GET A WARRANT AND MISDEMEANOR  
CASE IN THESE CIRCUMSTANCES.

>> CERTIFIED QUESTION TO THE  
APPELLATE COURT.

>> THEY COULD ISSUE A WARRANT  
ANYWAYS AND CERTIFY THE  
QUESTION, THEY'RE JUST NOT GOING  
TO ISSUE A WARRANT, THOUGH,  
UNLESS THEY TOTALLY IGNORE THE  
LAWYER.

YOU WOULD HAVE TO ASSUME THAT A  
JUDGE WILL IGNORE THE LAW.

>> I GUESS THE --  
LEGISLATURE COULD AMEND THE  
STATUTE.

>> THE LEGISLATURE COULD AMOUNT  
THE STATUTE.  
OUR PLEASURE THAT THEY DON'T  
NEED TO.  
THIS IS CORRECT.  
AS THE WAY THINGS STAND UNLESS  
THE LEGISLATURE ACTS WE CAN'T  
GET A WARRANT IN THESE CASES OR  
REVIEW IN THIS SITUATION.

>> YOU WANT TO TALK ABOUT THE  
MERITS.  
NOT SURE I UNDERSTAND HOW IF  
IT'S A MISDEMEANOR, HOW YOU GET  
A WARRANT WHEN SOMEBODY IS  
REFUSED THE BLOOD TEST.

>> UNDER THE MISDEMEANOR  
WARRANT STATUTE, YOU CAN GET A  
WARRANT FOR PROPERTY THAT'S THE  
MEANS TO COMMIT THE CRIME.

>> AND SO WE WOULD HAVE TO  
CONSTRUE WHAT TO BE PROPERTY.

>> BLOOD WOULD BE PROPERTY.  
NOW LET ME SAY UNDER THE  
FELONY --

>> I'M SURE PEOPLE THAT GIVE  
THEIR BLOOD AND WANT TO GET --  
NOT REALLY THE COMMON, IS IT  
REALLY THE COMMON USE OF  
PROPERTY?  
BLOOD?

>> IN THE SENSE OF UNDER THE  
WARRANT STATUTE, YEAH.  
THE WARRANT, PROPERTY IS THE  
STATE WOULD SAY READ TO BE AS A  
BROAD TANGIBLE ITEM TO BE  
SUBJECT TO THE SEARCH.

>> THERE'S CERTAINLY, SUPPORT  
FOR THE PROPOSITION THAT AT  
LEAST WITH RESPECT TO A FELONY  
IF BLOOD IS --  
EVIDENCE WITH RESPECT TO A  
CRIME, THAT WOULD FALL WITHIN  
THE SCOPE OF THE PROPERTY.

>> RIGHT.

>> THAT IS RELEVANT TO THE  
CRIME.

>> RIGHT.

>> BUT NOW, THE ISSUE HERE --  
THAT THE DISTRICT COURT DID NOT  
DISAGREE ABOUT THAT.  
THAT'S NOT YOUR DISAGREEMENT  
WITH THE DISTRICT COURT COMES

AND THEIR UNDERSTANDING OF THE TERM AND WITH RESPECT TO THE ISSUANCE OF WARRANTS IN MISDEMEANOR CASES.

>> YES.

>> WITH RESPECT TO THE PROPERTY THAT IS -- USED IN A COMMISSION OF THE CRIME.

>> IT'S ED MEANS TO COMMIT THE CRIME.

>> OKAY, YES.

HOW IN ANY UNDERSTANDING OF THE PLAIN MEAN OF -- MEANS TO COMMIT A CRIME.

NOW, I CANNOT FATHOM HOW BLOOD THAT IS COURSE -- THROUGH COMMITTING THAT CRIME.

>> BUT IN THIS CASE.

>> WHO IS GOING TO UNDERSTAND THAT BLOOD IS THE MEANS OF COMMITTING THAT CRIME?

>> ANYBODY THAT UNDERSTANDING THIS IS A STRICT LIABILITY CRIME TO DRIVE WITH AN UNLAWFUL BLOOD ALCOHOL LEVEL.

THE ONLY WAY TO DO THAT IS BY HAVING ALCOHOL INFUSED BLOOD. THAT'S THE ONLY WAY YOU CAN DO THAT.

MEANS IS THE WAY YOU COMMIT THE CRIME.

THE WAY YOU COMMIT THE CRIME OF DUI ESPECIALLY IN THE DUVALL CONTEXT IS AN UNLAWFUL --

>> IT'S SO STRANGE.

WE ALL THE TIME ARE TOLD THAT WE SHOULD NOT CONSTRUCT STATUTES OR ADD WORDS TO A STATUTE THAT ARE CLEAR.

I WOULD ON THIS ONE, IT IS AN AND I STAND CORRECTED ON WHAT IT WAS FOR THE MISDEMEANOR ONE.

THE ALCOHOL IS THE --

YOU KNOW INGESTING ALCOHOL.

A SEARCH WARRANT FOR THE ALCOHOL OR SOMETHING.

BUT THE BLOOD IS AGAIN, IT'S NOT THE MEANS TO COMMIT A CRIME IN ANY PLAIN MEANING INTERPRETATION.

WE WOULD LOOK TO SAY THAT.

>> WELL MAKE US --

LOOK RIDICULOUS.

>> THE ALCOHOL IS THE EVIDENCE OF A CRIME.

IT'S NOT A CRIME TO DRINK AND DRIVE.

IT'S A CRIME TO HAVE AN UNLAWFUL LEVEL OF ALCOHOL IN YOUR BLOOD. THAT'S THE WAY THE LEGISLATURE HAS DEFINED THE CRIME.

IT'S ALSO A CRIME TO DRIVE WHILE YOU'RE IMPAIRED.

THERE'S A PRESUMPTION IF YOU HAVE A CERTAIN LEVEL OF ALCOHOL IN YOUR BLOOD, THAT'S HOW THE LEGISLATURE IS DEFINING IT.

THAT YOU'RE DRIVING WHILE IMPAIRED.

>> I AGREE THAT IT'S DEFINED BY BLOOD LEVEL.

THAT'S WHY THERE'S AN IMPLIED CONSENT STATUTE BUT BECOME THE MEANS TO COMMIT THE CRIME IN THE ORDINARY SENSE OF THE WORD.

THE VEHICLE IS THE MEANS TO COMMIT THE CRIME.

>> BUT THE BLOOD DRIVE.

>> IT'S NOT THE MEANS TO COMMIT THE CRIME.

