

>> ALL RISE.

>> SUPREME COURT OF FLORIDA IS
NOW IN SESSION.

PLEASE, BE SEATED.

>> WE NOW COME TO THE THIRD AND
FINAL CASE ON TODAY'S DOCKET,
THE STATE OF FLORIDA V. ADKINS.

>> GOOD MORNING, YOUR HONORS.

DIANA BOCK APPEARING ON BEHALF
OF THE STATE OF FLORIDA, THE
PETITIONER IN THIS MATTER.

THIS CASE COMES BEFORE THE COURT
ON A DISMISSAL OF INFORMATIONS
IN THE CIRCUIT COURT BY JUDGE
BROWNELL, AND BASICALLY, IT CAME
ON A PRETRIAL MOTION, SO THERE
ARE NO REAL FACTUAL ISSUES.

THIS IS A MATTER OF LAW.

THE DISMISSAL WAS BASED UPON
JUDGE BROWNELL'S FINDINGS THAT
STATUTE 893.13 AS AMENDED BY
893.101 WAS SPATIALLY
UNCONSTITUTIONAL.

>> AND THAT WAS BECAUSE THE
STATE DOES NOT HAVE TO PROVE

BEYOND A REASONABLE DOUBT THE
DEFENDANT KNEW THE SUBSTANCE
THAT HE OR SHE POSSESSED WAS
ILLICIT?

>> THAT IS CORRECT, YOUR HONOR.

>> MY QUESTION ON IT, WHAT'S THE
STATUTE, AND YOUR ARGUMENT IS
THAT, NO, UNDER CASE LAW THAT IT
IS CONSTITUTIONAL, BUT THE
QUESTION I HAVE IS, WOULD THE
STATUTE BE INSTITUTIONAL WITHOUT
THE AFFIRMATIVE DEFENSE
PROVISION?

IN OTHER WORDS, IF LACK OF
KNOWLEDGE OF THE ILLICIT NATURE
COULD NEVER, WOULD NEVER BE
REQUIRED, IT'S A SITUATION WHERE
YOU'VE GOT THIS ELEMENT OF THE
CRIME, BUT THE LEGISLATURE'S
ALLOWING THE DEFENDANT TO RAISE
IT, AND THEN IF THEY RAISE IT,
IT GOES BACK.

MY QUESTION IS, WOULD THE -- SO
THAT SEEMS LIKE SOME OF IT WOULD
SEEM SOMEWHAT FAIR.

WELL, THEY CAN RAISE IT IF THEY
REALLY DIDN'T KNOW IT WAS
ILLEGAL.

BUT THE QUESTION IS, WOULD IT BE
CONSTITUTIONAL WITHOUT THE
PROVISION FOR THE AFFIRMATIVE
DEFENSE?

>> YES, IT WOULD, YOUR HONOR.

>> AND IT'S BECAUSE EVEN
THOUGH -- SO WHAT IS THE, WHAT
IS THE UNLAWFUL ACT THAT THE
PERSON IS BEING CHARGED WITH
COMMITTING?

>> THE POSSESSION -- AND THESE
CASES WERE ALL POSSESSION
CASES -- THE POSSESSION OF AN
ILLEGAL SUBSTANCE AS DEFINED BY
THE STATUTE, THAT SUBSTANCE WAS
IN THEIR POSSESSION.

>> NOW, IN THE SITUATION WITH
THE EXTREME OF, ACTUALLY, THE
SENATE BROUGHT IT UP, AND IT'S
THE STAFF ANALYSIS OF THE MAIL
CARRIER CARRYING A MAIL BAG, THE
MAIL BAG HAD AN ILLICIT

SUBSTANCE IN IT IN A PACKAGE, IS
THAT -- IF YOU DON'T KNOW THAT,
WHAT IS IN THE PACKAGE, ARE YOU
STILL, CAN YOU STILL BE CHARGED
AND CONVICTED OF POSSESSING THE
ILLCIT SUBSTANCE, OR DO THEY --
DOES THE STATE STILL HAVE TO
PROVE IN THAT, THAT THEY KNEW
THAT IN THE PACKAGE WAS
SOMETHING, WHETHER THEY THOUGHT
IT WAS BAKING POWDER OR COCAINE,
THAT THEY KNEW IT WAS A
SUBSTANCE?

>> I BELIEVE THAT YOU WOULD HAVE
TO, THE STATE WOULD HAVE TO
PROVE THAT THEY KNEW THAT THERE
WAS A SUBSTANCE.

>> SO THE SAME THING, IF
SOMEBODY GIVES ME OR GIVES
SOMEBODY A BACKPACK --

>> YEAH.

>> -- AND IN THAT BACKPACK IS AN
OUNCE OF MARIJUANA AND I DON'T
OPEN IT, CAN YOU JUST HOLD IT
UNTIL THE END OF THE DAY?

YOU WOULD HAVE, THE STATE WOULD
STILL HAVE TO PROVE THAT I KNEW
IN THAT BAG WAS SOMETHING EVEN
THOUGH THEY MIGHT HAVE SAID TO
ME IT'S A, IT HAS SOME TOBACCO?

>> BUT YOU HAD POSSESSION OF IT.

WE MUST SHOW POSSESSION --

[INAUDIBLE CONVERSATIONS]

OR WISH TO TRY WILLFUL

BLINDNESS, NOSE ARE

DIFFERENT CIRCUMSTANCES.

>> IF SOMEONE CHARGES A

MAILMAN CARRYING AN ILL --

ILLCIT ITEM, THE MAILMAN

WOULD HAVE TO PREVENT A

DEFENSE THAT IN THE NORMAL

COURSE OF BUSINESS --

>> HE WOULD BE ABLE TO, HE

WOULDN'T HAVE TO.

>> IF HE WANTED TO BE

ACQUITTED HE WOULD.

>> I DON'T BELIEVE THAT'S

TRUE, I THINK THE STATE

WOULD BE HARD TO PROVE THAT

HE HAD CONSTRUCTIVE

POSSESSION IN THE SENSE THAT
THE STATUTE DEVOTES.

>> CERTAINLY THAT WOULD BE
SOMETHING THAT WOULD BE A
POSSIBILITY.

I DO NOT KNOW THAT.

WHAT DO YOU MEAN THAT THE
STATE WOULD HAVE TO SHOW THE
ACTUAL OR CONSTRUCTIVE
POSSESSION.

IF HE HAS IT AND THE
SUBSTANCE IS IN WHATEVER
PACKAGE IT'S IN --

WHAT ELSE --

I'M REAL CONCERNED ABOUT
WHAT IT IS, THE WHOLE
ESSENCE OF THESE CRIMES IS
THAT THIS IS AN ILLEGAL
SUBSTANCE.

>> THAT IS CORRECT.

>> SO WHAT ELSE WOULD THE
STATE HAVE TO SHOW BEYOND
THE MERE FACT THAT HE HAD
THE PACKAGE IN THAT PACKAGE
WAS AN ILLEGAL SUBSTANCE AND

THAT HE KNEW THERE WAS A
SUBSTANCE IN THE PACKAGE.

>> I THINK --

I'M SORRY.

