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Donald Eldrenal Jenkins v. State of Florida

SC06-839

....., ALL RISE HEAR YEA HERE YEA
HERE YEA THE SUPREME COURT OF
FLORIDA IS NOW IN SESSION.

ALL THOSE HAVING BUSINESS
BEFORE THIS COURT YOU SHALL BE
HEARD.

GOD SAFER THESE UNITED STATES
THE GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.,,

.
>> GOOD MORNING.

>> LADIES AND GENTLEMEN THE
SUPREME COURT OF FLORIDA,
PLEASE BE SEATED.

>> GOOD MORNING, FRIENDS AND
WELCOME TO THE FLOIDA SUPREME
COURT!!\$!!!!!!!

COURT.

AND THE ARGUMENT CALENDAR FOR
WEDNESDAY, APRIL 25TH.

WE HAVE SOME HONORED GUESTS
WITH US TODAY, WE HAVE WITH
US, A GROUP, FROM SEA WIND
ELEMENTARY HOPE SOUND FLORIDA
THE PRINCIPAL MR. LARRY GREEN
WOULD YOU STAND SO THAT YOU
CAN BE RECOGNIZED, PLEASE.

WE ARE GLAD TO HAVE YOU HERE,
AND I UNDERSTAND THAT YOU
YOUNGSTERS PRESENTED YOUR
ARGUMENTS IN CASES YESTERDAY
AFTERNOON HERE IN THE COURT.
SO WE ARE GLAD YOU ARE HERE.

AND, ALSO, TAKE THIS
OPPORTUNITY, TO WELCOME THE
2007 JUSTICE TEACHING
INSTITUTE THE EDUCATORS FROM
HAVE BEEN SELECTED TO
PARTICIPATE IN THE JUSTICE
TEACHING INSTITUTE WE ARE GLAD
YOU ARE HERE AND WELCOME TO
THE ORAL ARGUMENTS AND WITH
THOSE INTRODUCTORY MATTERS WE
WILL PROCEED OH, TO OUR FIRST

CASE WHICH IS DONALD JENKINS
VERSUS THE STATE OFFED FOR,
MISS WILSON, READY TO PROCEED?

.
>> YOU THIS, YOUR HONOR.

-- THANK YOU YOUR HONOR PLAY
IT PLEASE THE COURT MY NAME IS
CAROL WILSON I REPRESENT
DONALD JENKINS IN THIS APPEAL
FOR CONVICTION AND SENTENCE
FOR POSITION OF COCAINE WITH
INTENT TO SELL.

>> LET ME ASK YOU BEFORE YOU
GET TO THE MERITS OF THE CASE
THE DEFENDANT IN THIS CASE
RECEIVED 17 MONTHS IN PRISON
IS THAT RIGHT.

>> THAT IS CORRECT.

>> AND, THE THAT OCCURRED,
MORE THAN TWO YEARS AGO, I
THINK!!\$\$!!!!!!!

THINK, SO HE HAS BEEN,
RELEASED?

ALREADY BEEN RELEASED.

>> YES, YES.

>> ACADEMIC QUESTION FOR US.

>> NO, IT IS NOT, BECAUSE.

>> AS FAR AS YOUR CLIENT IS
CONCERNED.

>> WOULD HAVE DONE ACADEMIC AT
THE TIME OF THE SECOND
DISTRICT OPINION HE WAS
RELEASED WELL BEFORE.

THAT HE STILL HAS THE
CONVICTION ON HIS RECORD.
AND THIS HE HAD THE RIGHT TO
CHALLENGE THAT TO THE DIRECT
APPEAL PROCESS.

AND IT IS -- STILL PERTAINS TO
HIM AT THIS POINT BECAUSE IT
CAN BE COUNTED IN POINTS
AGAINST HIM SHOULD HE HAVE ANY
FUTURE PROBLEMS WITH THE
CRIMINAL JUSTICE SYSTEM.

I THE ADDRESSES YOUR QUESTION
THANK YOU.

>> COULD YOU GIVE US AEL
THUMBNAIL SKETCH OF THE FACTS
AND CIRCUMSTANCES THAT GAVE
RISE TO THIS CASE.

>> YES, CERTAINLY, WHAT
HAPPENED IS ON THE 15th OF
JANUARY, 2003, 18-YEAR-OLD
MR. JENKINS PULLED INTO A GAS

STATION PARKING LOT, HE HAD BEEN TELEPHONED BY A CONFIDENTIAL INFORMANT, AND, SHOWED UP AT THE PARKING LOT, PRESUMABLY TO ENGAGE IN THE SALE OF COCAINE.

>> JUST STOP ON THAT THE QUESTION IS IN THE OPINION AND TRYING TO FIGURE OUT WHAT -- THE RECORD IT SAYS THAT THERE WAS THAT HE ORDERED A QUANTITY OF COCAINE.