IT IS EVIDENCE THAT THE CRIME WAS COMMITTED.

>> ALCOHOL INFUSED BLOOD IS THE MEANS TO COMMIT THE CRIME AS THE LEGISLATURE HAS DEFINED THE CRIME.

LET ME TAKE ONE THAT SEEMS A LITTLE MORE OBVIOUS AND ORDINARY LANGUAGE.

IT'S A CRIME TO TRANSMIT HIV INTENTIONALLY.

YOU USE BLOOD AS THE MEANS TO DO THAT INJECT SOMEBODY WITH YOUR BLOOD.

SO --

DEPENDING ON.

>> IF YOUR INTERPRETATION OF THIS STATUTE IS TRUE THEN THAT MEANS THAT WOULD RESULT IN THE POLICE COULD ALWAYS GET A WARRANT IN ANY DUI CASE, AND WHAT HAPPENS WITH THE PART THAT HAS A DRIVER CANNOT CONSENT TO HAVING HIS OR HER BLOOD DRAWN? THAT BECOMES A NOVELTY BECAUSE THE POLICE COULD ALWAYS GET A WARRANT AND COME TAKE YOUR BLOOD AGAINST YOUR WILL.

>> WELL, FIRST OF ALL WARRANTS ARE A SOCIETAL GOODS.

ALWAYS ENCOURAGED THE POLICE TO GET A WARRANT.

>> ALL OF THAT NOTWITHSTANDING. COULD THE POLICE IN EVERY SITUATION GET A WARRANT TO DRAW YOUR BLOOD AND THEREFORE YOU WOULD NOT HAVE ANY RIGHT TO NOT CONSENT TO HAVING YOUR BLOOD TAKEN?

>> IF THE POLICE WANTED TO BY PASS THE EASIER PROCESS OF GETTING AA PLIED CONSENT AND READING SOMETHING TO THE DEFENDANT THAT SAYS BY THE WAY, YOU'VE AGREED TO DO THIS ANYWAYS, AND IF YOU DON'T DO THIS, BAD THINGS WILL HAPPEN TO YOUR DRIVER'S LICENSE. REALISTICALLY, THAT'S THE POLICE OFFICER WILL PREFER.

>> RIGHT.

>> BUT NOW YOU WOULD HAVE NO CHOICE.

>> YES.

>> IF WE ACCEPT YOUR ARGUMENT A DEFENDANT DOES NOT HAVE THE CHOICE OF SAYING, OKAY. YOU COULD GO ON AND TAKE MY DRIVER'S LICENSE FOR SIX MONTHS OR A YEAR. THEY NO LONGER HAVE THAT CHOICE BECAUSE A POLICE CAN GET A WARRANT AND TAKE THEIR BLOOD ANYWAY.

>> EVERY INDIVIDUAL WHO COMMITS A CRIME HAS THE CHOICE TO CONSENT TO A SEARCH OR TO BE SUBJECT TO A WARRANT.

>> THAT QUESTION IS -- THEN YOU WOULD NO LONGER HAVE THAT RIGHT IF THE POLICE CAN GO AND GET A WARRANT IN EVERY DUI SITUATION; CORRECT?

>> IN NO WAY CHANGES YOUR RIGHT TO PROVOKE A CONSENT. TAKING IT OUTSIDE THE CONTENT OF CONSENT.

>> REALLY BECOMES A KNOWN, HOWEVER.

>> THAT'S TRUE IF THEY WANT TO SEARCH MY CAR.

I DON'T HAVE --

I CAN SAY I'M NOT CONTENTING THEY CAN GO GET A WARRANT.

>> THIS IS WHAT I'M TROUBLING

WITH.

I MADE A DEAL WITH THE STATE OF FLORIDA, YOU GIVE ME A DRIVER'S LICENSE.

AND POLICE OFFICER HAS EVER REASON TO BELIEVE I'M IMPAIRED, HE HAS A RIGHT TO ASK ME TO SUBMIT TO A BREATH TEST.

>> RIGHT.

>> IF I SAY NO, YOU CAN'T HAVE IT, THE DEAL IS OFF, THE STATE TAKES MY LICENSE AWAY.

THAT IS THE DEAL.

>> RIGHT.

YOU'RE TELL MEGAA POLICE OFFICER STOPS ME AND SAYS I WANT YOUR BLOOD AND BREATH TEST.

I SAY NO.

THEY TAKE MY LICENSE.

BUT HE CAN GET MY BLOOD ANYWAY.

>> HE CAN GO TO A NEUTRAL MAGISTRATE.

>> WHAT IF THEY ISSUE A WARRANT THEY CAN GET THE BLOOD ANYWAY. THERE'S SOMETHING WRONG WITH THAT.

>> THIS COURT IS ALWAYS SAID THAT CONSENT IS ONE ISSUE AND WARRANT IS A DIFFERENT ISSUE.

>> BUT WHAT HE IS SAYING WHICH IS WHAT MAKES THIS NOT MAKE SENSE FROM THE LEGISLATIVE INTERRATION POINT OF VIEW IS YOU SAID THAT I CAN REFUSE THAT FOR THEM TO SEARCH MY HOUSE.

I DON'T LOSE MY HOUSE IF I REFUSE TO CONSENT.

BECAUSE -- BUT HERE THE DEFENDANT ITSELF DOUBLE WHAMMY.

I LOSE MY LICENSE AND NOW CHARGED WITH A CRIME.

I MAY END UP BEING FOUND NOT GUILTY OF THAT CRIME.

BUT I STILL LOST MY LICENSE.

>> BUT YOU ALWAYS LOSE YOUR LICENSE.

>> IS THAT CORRECT?

>> THAT IS IN OTHER WORDS WE HAVE NO AREA OTHER AREA OF THE LAW WHERE SOMEBODY BUY REFUSING CONSENT HAS A DETRIMENT.

A HUGE DETRIMENT IN THIS SOCIETY NOT BEING ABLE TO DRIVE BUT YET THE STATE HAS THE ABILITY TO DO THE EXACT SAME THING.

SO THAT NO DEFENDANT WOULD BE --  
WOULD BE NO REASON TO.  
YOU WOULD ESSENTIALLY BE  
COHEARSING CONSENT IN EVERY CASE  
BECAUSE THE DEFENDANT MAY NOT  
LOSE -- MAY WIN THE CASE.  
BUT THEY DON'T WANT TO LOSE  
THEIR LICENSE.  
DOESN'T THAT STRIKE YOU AS  
UNFAIR?