>> I GUESS I THOUGHT THAT
WAS THE PART, THEY HAVE TO
SHOW THAT HE KNEW THERE WAS
A SUBSTANCE IN THE PACKAGE.

NOT THAT IT WAS --

NOT THAT --

>> THAT THERE'S AN ILLEGAL
SUBSTANCE.

>> THE STATE WOULD HAVE TO
PROVE HE KNEW WHAT WAS IN
THE PACKAGE.

>> THAT HE KNEW OR SHOULD
HAVE KNOWN, I HATE TO GO
DOWN THAT SLIPPERY SLOPE,
BUT THE REASON THE MAIL
CARRIER STANDS OUT IS
BECAUSE OF THE CIRCUMSTANCES
IN WHICH HE TAKES POSSESSION
OF THAT PACKAGE.

IF THE STATE IS REQUIRED TO
PROVE POSSESSION EITHER

ACTUAL OR CONSTRUCTIVE, THEN

WE HAVE TO PROVE THAT.

>> BUT THE CONSTRUCTIVE --

AGAIN, AND I THOUGHT ABOUT

THIS YESTERDAY, IT WAS

BOTHERING ME THIS MORNING, I

THOUGHT, WELL NO, IF YOU'RE

GIVEN A BACKPACK, AND THERE

IS SOMETHING IN IT, WHATEVER

THAT IS, THE STATE WOULD

HAVE TO PROVE THAT YOU KNEW

THAT YOU HAD POSSESSION OF

WHAT WAS INSIDE OF IT, THAT

YOU KNEW WHAT THAT WAS.

THAT IS IT WAS WHITE OR --

NOT THAT IT WAS --

YOU CAN SAY WELL YEA, I --

I THOUGHT IT WAS BAKING

POWDER OR --

>> THE WAY THAT THE

LEGISLATURE, AND I MAY BE

STEPPING BACK A BIT HERE,

BUT THE WAY THAT THE

LEGISLATURE HAS PRESENTED

THIS IN THE STATUTE, IS THAT

THE ACT ITSELF, SO IF THAT
WILL DENOTE SUFFICIENT
EVIDENCE THAT THEY TOOK
POSSESSION, IF TAKING THE
BACKPACK WILL EQUATE TO
TAKING POSSESSION, THEN AT
THAT POINT WE MET OUR
STANDARD, THAT'S ALL THE
STATE WOULD HAVE TO SHOW.
YOUR HONOR WOULD BE CORRECT
THEY DO NOT HAVE TO SHOW
WHAT'SED IN THE BACKPACK.
>> THAT, TO ME, --
>> BEFORE THE STATUTE WAS
AMENDED, THEY ALLOWED THE
FOLLOWING THAT ALLOWED THE
STATE TO PROVE IT'S CASE
PROBABLY 99 PAKISTAN OF --
99% OF THE TIME, WHICH IS
WHY THIS IS A CONCERN TO ME,
BECAUSE POSSESSION OF
WHATEVER IT IS, IT'S
PRESUMED THAT YOU KNOW THAT
IT WAS ILLEGAL, AND THAT IT
WAS REQUIRED FOR THE

DEFENDANT TO REBUT IT.

THAT PRESUMPTION DOES NOT
HAVE TO BE INSTRUCTED ON
BECAUSE THE STATE DOESN'T
NEED IT THEY HAVE TO PROVE
THAT YOU POSSESSED IT.

>> THAT THEY COMMITTED THE
LEGAL ACT, THAT'S CORRECT.

>> THE POSTOFFICE PERSON OR
A REGULAR PERSON, FOR
EXAMPLE, IF SOMEONE GAVE
ANOTHER PERSON A BUNCH OF
SPICES, AND ONE OF THOSE
CONTAINERS OF SPICES, ONE OF
THOSE HAD MARIJUANA, THEY
HAVE THE PACKAGE IN THEIR
POSSESSION.

THEY BELIEVE THEY HAVE A
BUNCH OF SPICES, THAT'S
ENOUGH AND THEY COULD BE
CONVICTED OF POSSESSION OF
MARIJUANA.

>> YOU'RE SAYING THEY HAVE
FIVE SPICES, THEY DON'T HAVE
TO KNOW IT'S ILLEGAL NOR

SHOULD THEY HAVE KNOWN, IT'S
NOT LIKE SHOULD HAVE KNOWN,
LIKE A REASONABLE PERSON
WOULD KNOW THAT THIS SPICE
WAS NOT --

SOMEBODY WAS PULLING A JOKE
ON YOU, SENDING YOU THIS IN
THE MAIL, YOU TAKE POSITION
OF IT BECAUSE THEY WANT TO
GET YOU TO TEACH YOU A
LESSON.

AND THE STATE CAN PROSECUTE
AND THEY CAN EXERCISE
DISCRETION NOT TO, AND THE
JURY, IF YOU ENDED UP AFTER
THAT HAVING AN INABILITY TO
TESTIFY OR SAY THAT YOU WERE
--

YOU HAD AN INABILITY BECAUSE
YOU BACK COMPETENCY, THE
STATE, WHERE YOU COULD NOT
PRESENT AN AFFIRMATIVE
DEFENSE WOULD BE CONVICTED
OF POSSESSION.

>> YOU COULD BE >> WHY

WOULDN'T YOU UNLESS IT WAS

JURY NULLIFICATION.

>> THERE MAY WELL BE, BUT

YOU CAN'T RELY ON JURY

NULLIFICATION WHERE THEY MAY

BE PUT IN PRISON FOR TEN TO

THIRTY YEARS AND THEIR

INNOCENT.

THE VAST MAJORITY OF CASES,

SOMEBODY HAS 15 BAILS OF

MARIJUANA IN THEIR GARAGE

AND THEY SAY THEY THOUGHT IT

WAS HAY OR THEY'RE IN THE

NEIGHBOR SELLING --

I THOUGHT I WAS SELLING

BAKING POWDER OR BUYING

BAKING POWDER, THE JURY

WOULD LAUGH THAT OUT, BUT

THERE, THE STATE WOULD HAVE

TO PROVE THAT THEY KNEW OR

SHOULD HAVE KNOWN THAT IT

WAS ILL --

ILLCIT, AND NOW THEY DON'T.

>> IN TERMS OF PROTECTING

THE INNOCENT, WHICH IS ONE

OF THE THINGS THAT FLOATS
AROUND AND SOME OF THESE
CASES THAT HAVE BEEN BROUGHT
TO OUR ATTENTION, THERE IS A
CONCERN HERE AT SOME --
AT SOME LEVEL AN EXTREME
CIRCUMSTANCES OF HAVING A
LAW THAT COULD ENSNARE
SOMEONE WHO IS NOT BLAME
WORTHY, BUT DOESN'T TBHB
THIS --
IN THIS CONTEXT WITH THE
STATUTORY SCHEME WE'RE
LOOKING AT, ISN'T THAT
CONCERN MITIGATED OR
ELIMINATED BY THE
AFFIRMATIVE DEFENSE THAT CAN
BE PROVEN --
THERE ARE DIFFERENT WAYS TO
ESTABLISH THAT AFFIRMATIVE
DEFENSE.
>> THAT IS CORRECT.
>> DOESN'T THAT REALLY SET
THIS STATUTORY SCHEME APART
FROM THE OTHER THINGS

BROUGHT TO OUR ATTENTION.