IS THAT -- IS THERE ANYWHERE IN THERE AS TO WHAT -- HOW MUCH COCAINE, WAS HOW WAS GOING TO BE SOLD?

>> I SAID TO MYSELF WOULDN'T IT BE NICE IF WE HAD A RECORD. AND THIS CERTAINLY ONE OF THOSE CASES, BECAUSE THERE IS NOTHING THAT SAYS -- AT VERY -- LITTLE DETAILS OF THIS SUPPOSED TRANSACTIONS ARE KNOWN WE DON'T KNOW WHAT THE AMOUNT WAS WE DON'T KNOW WHAT THE DOLLAR AMOUNT WAS.

>> BUT WHEN THE POLICE OFFICER WHO OVERHEARD THE CONVERSATION!!\$\$!!!!!!!!!!!!!!!!!!!!!! CONVERSATION, WHEN THE CONFIDENTIAL INFORMANT CALLED THE DEFENDANT -- TESTED IT WAS DEFENDANT SAID I WOULD LIKE TO BUY SOME COCAINE, WHAT YOU DO KNOW WHAT THE EXACT WORDS WERE THAT WERE USED?

AND JUST TRYING TO UNDERSTAND IN TERMS OF THE BECAUSE THE TRIAL JUDGE FOUND THAT IT WAS A WHEN HE WAS GIVING THE JUSTIFICATION FOR THE SEARCH, THAT THERE WAS A -- GIVEN THE SMALL QUANTITY INVOLVED.

AND I DIDN'T KNOW HOW -- SOMEBODY CAME UP WITH THAT THERE WAS SMALL QUANTITY OR LARGE QUANTITY WHETHER THIS IS TRAFFICKING COCAINE OR --

>> THERE WAS NOTHING FOR THE TRIAL COURT TO THERE WERE NO FACTS PRESENTED TO HIM, EXCEPT WHAT HE LEARNED AFTER THE WHOLE THING WAS OVER.

>> OKAY IF YOU WILL GO AHEAD

AND FINISH, JUSTICE ANSTEAD'S QUESTION.

>> CERTAINLY.

HE PULLED INTO A COMMERCIAL TEXACO GAS STATION, WHERE THERE WERE ALSO OTHER BUSINESSES THAT WERE OPEN AT THAT TIME.

AND WHEN HE PULLED IN IMMEDIATELY!!!!!!!!!!!!!!

IMMEDIATELY, THE POLICE PULLED IN, AND TOOK HIM OUT OF THE CAR, AND HAND CONSERVATED HIM AND RE-- HAND CUFFED HIM REMOVED HIM AT GUNPOINT.

>> ONE QUESTION AS YOU FOLLOW THROUGH, WHAT LEVEL OF CAUSE DID LAW ENFORCEMENT HAVE AT THAT POINT IN YOUR VIEW?

>> IN MY VIEW THEY DID NOT HAVE THEY HAD REASONABLE SUSPICION BUT DID NOT HAVE PROBABLE CAUSE TO REMOVE HIM AT THAT POINT.

>> GIVE US, THOUGH, AS YOU ARE DESCRIBING THE FACTS, OF THE ARRIVAL OF THE DEFENDANT, AT THE GAS STATION, WHAT HAD OCCURRED!!!!!!!!!!!!!!

OCCURRED, BETWEEN THE CI, AND THE POLICE PRIOR TO YOUR CLIENT ARRIVING AT THE GAS STATION?

>> ACCORDING TO OFFICER DANIEL, HER DEPARTMENT TAMPA POLICE DEPARTMENT HAD BEEN CONTACTED BY A CONSERVATIVE INFORM -- CONFIDENTIAL INFORMANT OR CI VOLUNTEERED TO WORK FOR HER HAD DONE PRIOR WORK FOR THE DEPARTMENT IN THE PAST WLA SHE TERMED PAGEOUTS IN A PAGEOUT THE PERSON, CALLS SOMEONE, AND EVIDENTLY HAS -- COMMENT TO SOME KIND OF TRANSACTION THE NATURE OF THE PRIORS TRANSACTION AND THIS TRANSACTION WERE NOT KNOWN WHAT WAS NONE THE SEV HEARD ONE SIDE OF A PHONE CONVERSATION!!!!!!!!!!!!!!

CONVERSATION, AND, THEN, CONTACTED SOMEONE AND THEN THE CONFIDENTIAL INFORMANT SAID

THE PERSON WILL BE HERE, AT THIS PARTICULAR GAS STATION, IN 15 MINUTES.

>> WASN'T THERE SOME MORE WHAT OTHER DETAILS, DID --

>> THE ONLY DETAIL THAT THEY HAD WAS A CAR A VAGUE CAR DESCRIPTION BROWN BOXY CAR AND A YOUNG BLACK MALE AND SOMEONE KNOWN AS D.

THAT WAS BASICALLY IT.