>> NO BECAUSE THERE'S NO OTHER  
AREA OF LAW TO CON SIDE TO A LAW  
BY GETTING A DRIVER'S LICENSE.

>> IF -- THEY COULD HAVE  
SOMETHING THEY COULD HAVE SAID  
THEY COULD WHEN YOU DRIVE WITH A  
LICENSE YOU ARE GOING TO CONSENT  
TO A --

>> THEY COULD HAVE SAID THAT  
BUT DIDN'T.

THEY SAID THE DRIVERS WERE EVERY  
CITIZEN IN THIS STATE WHO DOES  
NOT HAVE TO CONSENT, THERE'S A  
PENALTY IF YOU DON'T.

BUT YOU HAVE THAT RIGHT.

WHAT YOU WOULD BE SAYING AS A  
LEGISLATURE REALLY, AND I THINK  
THAT'S A POLICY DECISION TO SAY  
WITH ALL OF THIS DRUNK DRIVING  
OUT THERE, WE DON'T LIKE THE LAY  
IMPLIED CONSENT GOES.

YOU MUST CONSENT.

I MIGHT SUPPORT THAT POLICY BUT  
THAT'S NOT WHAT THE LAW IS RIGHT  
NOW.

>> BUT CONSENT IS NOT THE SAME  
THING AS GOING OUT AND GETTING A  
WARRANT.

WARRANT CASES YOU HAVE A JUDGE  
WHO COMES BETWEEN THE OFFICER  
AND THE CITIZEN.

AND SAYS, YEAH UNDER THESE  
CIRCUMSTANCES, A SEARCH WOULD BE  
REASONABLE.

WE HAVE PROBABLE CAUSE YOU HAVE  
THAT NEUTRAL MAGISTRATE COMING  
IN.

THERE'S A STATUTE THAT SAYS YOU  
CAN GET WARRANTS TO SEARCH  
PEOPLE IF YOU HAVE PROBABLE  
CAUSE TO BELIEVE THERE'S A  
CRIME.

THE CONSTITUTION HAS THAT.

THAT'S A GOOD THING.

>> DOES THERE -- GOT TO GET



THAT WARRANT WITHIN AN HOUR?  
IN THIS CASE UNDER TWO HOURS,  
YEAH.

>> THEY'VE GOT TO GET IT BEFORE  
THE BLOOD, THE ALCOHOL STARTS --  
>> EXACTLY.

>> WHERE IS THE DEFENDANT  
DURING THAT --  
>> IN CUSTODY WHICH HE WOULD BE  
IN CUSTODY ANYWAYS.  
BECAUSE URN THE STATUTE, THEY  
HAVE TO HOLD THEM UNTIL THEIR  
BLOOD ALCOHOL LEVEL GOES DOWN.  
NO EXTRA INTRUSION.  
GOING TO BE HELD ANYWAYS.  
THE INTRUSION IS THE STICKING  
WITH THE NEEDLE AND WITHDRAWING  
THAT BLOOD AND THAT'S ALL DONE  
BY A WARRANT.  
WE WANT TO ENCOURAGE THEM TO GET  
WARRANTS.

>> IF I GO THROUGH THE  
STATUTORY SCHEME IN TERM WAS  
3.13316.  
1932 AND 33 WHERE IT TALKS ABOUT  
GREAT BODILY HARL AN PROBABLY  
CAN DO IT BUT EVERYWHERE, IT'S  
NOT NO HARM, ACCIDENT.  
NO BODILY INJURY.  
IT DOESN'T ALLOW FOR THAT.  
SEEMS AS IF THIS GENERAL STATUTE  
OF THE SEARCH WARRANT YOU'RE  
SAYING THE GENERAL SHOULD  
PREDOMINATE OVER THE SPECIFIC  
STATUTE.  
BECAUSE LEGISLATURE WANTED THAT  
TO HAPPEN THEY COULD HAVE PUT IT  
INTO APPLY TO CONSENT TO A  
STATUTE.

>> THEY DID BUT ONLY UNDER  
CERTAIN CIRCUMSTANCES NOT  
PRESENT HERE.  
THEY CAN COHEARSE, THE PRESIDENT  
WITHOUT GETTING A JUDICIAL  
AUTHORIZATION UNDER IMPLIED  
CONSENT CAN HOLD YOU IN CERTAIN  
CASES AND FORCIBLY EXTRACT  
BLOOD.  
IN THIS CASE WE HAVE A WARRANT.  
HE WENT OUTSIDE NOT JUST UP TO  
THE POLICE OFFICER.  
HE WENT OUTSIDE.  
THIS HAS COME UP IN NUMEROUS  
OTHER STATES.  
AND IN THE STATE'S WHERE THE

IMPLIED CONSENT STATUTE IS SILENT ON THIS ISSUE, EVERY SINGLE STATE THAT HAS ADDRESSED THIS HAS SAID IT'S SILENT THAN WARRANTS ARE SOMETHING TOTALLY OUTSIDE OF CONSENT.

SO IT'S COMPLETELY APPROPRIATE.

>> THE LEGISLATURE HAS SPECIFIED IN OTHER PORTIONS OF THE STATUTE, FOR EXAMPLE, MANSLAUGHTER.

OR SERIOUS BODILY INJURY.

THE LEGISLATURE ACTUALLY SAYS IN THOSE INSTANCES, YOU CAN TAKE POLICE OFFICERS, YOU MAY TAKE THE BLOOD BY FORCE USING REASONABLE FORCE.

SO THEY HAVE SPOKEN AS TO HOW TO DO THINGS.

THEY DIDN'T SPEAK IN THIS INSTANT.

WHY SHOULD YOU BE ENTITLED TO A WARRANT HERE?

>> THEY'VE SPOKEN HERE'S WHERE YOU CAN GET BLOOD WITHOUT ANYBODY ELSE LOOKING AT THIS, THE POLICE OFFICERS CAN HOLD YOU DOWN AND TAKE YOUR BLOOD AND THESE CERTAIN CIRCUMSTANCES.

WHAT THEY HAVEN'T ADDRESSED IS WHAT ABOUT WHEN YOU GO OUTSIDE OF THIS CONSENT IMPLIED OR ACTUAL YOU GO OUTSIDE OF THAT, AND YOU GO UNDER A WARRANT.

WHICH IS A WHOLE DIFFERENT SET OF LAWS.

THE LEGISLATURE SILENT ON THAT. AND THE CASES IN OTHER STATES, WHERE THEY'VE ADDRESSED THIS AND SAID YOU CAN'T DO THIS, IT HAS SPOKEN AND SAID IF YOU REFUSE THESE TESTS NO OTHER TESTS SHALL BE GIVEN.