>> IT DOES, AND ADDRESSING
JUSTICE PARIENTE AND JUSTICE
QUINCE'S CONCERNS, THAT'S
NOT THE FACTS OF TODAY, BUT
WOULD A STRICT LIABILITY LAW
BE UNCONSTITUTIONAL?

THE POSITION WAS IT IS NOT,
BUT YOU'RE ABSOLUTELY
CORRECT.

THAT IS NOT THE FACTS.

>> THAT MAY BE AN
INTERESTING HYPOTHETICAL
QUESTION, BUT THAT'S NOT THE
QUESTION THAT WE HAVE TODAY,
AND I DON'T --

>> ABSOLUTELY, AND I DON'T
KNOW THAT WE NEED --

WE CERTAINLY DON'T NEED TO
DECIDE THAT, WE HAVE TO
DECIDE THE CASE THAT'S
BEFORE US TODAY.

WE MAY WANT TO THINK ABOUT
THE IMPLICATIONS AND THINGS
IT MAY HAVE FOR OTHER

THINGS, BUT WE NEED TO LIKE
AT THIS PARTICULAR STATUTE
AND THE AFFIRMATIVE DEFENSE
IS THE ASSAILANT FACTOR THAT
SETS THIS APART FROM SOME
OTHER CASES WHERE CONCERNS
HAVE BEEN RAISED ABOUT
ENSNARING THE INNOCENT.

>> YOU'RE CORRECT, YOUR
HONOR.

AND I HAVE A JURY
INSTRUCTION THAT WAS DRAFTED
IN RESPONSE TO THE STATUTE.
THE DEFENDANT HAS RAISED --
HERE IS THE AFFIRMATIVE
DEFENSE, HOWEVER, YOU'RE
PERMITTED TO PRESUME THAT A
DEFENDANT WAS AWARE OF THE
ILL LIT IT NATURE OF THE
CONTROLS SUBSTANCE IF YOU
FIND THE DEFENDANT WAS IN
ACTUAL OR CONSTRUCTIVE
POSSESSION OF THE CONTROLLED
SUBSTANCE.

BACK TO SQUARE ONE, THE FACT

HAD THAT THEY'RE IN
POSSESSION OF THE ITEM IS A
PRESUMPTION THAT THEY'RE
GUILTY.

>> BUT IT'S REBUTTAL.

WE NOW BEAR THE BURDEN AS
THE STATE.

>> HOW DO YOU DO THAT IN THE
SCENARIO THAT I GAVE YOU, I
COME IN THE COURT AND SAY
LOOK, I THOUGHT THIS WAS
OREGANO, AND THEY GET THE
JURY INSTRUCTION THAT I HAD
IT IN MY POSSESSION >> WELL
YOU, YOUR HONOR.

[LAUGHTER]

>> IF I WEAR MY BLACK ROBE
TO COURT.

>> I'M CONFUSED, IF WE'RE
SWITCHING TO UPHOLD THIS
WITH THIS AFFIRMATIVE
DEFENSE, I THOUGHT IT WAS
SOMETHING THAT SHIFTED THE
BURDEN TO THE DEFENDANT THAT
COULD PROVE THE NONEXISTENCE

OF THE FACT, THAT IS THAT
THEY DIDN'T KNOW IT WAS
ILLICIT.

YOU'RE SAYING ALL THEY HAVE
TO DO IS RAISE THAT --
THEY HAVE TO SAY I DIDN'T
KNOW, DO THEY HAVE TO
TESTIFY THEY DIDN'T KNOW?
THEY HAVE THE BURDEN OF
PREPONDERANCE.

>> AND THEN IT SWITCHES BACK
TO THE STATE TO PROVE WHAT?
BEYOND A REASONABLE DOUBT?

>> TO PROVE WHAT THEY --

>> IT'S NOT AN ELEMENT OF
THE CRIME.

>> NO, AND IT DOESN'T SHIFT
OR BECOME ONE.

GIVE ME ANOTHER LEGAL
STRUCTURE OF CRIMES THAT IS
WITH WITH THIS DRUG STATUTE.

>> I DON'T KNOW THAT I CAN.

>> DOES ANY OTHER STATE HAVE
THIS?

>> WASHINGTON STATE HAS A

SIMILAR LAW AND FOUND IT TO
BE CONSTITUTIONAL UNDER THE
SAME PARAMETERS >> SO WE ARE
ALREADY CLEAR THAT THE
DEPARTMENT THEN HAS TO
TESTIFY OR SOMEONE ELSE HAS
TO TESTIFY AND CONVINCING WHO
THAT INSTRUCTION IS GIVEN
THAT JUSTICE LABARAGA
MENTIONED WHO DETERMINED IF
THEY MEET THEIR AFFIRMATIVE
DEFENSE BY THE PREPONDERANCE
OF THE EVIDENCE.

>> THAT'S THE JURY, YOUR
HONOR, THEY WILL DECIDE IF
THEY MET THAT.

>> BY A PREPONDERANCE, AND
THEN IT WOULD SHIFT --
IS THAT WHAT THE JURY
INSTRUCTION SAYS?
THAT YOU MUST FIND THIS
AFFIRMATIVE DEFENSE BY THE
PREPONDERANCE?

>> I THE DON'T THINK IT'S
STATED --

DON'T YOU THINK IF WE'RE
PINCHING A STATUTE, THE
CONSTITUTIONALITY OF HOW IT
WORKS WE OUGHT TO BE PRETTY
CLEAR WHAT JURY INSTRUCTION
WILL SAY?

>> I THINK CERTAINLY IT'S
WARRANTED IN ALL CASES AND
THIS TYPE OF CASE WOULD BE
EVEN MORE SO, BUT I DO NOT
BELIEVE THAT BECAUSE IT
DOESN'T STATE THE STANDARDS
BY WHICH IT REQUIRES A
DEPARTMENT TO PROVE IT, THEY
MOVE SOMETHING TOWARD IN
COURT, AND THE TRIAL COURT
WILL BE RESPONSIBLE TO MAKE
SURE ALL OF THAT EVIDENCE
COMES IN APPROPRIATELY AND
THE JURY IS CHARGED
APPROPRIATELY, AND IF WE
NEED BETTER JURY
INSTRUCTIONS THAT IS
SOMETHING THAT SHOULD BE
LOOKED AT.

HERE, AFFIRMATIVE DEFENSE
BRINGS THIS OUTSIDE OF THE
SCOPE OF WHAT HAS BEEN THE
CONSTRUCTION --

CRUX OF THE PROBLEM --

>> THIS AFFIRMATIVE DEFENSE
EVERY CRIMINAL SAYS THAT, DO
YOU GET A PERSON TO COME AND
SAY WELL HE DIDN'T KNOW THEY
SENT HIM AN ILLEGAL
SUBSTANCE?

DO YOU THINK THE PERSON
WOULD INCRIMINATE THEMSELVES

--

>> IT'S WHY IT MAKES SENSE.

>> THE BURDEN SHOULD BE ON
THE STATE TO PROVE THAT HE
KNEW IT.

>> THAT HE KNOWS THE NATURE
OF THE SUBSTANCE?

>> I WOULD RESPECTFULLY
DISAGREE, AND THE REASON IS
KNOX AND BUNTON, IF YOU LOOK
AT THOSE I REALIZE THEY'RE
FEDERAL COURT CASES, BUT

WHAT COMES DOWN IS THIS.
A INDIVIDUAL WHO POSSESSES
THAT PARTICULAR SUBSTANCE
HAS THE UNIQUE KNOWLEDGE OF
HOW HE CAME TO POSSESSION OF
IT AND WHY.

>> THE OREGANO SCENARIO, HOW
DO YOU REBUT THAT.

>> I RECEIVED A BOX OF
SPICES, THAT'S PRESENTED TO
THE JURY, YOU COULD, AND I
DON'T SEE WHY YOU WOULD NOT,
BRING IN THE PERSON THAT
SENT IT TO YOU.

>> HERE IS A BOX OF SPICES,
TRYING TO SET YOU UP, AND
SOME OF IT CONTAINS ILLEGAL
SUBSTANCES, HOW ARE YOU TO
KNOW THAT?

>> IF IT'S DETECTED AND
YOU'RE CHARGED YOU HAVE
KNOWLEDGE RIGHT THEN, THEN
YOU KNOW WHAT YOU HAVE TO
DO.

>> AGAIN, THE STATUTE, IS

ACCORDING TO THE STATE,
CONSTITUTIONAL EVEN WITHOUT
IT BEING NECESSARY FOR THE
DEFENDANT TO KNOW IT WAS
ILLEGAL, THAT'S WHAT THE
PREMISE IS HERE.

>> IT IS, THE ACT OF
POSSESSING THE DRUG ZITS
ILLEGAL.

>> THE JURY GOT INSTRUCTED
THAT POSSESSION GAVE RISE TO
A PRESUMPTION THAT THIS WAS
ILLEGAL, AND IF THE
DEPARTMENT DIDN'T COME IN
AND REBUT IT, THE STATE WINS
ON THAT.

>> THAT IS NOT TRUE, YOUR
HONOR.

IF YOU LOOK AT THE WAY THAT
THE LEGISLATURE ENACTED.101,
THAT PRESUMPTION IS NEVER
DISCUSSED WITH A JURY UNLESS
AND UNTIL A DEFENDANT RAISES
THAT HE DID NOT KNOW.
THAT'S ONLY ADDRESSED AT THE

POINT IN TIME HE EXERCISED A
PERMANENT DEFENSE, NOT AS A
PRELIMINARY MATTER AND THE
JURY WILL NOT BE TOLD THAT.

>> BUT WHAT ABOUT PRIOR TO
THIS ENACTMENT OF 101.

THERE WAS CASE LAW THAT SAID
THE NATURE WAS IN FACT, BUT
THE STATE COULD COME IN AND
SAY THAT THE DEFENDANT HAD
IT IN HIS POSITION SO YOU
CAN PRESUME HE KNEW THE
NATURE OF TV RIGHT, BUT AT
THAT POINT, THE PROCESS, THE
LEGISLATURE SINCE THAT TIME,
AND THAT'S WHAT ALL OF THE
COURTS HAD SAID ABSENT THE
LEGISLATIVE INTENT, THESE
THINGS SHOULD NOT HAPPEN.

>> NOBODY IS ARGUING.

THEY SPOKE, THE QUESTION IS
WHETHER THEY SPOKE
UNCONSTITUTIONALLY.

>> WHETHER OR NOT THEY
PROCEEDED THEIR AUTHORITY BY

THE JUDGE BY REMOVING THE
DRAFTED ELEMENTED, BUT WHAT
YOU HAVE TO LOOK AT IS IF
THE BOUNDARY IS THE DUE
PROCESS BOUNDARY AND NO
COURT, STATE OR FEDERAL, AND
I DON'T MEAN JUDGE --
THE CIRCUIT COURT JUDGES,
BUT THE OTHER COURTS THAT WE
BRING CASE LAW FROM TODAY
SAID THERE IS NO BRIGHT LINE
FOR DUE PROCESS AND A PUBLIC
WELFARE LAW, SO THAT LINE IS
PUSHED BACK MORE BECAUSE OF
THE NATURE OF THIS CRIME.
THIS IS A UNIQUE TYPE OF
CRIME AND SITUATION WHERE
THIS LAW IS BEING APPLIED,
THIS IS NOT THE COMMON LAW,
I DON'T MEAN TRADITIONAL OLD
LAW THAT HAPPENS EVERYDAY.
THERE IS A REASON FOR THAT
LAW.
THE LEGISLATURE FOUND THAT
WAS AN IMPORTANT PUBLIC

WELFARE REASON.

WHICH IS WHY THE LAW IS SO
NECESSARY.

YOU EXHAUSTED YOUR TIME
ANDLY GIVE YOU AN EXTRA TWO
MINUTES.

, >> THANK YOU, YOUR HONOR.

MAY IT PLEASE THE COURT,.

IN RESPONSE TO YOUR
QUESTION, AFFIRMATIVE
DEFENSE IN THIS CASE DOES
NOT RENDER THE STATUTE
CONSTITUTIONAL BECAUSE IT
UNHINGES THE PRESUMPTION OF
INNOCENCE AFFORDED TO THE
DEFENDANTS.

IT FORCES THEM TO TESTIFY TO
PRESENT EVIDENCE TO SHOW
THEY DID NOT HAVE KNOWLEDGE
OF THE ILLICIT NATURE OF THE
SUBSTANCE WHEN THE CRIME IS
A CONSTITUTIONAL REQUIRED
ELEMENT OF THESE OFFENSES.

>> THIS IS WHERE --

BECAUSE I GUESS I WOULD

RATHERRED DID IT ON WHAT'S
BEEN ARGUED, AND IF --
BECAUSE I THINK YOU'RE
RIGHT, IF WE HAVE TO WORRY
ABOUT THE AFFIRMATIVE
DEFENSE WE GET INTO WHAT YOU
JUST SAID, SO NOW GOING TO A
SITUATION WHERE WHERE THE
CASES WHERE THE LAWS ARE
UNCONSTITUTIONAL ALL HAD TO
DO WITH CIRCUMSTANCES WHERE
THERE COULD BE A NONCRIMINAL
INNOCENT ACT.

IF YOU POSSES AN ILLEGAL
SUBSTANCE, EVEN IF YOU DON'T
KNOW OR SAY YOU DON'T KNOW
THAT IT WAS ILLEGAL, THERE
IS NO SET OF CIRCUMSTANCES
WHERE IT IS LEGAL TO POSSES
AN ILLEGAL SUBSTANCE,
CORRECT?