THAT'S WHAT THE LEGISLATURE HAS SAID THIS IS THE ONLY WAY.

THE ONLY WAY WE'RE GOING TO DO THAT, AND FLORIDA THEY HAVEN'T SAID ANYTHING ABOUT A WARRANT. COMPLETELY SILENT ON THAT.

AND IN OTHER CONTEXT YOU CAN STILL GIVE BLOOD IF THE FERN ACTUALLY CONSENTS TO GIVING BLOOD NOT GOING UNDER IMPLIED CONSENT.

DON'T READ THEM WARNINGS AND IF

YOU SAY WILL YOU CONSENT TO GIVE  
ME BLOOD NOTHING THROWS THAT  
OUT.

THAT'S ACCEPTABLE BECAUSE IT'S A  
DIFFERENT SITUATION.

OUTSIDE OF IMPLIED CONSENT.

NOT GOING UNDER THAT STATUTE AT  
ALL.

WE'RE GOING UNDER THE WARRANT  
STATUTE WHICH IS SOMETHING  
COMPLETELY DIFFERENT.

>> BRINGS US BACK TO THE ISSUE  
OF BLOOD BEING PROPERTY.

>> BLOOD IS PROPERTY.

LET ME SAY ABOUT PROPERTY, UNDER  
THE WARRANT STATUTE, FOR A  
FELONY OR FOR MISDEMEANOR, YOU  
CAN ONLY GET PROPERTY.

SO IF BLOOD IS NOT PROPERTY, AND  
A MISDEMEANOR --

THAT WOULD HAVE FAR REACHING  
IMPLICATIONS.

>> HUGE IMPLICATIONS.

ELIMINATE NUMEROUS LAW  
ENFORCEMENT EFFORTS.

COULDN'T GET BLOOD FOR A MURDER,  
SEMEN IN A BATTERY  
INVESTIGATION.

>> THE MEANS FOR THE CRIME  
THAT'S WHAT THE MISDEMEANOR  
SAYS.

>> THE MEANS IS SPECIFIC TO  
MISDEMEANOR.

BLOOD IS PROPERTY.

THAT WOULD AFFECT ALL A CASES  
NOT JUST MISDEMEANOR CASES.

WHAT WE'RE LOOKING AT HERE IS  
WHETHER -- BLOOD OR ALCOHOL  
INFUSED BLOOD IS THE MEANS TO  
COMMIT THE OFFENSE OF DRIVING  
UNDER THE INFLUENCE.

>> HOW IS THE FELONY STATUTE  
STATED AS FAR AS THE PROPERTY?

>> YOU CAN USE -- GET PROPERTY  
THAT'S EVIDENCE OF A CRIME.

WOULDN'T IT BE --

>> DON'T WE HAVE THAT PRINCIPLE  
THAT IF A LEGISLATIVE BODY USES  
DIFFERENT LANGUAGE IN TWO  
DIFFERENT STATUTES.

AND WOULD BE JUST AS EASY A FOR  
THE MISDEMEANOR TO USE THAT SAME  
LANGUAGE THAT WE HAVE TO --  
SHOULD BE CONSTRUING IT TO MEAN  
SOMETHING DIFFERENT.

>> NOT THE WORD PROPERTY BUT  
WHAT KIND OF PROPERTY YOU GET,  
YES, ABSOLUTELY.

>> I SEE AS A TORTURED USE OF  
MEANS TO COMMIT THE CRIME.  
NOT THE PROPERTY PART.

>> WELL, RIGHT.  
THEY ARE THERE FOR THEM.

>> AND LET ME SAY THERE ARE  
SOME THINGS THAT ARE MEANS, BUT  
AREN'T EVIDENCE.  
BUT ARE EVIDENCE BUT NOT MEANS.  
LIKE, I WOULD SUBMIT AN EMPTY  
LIQUOR BOTTLE IN THE CAR WOULD  
BE EVIDENCE THAT YOU WERE  
DRIVING UNDER THE INFLUENCE OF  
ALCOHOL.  
WOULDN'T BE THE MEANS TO DO  
THAT.  
IT WOULD BE THE MEAN FOR THE  
CRIME OF HAVING AN OPEN  
CONTAINER IN YOUR CAR.  
BECAUSE THAT'S THE MEANS.  
IF MEANS HAS A ANY MEANING AND  
CLEARLY HAS SOME MEANING, THIS  
IS A SITUATION WHERE IT HAS TO  
BE THE MEANS.

>> EVIDENCE IS BORDER.  
WOULD HAVE INCLUDED BOTH THE  
BOTTLE AND THE BLOOD.

>> RIGHT.

>> AND IN A FELONY ALL OF THAT.  
>> MUST HAVE HAD A NARROW  
MEANING THAT WAS MORE NARROW  
THAN THE FELONY STATUTE.

>> RIGHT.

>> AND AGREE IT IS MORE NARROW.  
THIS IS THE WARRANT STATUTE NOT  
DIRECTED JUST TO DUIS BUT  
TOWARDS ALL A CRIMES.  
I WOULD SUBMIT APPLYING THAT  
STATUTE IN THE CONTEXT OF A DUI.  
THE MEANS TO COMMIT THAT OFFENSE  
OF DRIVING WITH AN UNLAWFUL  
BLOOD ALCOHOL LEVEL HAS TO BE  
THE BLOOD.  
I MEAN, IT IS GOING THROUGH YOUR  
VAINS, THAT'S WHY WE HAVE THESE  
PRESUMPTIONS IT'S THE ALCOHOL  
INFUSED BLOOD.  
STRICT LIABILITY FOR HAVING A  
CERTAIN LEVEL OF ALCOHOL IN YOUR  
BLOOD.

>> YOU HAVE GONE OVER YOUR TIME  
TOTALLY BUT I'LL GIVE YOU A

MINUTE FOR REBUTTAL.

>> THANK YOU.

>> GOOD MORNING I'M GOING TO ASK YOU A QUESTION ALONG THE SAME THAT I ASKED THE STATE. IF I UNDERSTAND YOUR ARGUMENT, IT HAS NOTHING TO DO WITH THE DEFENDANT IN THIS CASE, IS THAT CORRECT?

>> THIS IS AN A ISSUE OF LAW. IS THAT WHAT YOU ARE ASKING ME?

[LAUGHTER]

WHO ARE YOU REPRESENTING?

I REPRESENT MR. GEISS.

>> WHAT'S HAPPENING HAS NO IMPACT ON GEISS.

>> ON THE RULING WAS --

>> IN TERMS OF ANYTHING EXCEPT SOME FUTURE OFFENSE HE COMMITS BUT IN TERMS OF THE OFFENSE HE WAS CHARGED WITH HERE, THIS WOULD HAVE NO IMPACT ON THAT.

>> IF THIS COURT WERE TO ADDRESS THE BROADER ISSUE OF WHETHER OR NOT A SEARCH WARRANT CAN BE USED TO COMPEL BLOOD IN A FELONY CASE, IT POTENTIALLY COULD AFFECT HIM.

>> BUT --

POTENTIALLY BUT NOT IN THIS CASE.

>> HE'S --

I DON'T UNDERSTAND WHAT YOU'RE ASKING.

>> MY UNDERSTANDING IN THIS DISTRICT COURT YOU LOST UNDER LEON.

>> YES, SIR.

>> AND I ALSO SEEM TO HAVE NOTICED THAT YOU DON'T MAKE ANY ARGUMENT ABOUT THAT TO US.

>> WELL, THE CERTIFIED QUESTION HERE WAS VERY NARROW.

REGARDING --

>> I UNDERSTAND THAT, BUT YOU KNOW SOMETIMES WE WILL THROW BEYOND THE QUESTION CERTIFIED BUT THE POINT IS YOU HAVE NOT ARGUED THAT THE DISTRICT COURT AIRED IN THEIR CONCLUSION REGARDING THE GOOD FAITH EXCEPTION.

THEY CONCLUDED THAT THE SEARCH WARRANT SHOULD NOT HAVE BEEN ISSUED.

BUT THEY CONCLUDED THAT THE POLICE RELIED ON IT IN GOOD FAITH.

YOU HAVE NOT CHALLENGED THAT LEGAL CONCLUSION.

>> I DID NOT WRITE IN MY BRIEF REGARDING LEON.

MY RESPONSE TO THAT WOULD BE THAT IF THE -- IF THIS COURT WERE TO READDRESS THE ISSUE REGARDING PROPERTY, AS BEING REGARDING THE FELONY AND A MISDEMEANOR STANDARD, THAT WE WOULD CERTAINLY BE ABLE TO GO BACK IN AND ARGUE THAT -- BECAUSE WHAT THE DISTRICT COURT FOUND WAS THAT A SEARCH WARRANT COULD BE ISSUED IN CASES OF A FELONY.

>> THAT'S NOT THIS CASE.

THAT'S NOT THIS CASE.

IN THIS CASE, I UNDERSTAND IT REALLY WAS A FELONY.

BUT AT THE TIME, THE WARRANT WAS ISSUED THEY DIDN'T KNOW THAT.

THE BASIS FOR THE WARRANT WAS THE BASIS FOR A WARRANT AND A MISDEMEANOR CASE BECAUSE OF WHAT THEY KNEW ABOUT HIS RECORDS. THEY HAVE TO LOOK AT IT IN TERM IT WAS WHAT THEY KNEW AT THE TIME.

WHEN YOU SAY THAT'S CORRECT?

>> YES, JUDGE, YES, SIR.

>> AT THE END OF THE ROAD HERE, THE DISTRICT COURT DECIDED THAT THE WARRANT SHOULD NOT HAVE BEEN ISSUE ORED.

YOU AGREE THAT THE WARRANT SHOULDN'T HAVE BEEN ISSUED.

>> YES, SIR.

>> AND RELIED UPON GOOD FAITH AND THEREFORE THE EVIDENCE SHOULD NOT HAVE BEEN SUPPRESSED. YOU DON'T AGREE WITH THAT BUT YOU HAVE NOT ARGUED ANYTHING ABOUT THAT, HAVE YOU?

>> YOU'RE RIGHT I DID NOT WRITE THAT SPECIFICALLY IN MY BRIEF ADDRESSING THE STATES' ARGUMENT. I DID NOT WRITE ABOUT LEON, THAT'S CORRECT I DID NOT.

>> SO YOUR CLIENT CAN GET NO RELIEF.

I DON'T THINK YOUR CLIENT WILL

GET RELIEF FROM WHAT HAPPENS  
HERE TODAY.  
THEY DO FOR SOME FUTURE CASE.  
THIS IS A CASE WITH NO RELIEF.  
[LAUGHTER]  
NO ONE IN SIGHT TO GET RELIEF.  
USUALLY WE HAVE PEOPLE THAT WANT  
RELIEF, AND THEY'VE GOT A CLEAR  
IDEA ABOUT THEIR RELIEF THEY'RE  
GOING TO GET.  
[LAUGHTER]  
>> YOU'RE RIGHT I WOULD ARGUE  
THAT THIS CASE.  
>> AIM MISSING SOMETHING?  
>> I WOULD AGREE THAT THE FIFTH  
DISTRICT COURT OF APPEAL FOUND  
THAT LEON GOOD FAITH EXCEPTION  
APPLIED IN THIS CASE.  
I WOULD AGREE.  
>> YOU COULD NOT RELITIGATE  
THAT.  
WITHOUT HAVING TO APPEAL THAT IS  
THAT A FINAL DECISION?  
[LAUGHTER]  
>> THAT'S THE BOTTOM LINE.  
>> AND I GUESS IS THE SHORT  
ANSWER TO WHAT IS I DON'T KNOW.  
[LAUGHTER]  
I DON'T KNOW IF I COULD  
READDRESS THAT AT THE LOWER  
COURT LEVEL LATER IF THIS COURT  
WERE TO MAKE SOME -- AND,  
OBVIOUSLY, WHAT HAPPENED AT THE  
FIFTH DISTRICT COURT OF APPEAL  
REGARDING THE MISDEMEANOR ISSUE  
APPLIES TO THIS CASE IN THE  
SENSE THAT IT APPLIES TO THE  
FACTS.  
>> BUT THAT'S THE LAW OF THE  
CASE.  
>> RIGHT.  
>> UNCHALLENGED LAW OF THE CASE  
IS SEEMS TO ME.  
>> FILE CROSS APPEAL --  
>> OKAY.  
>> WELL, WE SOMETIMES WILL  
TREAT THE BRIEF AS ESSENTIALLY A  
CROSS NOTICE TO INVOKE.  
OUR RESUMES DON'T PROVIDE, AND  
THESE PROCEEDINGS IN OUR APPEALS  
FOR A CROSS PROCEEDING.  
BUT MY UNDERSTANDING IS WE TREAT  
THE BRIEF IN THAT WAY.  
GOT TO PRESENT THE ISSUE, AND  
HERE THE ISSUE HASN'T BEEN

PRESENTED.