>> TO USE YOUR EXAMPLE OF
THE MAIL CARRIER --

>> BUT I WOULD ARGUE AGAIN,
I WOULD SAY THE MAIL

CARRIER, THE STATE WOULD
HAVE TO PROVE THEY KNEW
SOMETHING IN THAT BAG, NOT
JUST THAT THEY POSSESSED THE
BAG, BUT THAT IS ANOTHER
CASE, WE DON'T HAVE THAT
HERE.

>> KNOWLEDGE OF THE PRESENCE
OF THE SUBSTANCE COULD BE
PROVEN EASILY.

PRESCRIPTIONS ARE ORDINARILY
DELIVERED,, --

>> I GUESS THE FIRST MAILMAN
PROSECUTION, WE'LL WORRY
ABOUT THAT, RIGHT?

NOW THAT THE POSTAL SERVICE
IS APPARENTLY GOING TO BE
DEFUNDED, I GUESS MAYBE THEY
CAN TAKE OUT PRESCRIPTION
DRUGS AND NETFLIX, I
APPRECIATE THAT WE HAVE TO
WORRY ABOUT IF IT'S
CONSTITUTIONAL OR
UNCONSTITUTIONAL, WE'RE NOT
LOOKING AT FACTS, AND SO

THAT'S MY QUESTION, IS, WHY
ISN'T IT DIFFERENT FROM THE
OTHER CASES WHERE THERE
COULD BE A WAY THAT YOU
COULD HAVE DONE THE SAME ACT
BUT IT BE CONSTITUTIONAL,
LIKE YOU'RE LIVING IN LOS
ANGELES, OR YOU KNOW, SO,
YOU --
AND WE DON'T HAVE A NOTICE
--
WE'RE NOT DEALING WITH
PROCEDURAL DUE PROCESS,
WE'RE NOT DEALING WITH
NOTICE, EVERYBODY IS ON
NOTICE NOW THEY BETTER
EXERCISE CAUTION BEFORE THEY
TAKE SOMEONE'S BACKPACK OR
SOMEBODY THEY TAKE INTO
POSSESSION A FRIEND'S
PRESCRIPTIONS OR THEY YOU
KNOW WE HEAR AT THE AIRPORT
ALL THE TIME, DO NOT --
DID YOU PACK YOUR OWN BAGS,
DID SOMEONE ELSE PACK YOUR

BAGS, MAKE SURE THEY DON'T
LEAVE YOUR POSITIONS, SO
WE'RE ON NOTICE.

DIDN'T --

ISN'T THAT MAKE IT

CONSTITUTIONAL BECAUSE
THERE'S NO WAY TO LEGALLY
POSSESS AN ILLEGAL
SUBSTANCE.

>> NO, BECAUSE WHAT STATUTE
DOES IS FORCES INDIVIDUALS
TO INSPECT EVERYTHING THEY
OWN AND ARE HANDED ALL THE
TIME.

SO IT CRIMINALIZES A BROAD
SWATH OF --

>> LET'S TALK ABOUT THAT,
HOW HARD THAT IT IS TO MAKE
SURE YOU DON'T TAKE INTO
YOUR POSSESSION SOMETHING
ILLEGAL.

GIVE ME WHERE THE BURDEN IS
ON THE PUBLIC VERSES IF WE
TAKE WHAT THE LEGISLATURE
HAS SAID, AND AS JUSTICE

QUINCE SAID, AN ENORMOUS
PROBLEM WITH SALE,
POSSESSION OF DRUGS,
COCAINE, PRESCRIPTION DRUGS
THAT ARE IMPROPERLY BEING
DISTRIBUTED --
WHY ISN'T IT APPROPRIATE TO
PUT THAT BURDEN TO SAY, YOU
KNOW WHAT, YOU MAY BE
CHARGED CRIMINALLY SO YOU
BETTER NOT TAKE A PACKAGE
FROM A FRIEND IF YOU'RE
GOING TO OPEN A PACKAGE AT
HOME, YOU BETTER KNOW WHAT'S
IN IT.

>> BUT AGAIN, YOUR HONOR, I
THINK THAT CRIMINALIZES A
BROADER RANGE OF CRIMINAL
ACTIVITY, AND TO YOU THE
FACT THAT THE TYLENOL PILLS
WITH THE WORD CODEINE IS SO
SMALL YOU NEED A MICRO
SCOPE, YOU WOULD HAVE TO
INSPECT EVERYTHING, IF
SOMEONE IS WALKING DOWN THE

STREET, I KNOW THAT THE
WHITE POWDER IS ON MY SHOE
THAT I STEPPED ON, BUT
THAT'S INNOCENT ACTIVITY.
YOU WOULD HAVE TO IN FACT
EVERYTHING YOU OWN ARE AND
HANDED ALL THE TIME.
THE STATE WOULD ONLY --
>> BUT ISN'T THE REALITY
HERE THAT THESE DRUGS THAT
ARE ILLICIT ARE VALUABLE.
AND THE PEOPLE WHO OWN THEM
JUST DON'T CASTING THEM
ABOUT AT RANDOM.
NOW I CAN SEE THAT THERE CAN
BE UNUSUAL CIRCUMSTANCES
WHERE SOMEBODY WILL PLANT
SOMETHING ON SOMEBODY ELSE,
OKAY, THAT'S THERE, BUT IN
THE ORDINARY COURSE OF
EXPERIENCE, THESE ARE
VALUABLE THINGS THAT THE
PEOPLE WHO WHO POSSESS THEM
WILL ONLY GIVE UP FOR MONEY
OR SOMETHING ELSE OF VALUE,

THEY DON'T JUST CAST IT

ABOUT.

AND SO, I THINK THAT'S KIND

OF THE --

THAT COMBINED WITH THE OTHER

REALITY IS THAT ORDINARILY,

PEOPLE KNOW WHAT THEY'VE

GOT.

, IF ANY, YOU'VE GOT --

AGAIN, THERE ARE EXCEPTIONS

TO THAT, BUT THE REALITY IS

THAT ORDINARILY, YOU KNOW

WHAT YOU'VE GOT IN YOUR

BRIEFCASE, YOU KNOW WHAT

YOU'VE GOT IN YOUR CAR, AND

YOU PUT ALL OF THAT

TOGETHER, AND THE SCHEME

SEES TO ME TO MAKE A LOT OF

SENSE BECAUSE IT RECOGNIZES

THOSE REALITIES, BUT AT THE

SAME TIME, RECOGNIZES THE

EXTRAORDINARY CIRCUMSTANCES

THAT DEPART FROM THOSE

COMMON REALITIES AND ALLOWS

AN AFFIRMATIVE DEFENSE IN

THOSE EXTRAORDINARY
CIRCUMSTANCES.
ISN'T THAT WHAT LEGISLATURE
AND THE JUDGE THEY MADE,
ROOTED IN A COMMON SENSE
UNDERSTANDING OF THE REALITY
ABOUT DRUGS, BUT WHICH
PRESERVES THE ABILITY OF
SOMEONE TO ESTABLISH AN
AFFIRMATIVE DEFENSE?

>> PRIOR TO THIS, THERE WAS
A KNOWLEDGE OF THAT
INFERENCE AND IT WAS USED IN
CASES OF ACTUAL POSSESSION,
THE STATE WAS AWARE AND IT
WOULD APPLY.