>> OKAY.

IN ANY --

GOING BACK TO THE ISSUE  
REGARDING MEANS TO COMMIT THE  
CRIME.

MR.--

OR THE STATE'S ARGUMENT THAT  
BLOOD ALCOHOL INFUSED BLOOD IS  
THE MEANS TO COMMIT THE CRIME OF  
DUI.

I WOULD ARGUE TO THE COURT THAT  
THE COMMON UNDERSTANDING OF THE  
WORD MEANS, WOULD BE SYNONYMOUS  
WITH INSTRUMENTALITY, VEHICLE,  
AGENCY AND THAT IN THIS CASE,  
THAT THE BLOOD CANNOT BE THE  
INSTRUMENTALITY OF THE VEHICLE  
OR THE AGENCY TO COMMIT THE  
CRIME OF DUI, THAT, IN FACT, THE  
MEANS TO COMMIT THE CRIME OF DUI  
IS, IN FACT, THE VEHICLE ITSELF.

>> DOESN'T THE TERMINOLOGY  
THERE IMPLY A PURPOSEFUL USE OF  
SOMETHING?

I MEAN, YOU CAN MAYBE ARGUE  
ABOUT HOW PURPOSEFUL IT HAS TO  
BE BUT THAT SOMEONE USES MAKES  
AN INTENTIONAL USE OF SOMETHING.  
AS OPPOSED TO JUST, YOU KNOW,  
BREATHING.

AND A HAVING BLOOD COURSING  
THROUGH THE VAINS.

>> CERTAINLY, YOU DON'T MAKE A  
PURPOSEFUL USE OF YOUR BLOOD.  
NO CHOICE OF WHETHER OR NOT YOU  
USE THE BLOOD THAT'S COURSING  
THROUGH YOUR VAINS.

I WOULD AGREE THAT'S WHY BLOOD  
CANNOT BE THE MEAN --

>> NOT USING BLOOD IN YOUR  
ARGUMENT HERE TODAY.

>> NOT AS ME SPECIALLY AND THE  
WAY THAT I'M USING IT; RIGHT?  
OR THE WAY WE'RE USING BLOOD TO  
JUDGE STAND UP HERE AND JUDGE  
THIS.

THIS IS RICH AS THE LANGUAGE  
USING THE LANGUAGE IN A WAY  
THAT'S TOTALLY DIFFERENT.

I MEAN, THIS IS YOUR ARGUMENT I  
THINK.

TOTALLY DIFFERENT THAN IT WOULD  
BE COMMONLY UNDERSTOOD.

>> YES.



>> DON'T WE ALLOW THE STATE TO  
CAUSE A FORFEITURE OF THINGS  
THAT USE THE MEANS TO COMMIT A  
CRIME.

START FORFEITING BLOOD?

[LAUGHTER]

>> THAT'S A WHOLE --

YES, SIR.

I WOULD AGREE.

>> I FIND THIS, UNFORTUNATE  
THERE'S A HIGHEST COURT OF THE  
STATE THAT THIS IS WHERE THIS  
NONSENSE IS LEADING US TO THIS  
KIND OF STUFF.

>> YES, SIR, AND THE  
LEGISLATURE HAS NOT  
INTERPRETED -- OR SPOKEN  
SPECIFICALLY REGARDING THE  
SEARCH WARRANT STATUTE AND  
WHETHER IT CAN BE APPLIED TO  
BODILY FLUIDS.

THERE ARE OTHER COURTS AND  
JURISDICTIONS THAT HAVE APPLIED  
THEIR SEARCH WARRANT CHUTE TO  
BODILY FLUIDS.

IN MY BRIEF I TALKED ABOUT THE  
RHODE ISLAND STATUTE WHICH WAS  
LATER AMENDED.

SPECIFICALLY THE LEGISLATURE IN  
RHODE ISLAND SPECIFICALLY ADDED  
LANGUAGE TO IT SAYING THAT THE  
SEARCH WARRANT STATUTE COULD BE  
USED FOR BODILY SPECIMENS.

BLOOD SALIVA, AND IT WAS  
INTERESTING TO ME IN RESEARCHING  
THIS CASE THAT WITH ALL OF THE  
DEATH PENALTY CASES THAT COME  
BEFORE THIS COURT WHERE  
POTENTIALLY SEARCH WARRANTS MAY  
HAVE BEEN ISSUED INITIALLY TO  
GET BLOOD OR OTHER BODILY FLUIDS  
AND NOBODY HAS CHALLENGED  
WHETHER OR NOT BLOOD IS  
PROPERTY.

BUT UNDER THE MEANING OF THAT  
STATUTE.

>> AGAIN ONE ISSUE AS TO  
WHETHER BODILY FLUIDS BECOME  
PROPERTY FOR THE FELONY DOING  
THAT EVIDENCE.

COMMON UNDERSTANDING OF EVIDENCE  
IS THAT CERTAINLY BLOOD ALCOHOL  
READING WOULD BE EVIDENCE.

BUT IT IS WHEN IT GETS TO THE  
OTHER STATUTE, IT JUST, I THINK

IT STRETCHES IT TO BECOMING A LOGICAL.

I WAS THINKING OF WHAT WAS BEING SAID ABOUT IF YOU HAVE HIV AND YOU CAN'T TRANSPORT BLOOD, I DON'T KNOW WOULD THAT MEAN THAT IF YOU ARE HIV POSITIVE THAT THE STATE COULD JUST -- TEST YOUR BLOOD ANY TIME.

I WASN'T SURE I UNDERSTOOD THAT ARGUMENT.

I MEAN, OBVIOUSLY, IF YOU HAVE, TRANSPORTING BLOOD, THAT'S THE. THAT'S THE ILLEGAL ACT IS TRANSPORTING BLOOD.

THAT WOULD BE OUTSIDE OF YOU.

BUT HAVE YOU THOUGHT OF ANY OTHER -- AGAIN, IT DOES SEEM TO ME, THOUGH, FOR YOUR CLIENT THAT THEY'RE REALLY -- SEEM TO AGREE THAT THERE REALLY ISN'T ANY RELIEF THAT YOU WOULD GET EVEN IF WE AGREE WITH YOUR STATUTORY CONSTRUCTION ARGUMENT.

>> I DON'T, I HAVEN'T CONCEDED THAT I AGREE WITH THAT.

I HAVE CONCEDED THAT THAT'S SOMETHING I DIDN'T ARGUE IN MY BRIEF.