BUT NOW BECAUSE IT COULD
CRIMINALIZE INNOCENT
ACTIVITY, THE STATUTE IS
UNCUSHIONAL.

>> HOW LIKELY MUST IT BE
BEFORE IT BREACHES THE
CONSTITUTIONAL BARRIER?
FACIAL CHALLENGE YOU MUST
SHOW THAT THERE IS NO WAY

THIS CAN BE APPLIED,

CORRECT?

>> RIGHT.

>> WOULD WOULD THIS NOT MORE

PROPERLY BE PRESENTED, IF AT

ALL, AS APPLIED CIRCUMSTANCE

WHERE YOU HAVE FACTS THAT

WE'RE DEALING WITH, AND THAT

THERE MAY BE SOME

CIRCUMSTANCES WHERE THIS

COMES ABOUT, BUT WITH ALL OF

THE DIFFERENT ASPECTS OF THE

LAW, AND THE STATEMENT

THAT'S YOU HEARD THIS

MORNING, WHY WOULDN'T THIS

BE MORE APPROPRIATE, IF AT

ALL, DEALING WITH IT WITH

THE FACTS YOU'RE DEALING

WITH?

IT SEEMS TO ME WITH THE

HISTORY OF THIS STATUTE, I'M

NOT SURE YOU MAKE THIS ON A

FACIAL CHALLENGE.

>> WELL THE ABSENCE OF MENS

REA --

>> WHERE IS THAT WRITTEN?

HAVEN'T WE IN A NUMBER OF
CASES TALKED ABOUT THE
LEGISLATURE'S ABILITY TO
DEFINE THE CRIME.

WITH THE U.S. SUPREME COURT
DEALING WITH A DRUG OFFENSE,
MADE A DECISION THAT'S
EXACTLY CONTRARY TO WHAT
YOU'RE SAYING.

I UNDERSTAND THAT THIS IS A
COMPLICATED AREA, AND WHEN
WE'RE TALKING ABOUT COMMON
LAW CRIMES, WHAT YOU SAID
MAY HAVE MORE FORCE, BUT
THIS IS NOT A COMMON LAW
CRIME HERE, THIS IS A
STATUTORY OFFENSE, PUBLIC
WELFARE, WE CAN ARGUE ABOUT
THAT, BUT IT IS CERTAINLY A
STATUTORY OFFENSE.

I DON'T KNOW WHAT CASE
YOU'VE GOT THAT SUPPORTS
THAT BROAD PROPOSITION YOU
JUST STATED --

TELL ME WHAT IT IS.

>> I THINK THE U.S. SUPREME
COURT AND THIS COURT NOTED
THERE ARE CONSTITUTIONAL
LIMITED IN THE LEGISLATURE
DEFINING CRIMES, BUT THERE
IS NO --

THERE ARE NOT TOO MANY CASES
WHERE THE LEGISLATURE
REMOVED MENS REA AS AN
ELEMENT OF THE CRIME --

>> THIS IS WHERE I'M --
THERE ARE SOME APPEAL TO
WHAT THEY'RE SAYING BECAUSE
WE HAVE TO GIVE DEFERENCE TO
THE LEGISLATURE IS THAT THE
MENS REA IS THE POSSESSION
OF THE SUBSTANCE.

SO IT IS NOT A --
IT WOULD BE LIKE, I GUESS,
SAY YOU'RE BEING CHARGED
WITH POSSESSION OF STOLEN
GOODS, I'M ASSUMING WITH
THOSE CRIMES, THE STATE
PROVES YOU HAVE TO KNOW IT

WAS STOLEN, BUT I DON'T KNOW
THAT --
WOULD IT BE WRONG IF THE
LEGISLATURE --
IT'S A BIG PROBLEM, PEOPLE
ARE GETTING STOLEN GOODS,
AND WE CAN'T PROVE THEY KNEW
IT OR NOT, WE NEED TO
ELIMINATE --
YOU DON'T HAVE TO KNOW IT
WAS STOLEN, YOU JUST HAVE TO
POSSESS THE STOLEN GOOD?
>> I THINK THE KNOWLEDGE OF
THE ILLICIT NATURE OF THE
SUBSTANCE.
>> KNOWLEDGE OF POSITION --
POSSESSION OF THE SUBSTANCE
AND THAT THAT SUBSTANCE IS
ILLEGAL.
THE STATE HAS TO PROVE IT
WASN'T BACKING POWDER, THAT
IT WAS COCAINE, CORRECT?
>> RIGHT, BUT THE MENS REA,
THE ENTIRETY OF THE MENS REA
IN THIS STATUTE IS KNOWLEDGE

OF THE PRESENCE OF THE
SUBSTANCE IS ENTIRELY
INNOCENT KNOWLEDGE.

>> WHY IS THAT REQUIRED?

>> IF YOU LOOK AT THE
STATE'S ARGUMENT, AND IN
THIS INSTANCE, ALL YOU HAVE
TO DO TO PROVE YOUR
POSSESSION CASE, IS PROVE
THAT THE PERSON KNOWINGLY,
THAT IS THEY HAD KNOWLEDGE
THEY WERE IN POSSESSION OF
THE SUBSTANCE, AND THAT THE
SUBSTANCE WAS ILLEGAL, WHAT
IS WRONG WITH THAT.

>> IT CRIMINALIZES A WRONG
RANGE OF ACTIVITY, YOUR
HONOR.

>> I DON'T KNOW IF IT'S A
BROAD RANGE BECAUSE OF WHAT
JUSTICE LEWIS IS LAYING,
OVER THE YEARS, MANY
DEFENDERS WOULD LOVE TO SHOW
THAT AN INNOCENT GIRL OR GUY
GOT DUPED BUT THAT'S THE

HORRIBLE MOST OF THE CASES
UNDER THE OLD LAW THE STATE
WOULD GET A CONVICTION.
SO I WOULD LIKE TO SEE THE
CASE WHERE IT WAS AN UNJUST
APPLICATION WHERE THE PERSON
COULD NOT HAVE KNOWN OR
WAS LIKELY NOT TO KNOW IT WAS
ILLICIT.

>> I THINK THE FACTS IN THIS
CASE CASE ARE --

THIS COURT HELD THAT THE
STATE RELIES ON THE
PRESUMPTION OF IT'S OWN
PERIL --

>> LET ME ASK YOU HOW A
PROSECUTOR WOULD GO ABOUT
PROVING THAT SOMEONE KNEW
THAT THE ITEM IN THEIR
POSSESSION WAS ILLICIT --
ILLICIT IN NATURE.

INTENT --

>> SO AN INFERENCE SIMILAR
TO THE ONE THAT EXISTS NOW
IN THE --

>> IT WAS REVERSED.

I THINK IN 193101 PRIOR TO
THAT THERE WAS AN INFERENCE
GOING THE OTHER WAY, AND THE
LEGISLATURE MOVED EVERYTHING
THE OTHER WAY AND KEPT IT --

>> IN A WAY, THAT'S WHAT I
WAS SORT OF SAYING IT'S A
PRACTICAL MATTER.