MAY BE SOMETHING THEY ATTEMPT TO READDRESS LATER WHETHER THAT'S SOMETHING THAT I WOULD PREVAIL ON, OBVIOUSLY, I DON'T KNOW AT THIS POINT.

>> BUT IF WE HELD THE WARRANT AND THEY GOT A WARRANT IN THIS CASE, DID THEY NOT?

YES, SIR.

>> GOT BLOOD FROM YOUR CLIENT?

YES, SIR.

>> WHAT WAS THE BLOOD ALCOHOL LEVEL?

>> I DON'T KNOW.

>> HIGH ENOUGH --

CORRECT?

>> YES.

>> IF WE HOLD THAT THE WARRANT WAS ILLEGALLY ISSUED, THEREFORE, IT WOULD RENDER THE READING ADMISSIBLE TO HELP THE CLIENT, WOULDN'T IT?

ABSOLUTELY.

>> BASED ON RELIEF THERE?

HEAR FROM HER IN A SECOND.

>> IT WOULD CERTAINLY.

IT WOULD BE --  
GIVE SOME RELIEF TO MY CLIENT  
AND THERE ARE OTHER WAYS THE  
STATE CAN TRY TO GET BLOOD  
EVIDENCE IN AND EVEN IF IT'S  
FROM --

>> LEON?

WHAT ABOUT LEON?

WHAT ABOUT THE HOLDING OF THE  
DISTRICT COURT THAT SAID WHICH  
HELD THAT THE WARRANT WAS NOT  
VALID.

BUT HELD ALSO THAT THE POLICE,  
RELIED ON THEM IN GOOD FAITH IN  
WHICH IS UNCHALLENGED HOLDING OF  
THAT COURT.

>> YOUR HONOR, MY RESPONSE TO  
THAT HAS BEEN THAT THAT MAY BE  
SOMETHING THAT WE HAVE TO TRY  
AND ADDRESS.

>> I JUST DON'T, AGAIN, IT IS  
LEON IS JUST NOT A HOLDING THAT  
EVERY SEARCH WARRANT IF IT'S  
OBTAINED AND FOUND OUT THAT IT  
WAS ERRONEOUSLY OBTAINED THE  
POLICE STILL GET TO PUT IT IN.  
IN LEON I THINK IT WAS A CASE  
INVOLVING TO STAY --  
SOME KIND OF AN ERA.

BUT AGAIN NOT TO PICK ON YOU  
HERE, BUT WE CANNOT ADDRESS IT  
BECAUSE IT'S NOT RAISED.

AND SO I GUESS WITH THAT BEATING  
THIS OVER AND OVER AGAIN WE KEEP  
THIS CASE GOT TO MAKE CLEAR  
WE'RE NOT ADDRESSING THIS ISSUE.  
I MAY AGREE, I HAVEN'T LOOKED AT  
THE LEON ISSUE BECAUSE IT WASN'T  
ADDRESSED.

[LAUGHTER]

>> I KNOW THAT JUSTICE CANADY  
SUGGESTED THIS IS SOMETHING TO  
POTENTIALLY BE TREATED AS A  
CROSS APPEAL.

I WOULD ARGUE THAT --

>> HE WAS SAYING THAT IF YOU  
HAD PUT THAT IN THE BRIEF, IN  
OTHER WORDS WHEN SOMEONE, WHEN  
THE RESPONDANT ADDS ISSUES WE  
WILL TREAT THAT AS -- TREAT  
THOSE ISSUES BECAUSE YOU RAISED  
IT THAT WAY.

I DON'T THINK HE WAS SUGGESTING  
THAT NOW YOU COULD.

>> I THINK IT'S TOO LATE.

>> IT IS SOMETHING THAT I DID.

[LAUGHTER]

>> IT IS SOMETHING THEY ARGUED -- THAT WAS RAISED AT THE FIFTH DISTRICT COURT OF APPEAL. PERHAPS THE COURT COULD CONSIDER IT BECAUSE IT WAS RAISED AT THE LOWER COURT LEVEL. THAT WOULD BE MY RESPONSE TO THAT.

IN ANY EVENT BACK TO THE ISSUE REGARDING THE SEARCH WARRANT IN IMPLIED CONSENT, THE STATE HAS ARGUED THAT IMPLIED CONSENT CANNOT -- OR THAT IMPLIED CONSENT AND THE STATUTORY ARE TWO DIFFERENT THINGS. APPLIES TO BLOOD DRAWS MADE WITHOUT A WARRANT AND THAT THE STATE WARRANT STATUTE CAN BE READ IN HARMONY WITH THE ISSUES OTHER OR WITH THE COMPLIED CONSENT.

I WOULD SUGGEST THAT CONSENT IN THE RIGHT TO REFUSE WAS ACTUALLY DECIDED BY THIS COURT BACK IN 1980.

SOMETHING THAT THE LEGISLATURE HAS BEEN AWARE OF FOR 32 YEARS. NEVER SAYING THAT YOU DO NOT HAVE A RIGHT TO REFUSE, AND THAT THE DEFENDANT IN THIS CASE DID, IN FACT, REFUSE A BREATH TEST INITIALLY.

AND WAS TAKEN TO THE HOSPITAL AND BLOOD WAS FORCIBLY DRAWN PURSUANT TO A SEARCH WARRANT. AND THAT IN USING A SEARCH WARRANT, THAT THE INTENT OF THE LEGISLATURE IN ACTING IN THE IMPLIED CONSENT.

I WOULD, THE STATE HAS ARGUED THAT OR I WOULD SUGGEST TO THIS COURT THAT THE SPECIFIC INTENT STATUTE, THE IMPLIED CONSENT STATUTE COMS OVER THE GENERAL INTENT STATUTE, THE SEARCH WARRANT STATUTE IN THIS CASE. AND IF I COULD HAVE JUST ONE MOMENT.

UNLESS AND UNTIL THE LEGISLATURE AMENDS THEM TO ALLOW FOR DUIS, THE ONLY METHOD BY WHICH BLOOD CAN BE DRAWN IN DUI CASES IS PURSUANT TO THE IMPLIED CONSENT

STATUTES AND DEATH OR SERIOUS BODILY INJURY OR WHEN SOMEBODY APPEARS AT THE HOSPITAL FOR TREATMENT AND THE IMPOSITION OF A BREATH OR URINE TEST IS IMPOSSIBLE OR INCAPABLE OF CONSENT BECAUSE THEY'RE UNCONSCIOUS.

I WOULD ASK THIS COURT TO ADDRESS THE BROADER QUESTION THAT GEORGE POSED IN HIS OPINION WHEN THE QUESTION WAS CERTIFIED TO THIS COURT, AND ADDRESS WHETHER OR NOT THE PRIOR RULING IN SAN THAT A PERSON HAS A RIGHT TO REFUSE TESTING CONTROLS.

I WOULD URGE THIS COURT TO ANSWER THAT QUESTION THE AFFIRMATIVE, AND THEREFORE AN ANSWER TO THE SECOND PART OF THAT QUESTION WHICH IS IF THE COURT FINDS THAT IT DOESN'T CONTROL CAN ANY SEARCH WARRANT BE ISSUED FOR A MISDEMEANOR I WOULD SAY YOU WOULDN'T NEED TO GET TO THE SECOND QUESTION IF THIS COURT USES TO ANSWER ONLY THE QUESTION THAT WAS CERTIFIED BIT FIFTH DISTRICT COURT OF APPEAL I WOULD ASK THE COURT TO ANSWER IT IN THE AFFIRMATIVE. ANY OTHER QUESTIONS?

OKAY, THANK YOU.

>> IF I COULD JUST MAKE THREE QUICK POINTS.

FIRST OF ALL, THIS DEFENDANT IS NOT GOING TO GET ANY RELIEF HASN'T CHALLENGED GOOD FAITH NOR COULD HE.

INCAPABLE OF EXCEEDING REVIEW BECAUSE THESE POLICE OFFICERS WANT TO DO THIS WARRANT THING, THEY CAN'T GET HIM NOW AND NO WAIT STATE CAN GET REVIEW OF THAT ISSUE.

THE STATE CAN'T SAY THEY APPEAL THAT.

NO WAY FOR THE STATE TO GET THE REVIEW ANY OTHER WAY.

>> DOESN'T STOP, A JUDICIAL OFFICER FROM DISAGREEING WITH THAT AUTHORITY.

AND ISSUING THE WARRANT AND THEN COME UP THROUGH THE CASE JUST LIKE THIS ONE.

>> THAT OFFICER WOULD BE ACTING  
CONTRARY TO THE LAW.  
>> IT IS THE JUDICIAL OFFICER  
WHO ISSUES THE WARRANT.  
>> RIGHT THAT THE JUDICIAL  
OFFICER.  
>> DISAGREES WITH IT.  
THIS DUI CASE HAVE CREATED A  
WHOLE WORLD OF JURISDICTIONAL  
ISSUES FOR COURTS.  
THAT IN MY VIEW HAVE EXPANDED  
JURISDICTION AND CERTAIN OTHER  
AREAS.  
THE SAME THING COULD HAPPEN HERE  
IS THAT COUNTY COURT JUDGE  
DISAGREED OR JUDICIAL OFFICER  
ISSUES THE WARRANT AND GOES  
THROUGH THE PROCESS AND GET A  
CIRCUIT COURT THAT LOOKS AT IS  
IT.  
DISAGREES, AND COMES BACK UP.  
>> AND I WOULD SAY NO COUNTY  
COURT JUDGE CAN ISSUE A WARRANT  
THAT SAYS THAT THE WARRANT OR  
STATUTE DOESN'T --  
>> MY FRIEND, IT HAPPENS.  
WE SEE THE CASES SO YOU'RE  
INCORRECT ON THAT.  
>> OKAY.  
LET ME SAY DUE -- NOT ASKING FOR  
BROAD HOLDING ABOUT MEANS.  
DUVALL IS THE ONLY STATUTE THAT  
I CAN THINK OF WHERE PUTTING  
YOURSELF IN A CERTAIN CONDITION,  
PUTTING YOUR BODY IN A CERTAIN  
CONDITION IS THE MEANS TO COMMIT  
A CRIME BECAUSE THAT'S HOW THE  
LEGISLATURE IS DEFINED AS A  
STRICT LIABILITY OF THE CRIME.  
>> SO THE VEHICLE ISN'T THE  
MEANS TO COMMIT THE CRIME.  
>> THE VEHICLE IS THE SECOND  
PART OF IT.  
HAS TWO ASPECTS.  
>> IS YOUR BRAIN --  
>> THE BLOOD.  
>> HOW ABOUT YOUR BRAIN?  
>> NOT A CRIME TO HAVE A  
CERTAIN LEVEL OF ELECTRICITY IN  
YOUR BRAIN BUT TO HAVE A BLOOD  
ALCOHOL LEVEL.  
>> PETS, YOU KNOW.  
>> NO STATUTE DEFINES BRAIN  
ACTIVITY AS A CRIME.  
THERE'S A STATUTE DEFINING BLOOD

ALCOHOL LEVEL AS A CRIME IF YOU  
DRIVE TOO.

SO THAT IS, AND JUST TO CLARIFY.

[LAUGHTER]

JUST TO CLARIFY THE HIV, MY  
INTENT WAS IT'S A CRIME  
KNOWINGLY TO TRANSMIT HIV.  
PUT A VILE OF YOUR BLOOD AND  
INJECTED INTO SOMEBODY.  
CAN BE A MEANS.

>> YOUR BLOOD OUT.

>> OR TRANSMITTED DIRECTLY  
SOMEHOW.

BE THAT AS IT MAY ASK YOU TO  
REVERSE THAT ASPECT.

>> THERE IS A DISTINCTION  
BETWEEN TAKEN THE BLOOD OUT AND  
USING IT IN A CERTAIN WAY.

>> RIGHT.

>> AND VACCINE THE BLOOD  
COURSING THROUGH YOUR BODY.  
AND SAYING THAT'S BEEN USED.

>> IN THESE LIMITED  
CIRCUMSTANCES LEGISLATURE HAS  
THAT AS BEING A CRIME.

SO THAT MAKES IT THE MEANS.

>> HOW ABOUT ATTEMPTED SEXUAL  
BATTERY AND DIDN'T OCCUR AND  
WANTED TO SEARCH YOUR BLOOD TO  
SEE IF YOU WERE HIV POSITIVE IN  
ORDER TO SHOW THAT YOU --  
THAT YOU HAD HIV?

WHAT WOULD THAT BE?

>> I DON'T SEE WHERE THAT WOULD  
BE TO DO ANYTHING.

>> ATTEMPTED MURDER.

>> THANK YOU.

>> WE THANK YOU BOTH.

>> THAT HAS THE LAST CASE ON  
TODAY'S DOCKET.

COURT IS NOW ADJOURNED.

>> ALL RISE.