I'M SURE YOU HAVE SCORES OF
PROSECUTIONS UNDER THIS,
THIS IN A PRACTICAL WAY,
IT'S MUCH DIFFERENT,
ESPECIALLY IF ONCE THEY PUT
ON THAT, YOU KNOW, IT WAS A
FRIEND'S BACKPACK, AND I
THINK THAT WOULD BE ENOUGH
TO SHIFT IT BACK, THAT THE
STATE WOULD STILL THEN HAVE
TO PROVE IT WAS --
THAT THEY KNEW IT WAS
ILLEGAL, YES, WITH THE BENT
OF THE PRESUMPTION, BUT THAT
MAY NOT BE ENOUGH TO GET IT
BEYOND A REASONABLE DOUBT.

THIS PERSON IS MY FRIEND,
GAVE IT TO ME, HE IS A GOOD
GUY, AND I HAD NO REASON TO
KNOW THAT WHAT IT WAS IN
THAT BACKPACK WAS ILLEGAL,
AND THEY HAVE TO PROVE NOT
ONLY POSSESSION OF THE
BACKPACK, BUT THEY KNEW
SOMETHING WAS IN THAT
BACKPACK, AND I THINK THAT
MIGHT BE A SECOND STEP THAT
IS PART OF THE STATE'S
BURDEN OF PROOF.

>> I THINK THAT TURNS UPSIDE
DOWN THE PRESUMPTION OF
INNOCENCE AND FORCES THEM TO
PRESENT SOME EVIDENCE.

>> HOW DID IT NOT BEFORE,
OKAY, IF IT WAS A
PRESUMPTION IF YOU POSSESSED
IT, KNEW IT WAS ILLEGAL, YOU
WOULD STILL HAVE TO PUT ON,
IN ORDER FOR IT TO GO BACK
AND THE STATE NOT BE ABLE TO
WIN, UNDER THE OLD LAW,

DIDN'T THE DEFENDANT STILL
HAVE TO COME FORTH WITH
EVIDENCE TO REBUT THE
PRESUMPTION

>> NO, THE STATE RELIED ON
THE INFERENCE AT IT'S OWN
PERIL, SO THERE WAS A JURY
INSTRUCTION INSTRUCTING ON
THE INFERENCE, BUT ALSO THE
KNOWLEDGE OF THE NATURE IS
AN ELEMENT THAT THE STATE
MUST PROVE BEYOND A
REASONABLE DOUBT.

NOW FOR THEM TO BENEFIT AND
OVERCOME THE PRESUMPTION,
THE INTENDED PRESUMPTION
COUPLED WITH THE AFFIRMATIVE
DEFENSE, THEY HAVE TO PUT
FORWARD SOME EVIDENCE, THE
DEFENDANT COULD SIT SILENTLY
AND RELY ON THE PRESUMPTION
OF INNOCENCE AND THEY COULD
STILL FIND HIM OR HER NOT
GUILTY IF THE STATE DID NOT
PROVE BEYOND A REASONABLE

DOUBT THAT THE DEFENDANT HAD
KNOWLEDGE OF THE NATURE OF
THE SUBSTANCE.

GOING BACK TO --

>> HELP ME UNDERSTAND ABOUT
THE KNOWLEDGE OF THE ILLICIT
NATURE, ARE WE TALKING ABOUT
KNOWLEDGE OF --

WE'RE NOT TALKING ABOUT
KNOWLEDGE OF LAW?

>> NO.

>> SO YOU CAN SEE THAT --

>> I'M NOT ASKING THAT YOU
HAVE TO KNOW THAT COCAINE IS
ILLEGAL, >> SO THIS IS
DIFFERENT FROM LAMBERT IN
THAT SENSE?

>> I THINK --

>> THERE IT WAS KNOWLEDGE OF
THE LAW.

>> I THINK THE SUPREME COURT
CONSTRUED ELEMENTS OF MENS
REA OR SOME TIME OF
KNOWLEDGE ELEMENT --

I THINK THE FOOD STAMP CASE

MIGHT BE A GOOD EXAMPLE OF
THAT WHERE THEY CONSTRUED AN
ELEMENT THAT THE DEFENDANT
WOULD HAVE TO HAVE KNOWLEDGE
OF THE UNAUTHORIZED NATURE
OF --

>> DOESN'T THAT GO BACK TO
THE NATURE OF WHAT IT IS
YOU'RE DEAL E.G. WITH?
BECAUSE WE HAVE SUCH RAMPANT
PROBLEMS WITH ILLICIT DRUGS,
THAT THAT PUT THAT'S IN
ANOTHER CATEGORY AS COMPARED
TO FOOD STAMPS.

YOU COULD TALK, FOR EXAMPLE,
WHAT ABOUT IF THE GOVERNMENT
SHOULD DECIDE THAT HAVING
POSSESSION, YOU NEED NOT
HAVE SPECIFIC INTENT FOR A
NUCLEAR DEVICE.

IT'S BECAUSE OF THE NATURE
OF THE ITEM THAT IT CARRIES
WITH IT, SOMETHING ELSE --

>> RIGHT BUT IN THIS CASE
THERE IS NO REQUIRED

KNOWLEDGE OF THE NATURE OF
THE ITEM AS OPPOSED TO CASES

--

>> IF YOU HAVE POSSESSION OF
A NUCLEAR DEVICE, COULD YOU
HAVE A STATUTE THAT WOULD
MAKE THAT ILLEGAL?

>> I THINK IT WOULD DEPEND
ON --

>> CERTAIN LIABILITY.

>> RIGHT THE PENALTIES AND
SO ON AND SO FORTH, YOUR
HONOR.

>> THAT'S AN INTERESTING
THING BECAUSE WHAT YOU START
TO GO TO IS THEY CAN
CRIMINALIZE BEHAVIOR BUT
THEY CAN'T SET THE SENTENCE
TOO HIGH --

AND THAT'S THE --

THAT'S SORT OF THE RUB, BUT

WHY IS IT, I KNOW YOU

STARTED AND SAID WHY, BUT

I'M DRAWN TO THIS IDEA THAT

WE DON'T HAVE TO REACH THE

ISSUE WHETHER IT WOULD BE
CONSTITUTIONAL WITHOUT THE
AFFIRMATIVE DEFENSE, THE
AFFIRMATIVE DEFENSE IS
THERE, AND GIVES THE TRULY
INNOCENT DEFENDANT, YES IT'S

--

THE ABILITY TO SAY I DIDN'T
KNOW.

NOW, YOU KNOW, AT THAT POINT
THEN, THE QUESTION WOULD BE
WHAT COULD THE STATE PUT ON
TO SAY YOU MUST HAVE KNOWN
BECAUSE YOU'RE A DRUG
DEALER, I MEAN, YOU KNOW YOU
HAVE BEEN CONVICTED OF 20
OTHER DRUG OFFENSES.

DOESN'T THAT SOMEHOW MAKE
THIS A MORE FAIR STATUTE?
AND I UNDERSTAND WHAT YOU'RE

--

AND I GUESS THAT'S MY
QUESTION, IS THEY MUST HAVE
WANTED --

THE LEGISLATURE DIDN'T WANT

THIS TO BE THAT YOU DIDN'T

HAVE AN OUT.

THEY WANTED AN OUT, AND WHY

SHOULDN'T WE GIVE CREDIT FOR

THE LEGISLATURE WANTING THAT

OUT AS PUTTING THE BURDEN ON

THE PERSON ABLE TO SAY IF HE

OR SHE KNEW OR DIDN'T KNOW.

>> I THINK THAT OPENS THE

CONSTITUTIONAL PRESUMPTION

OF INNOCENCE AND FORCES

DEFENDANTS TO PUT ON

EVIDENCE OF THEIR OWN

INNOCENCE.

BEFORE, THE STATE HAD THE

BURDEN THROUGHOUT REGARDLESS

OF IF THERE WAS AN

INFERENCE.

IT NEVER SHIFTED TO THE

DEFENDANT.

NOW THE DEFENDANT IS FORCED

TO TESTIFY OR PUT ON OTHER

EVIDENCE TO PROVE --

BUT DON'T YOU, AGAIN, I

THINK, OR DO YOU BELIEVE

THAT THE STATE HAS TO PROVE
THAT YOU KNEW YOU HAD
POSSESSION OF THE SUBSTANCE?
NOT JUST POSSESSION OF THE
SUIT CASE?

DON'T THEY HAVE TO SHOW THAT
YOU KNEW?

>> RIGHT, I THINK?

JACONA KNOWLEDGE OF THE
PRESENTS AND THE NAME ARE
BOTH ELEMENTS.

>> HEAR WE'RE SAYING THAT AT
LEAST KNOWLEDGE OF THE
SUBSTANCE IS STILL PART OF
THE STATE'S BURDEN SO THEY
HAVE TO PROVE THAT YOU
POSSESSED A SUBSTANCE THAT
WAS ILLEGAL, THEY HAVE TO
PROVE THAT YOU POSSES THE
ILLEGAL SUBSTANCE, BUT YOU
HAVE TO PROVE IT WASN'T
ILLEGAL.

>> BUT I THINK THE KNOWLEDGE
OF THE PRESENCE ELEMENT --
I THINK MENS REA IS CULL

CULL --

KNOWLEDGE >> BUT WHAT WE'RE
SAYING IS ALL OF THE THINGS
WE KNOW ABOUT DRUG OFFENSES,
YOU DON'T USUALLY POSSESS
THESE VERY VALUABLE
SUBSTANCES, THE LEGISLATURE
CAN TAKE NOTICE OF THE FACT
THAT IN THE VAST MAJORITY OF
CASES, A PERSON IS GOING TO
KNOW THAT THEY JUST BOUGHT
FOR \$1000, IT WASN'T AN
OUNCE OR TWO OF BAKING SODA,
THEY BOUGHT HEROIN.

>> I THINK IN THE CURRENT
DAY, IT WOULD BE VERY EASY
FOR SOMEONE TO ACQUIRE
VICODIN OR ANOTHER
SUBSTANCE, I THINK THAT'S AN
EASY EXAMPLE OF HOW THIS
WOULD HAPPEN IN A NORMAL
EVERYDAY SCENARIO.

WITH THAT WE ASK THE COURT
AFFIRM THE TRIAL COURTS
BELOW AND DECLARE IT

INCONSTITUTIONAL AT IT'S

FACE.

THANK YOU.

>> I THINK WHAT'S IMPORTANT

TO RECALL IS WHAT THE COURT

HIT ON PRETTY WELL.

THIS IS AN UNUSUAL

CIRCUMSTANCE.

SINCE 1971 THIS HAS BEEN A

WAR ON DRUGS.

AND EVERY CITIZEN OF THIS

STATE HAS BEEN CALLED TO

DUTY.

IT'S THEIR RESPONSIBILITY TO

KNOW WHEN THEY TAKE POSITION

OF SOMETHING ILLICIT, IT'S

THEIR RESPONSIBILITY TO KNOW

IT'S ILLICIT IT.

>> SO THIS IS A DISTRICT

LIABILITY OF CRIME?

>> I DON'T THINK IT IS, --

IT IS MY OPINION THAT THE

EVENTS ARE JUST AS BAD AS IF

THE STATE HAS TO THE ILL LIT

IT --

ILLCIT NATURE OF THAT, AND
IT'S DIFFICULT FOR THE
DEFENDANT TO SHOW HE DID NOT
KNOW THE ILLICIT NATURE OF
IT.

>> BUT THEY HAVE THE ABILITY
TO DO SO.

>> BUT IT'S THE STATE THAT'S
BRINGING THE CHARGE AGAINST
THE DEFENDANT, IT IS THE
STATE THAT IS SUPPOSED TO
HAVE THE BURDEN OF
DEMONSTRATING THIS DEFENDANT
IS CULPABLE BECAUSE --

>> WE HAVE THAT BURDEN, WE
NEVER LOSE THE BURDEN OF
PROVING THE ELEMENTS OF THIS
CRIME, THEY DO NOT INCLUDE
THE KNOWLEDGE OF THE ILLICIT
NATURE OF THE SUBSTANCE, BUT
WE MUST PROVE EVERY ELEMENT
OF THAT CRIME.

THEN AND ONLY THING --

>> I COME BACK TO MY
ORIGINAL STATEMENT WHICH IS

THE WHOLE ESSENCE, IT SEEMS
TO ME, OF THESE DRUG CASES,
IS THAT THESE ARE IN FACT
ILLICIT SUBSTANCES.

>> YES THEY ARE.

>> SO THE STATE NEVER HAS TO
DEMONSTRATE THAT.

>> YES WE DO --

>> YOU HAVE TO SHOW IT'S AN
ILLEGAL SUBSTANCE, BUT NOT
THAT THE DEFENDANT KNEW IT
WAS AN ILLEGAL SUBSTANCE.

>> EXACTLY BECAUSE THE CRIME
IS THE POSITION OF IT, WE
CANNOT REACH INTO THE MIND
OF A DEFENDANT AND KNOW WHAT
HE KNEW OR DIDN'T KNOW.

THAT INFORMATION IS
EXCLUSIVELY IN THE
POSSESSION OF THE DEFENDANT
HIMSELF.

IT GIVES HIM THE KEY HE
NEEDS TO UNLOCK THAT DOOR,
WE DON'T HAVE THAT ABILITY.

THIS IS A WAR, A TOOL THAT

WE HAVE BEEN GIVEN BY THE
LEGISLATURE.

WE HAVE ARTICULATED IT WITH
NO ROOM FOR THE --
HAVE THEY GONE TOO FAR, HAVE
THEY REACHED THE LINE OF DUE
PROCESS, I THINK THEY HAVE
NOT WE ASK THE TRIAL COURT
BE OVERTURNED AND THE
INFORMATION REINSTATED AND
THE TRIAL MOVES FORWARD,
THANK YOU.

>> WE THANK YOU BOTH FOR
YOUR ARGUMENT TODAY, THAT IS
THE LAST CASE ON OUR DOCKET
FOR TODAY, SO THE COURT WILL
NOW BE ADJOURNED.

>> ALL RISE.