>> BUT YOU DO AGREE AND YOUR CLIENT AGREES THAT A CALL WAS IN FACT MADE ON THE \$OFFICER'S CELL TONE TO HIM?

-- CELL PHONE TO HIM.

>> THERE WAS WHAT THE FACTS PROVE WAS THAT WHEN THE CELL PHONE WAS REMOVED FROM MY CLIENT!!\$!!!!!!!

CLIENT'S CAR, THE OFFICER A NUMBER WAS ON THAT CELL PHONE THAT IS WLA SHE TESTIFIED DO.

>> BEFORE OR AFTER THE SEARCH?

>> THAT WOULD HAVE BEEN, AFTER HE HAD BEEN REMOVED AT

GUNPOINT!!\$!!!!!!!

GUNPOINT.

>> BUT NO SEARCH YET?

>> OR DOES THAT MAKE A DIFFERENCE?

I DON'T THINK THE RECORD MY RECOLLECTION OF THE RECORD IS THAT IT IS NOT CLEAR.

>> ANSWER JUSTICE WELLS' QUESTION, PLEASE.

>> THE WASN'T THE TESTIMONY THAT THE CALL WAS MADE BY THE INFORMANT IN THE PRESENCE OF THE PLIS OFFICER?

-- POLICE OFFICER?

>> YES, OKAY SO THE POLICE OFFICER HAD A SITUATION IN WHICH THERE WAS A CALL MADE, AND ARRANGEMENT MADE TO MEET IN 15 MINUTES.

>> THAT IS CORRECT.

>> 15 MINUTES -- AND THE DESCRIPTION OF THE CAR THEY SHOWED UP WHERE IT WAS DESIGNATED THAT THE MEETING WAS TO TAKE PLACE, THE CAR SHOWED UP, AND THERE WAS THIS DEFENDANT.

THAT IS THAT IS WHAT HAPPENED;
RIGHT?

.
>> THAT IS CORRECT.
ONE WALKED ACROSS SAID THAT IS
HIM THAT IS HIM THAT IS HIM;
RIGHT?

.
>> WELL, HE LOOKED AT THE CAR,
AND SAID TO THE POLICE THAT IS
HIM THAT'S HIM AND THEN
OFFICER DANIEL SAID, SHE
WANTED TO MAKE SURE.
AND SO SHE WANTED TO SECURE
HIM, WHILE THE CONFIDENTIAL
INFORMANT WENT BACK TO THE
CORPORAL!!\$\$!!!!!!!!!!!!!!
CORPORAL, AND SAID, AND
CONFIRMED THE IDENTIFICATION.
>> YES, THERE IS ONE OTHER
FACT I WANT YOU TO ADDRESS ITS
SIGNIFICANCE I GUESS WE ARE
STILL HERE WHETHER THIS WAS
PROBABLE CAUSE TO ARREST WHAT
-- IT WAS ARREST ON WHAT CRIME
THE SIGNIFICANCE THAT THE
POLICE SEV -- OFFICER KNEW
THIS WAS AN AREA THAT WAS
KNOWN FOR DRUGS.

IS NOT THAT ONE MORE FACT THAT
WE'VE GOT TO EVALUATE IN TERMS
OF THE TOTALITY OF THE
CIRCUMSTANCES.

>> THAT IS ONE MORE FACT THAT
WOULD BE EVALUATED UNDER A
PROBABLE CAUSE SITUATION.

>> SO WHAT IS MISSING?
WE HAVE A CONFIDENTIAL
INFORMANT WHO TALKED TO THE
OFFICER, DESCRIBED MAYBE IN
VAGUE TERMS IN YOUR -- WHO THE
PERSON IS GOING TO BE, HAS
DESCRIBED THE CAR, TOLD HER
BASICALLY HE IS GOING TO BE HE
IS GOING TO SELL SOME DRUGS.
WHAT IS MISSING HERE FOR
PROBABLE CAUSE?

>> WHAT IS MISSING HERE IS THE
ACTUAL TRANSACTION ITSELF.

>> YOU DO REALLY HAVE TO HAVE
THAT?

I MAINTAIN PROBABLE CAUSE,
REALLY IS A PROBABILITY OR A
SUBSTANTIAL CHANCE THAT

CRIMINAL ACTIVITY IS GOING TO TAKE PLACE.

AND DO YOU HAVE TO HAVE THE ACTUAL SHOWING OF THE CRIMINAL ACTIVITY IN ORDER TO HAVE PROBABLE CAUSE.

>> YOU DON'T HAVE TO IT -- YOU DON'T HAVE TO HAVE IT IN EVERY CASE JUSTICE BUT I BELIEVE IT IS REQUIRED IN THIS ONE BECAUSE OF THE OTHER UNKNOWNNS THAT PRECEDED THE SEIZURE OF MR. JENKINS.

>> DOES AT THE OTHER PREDICTABLE CONDUCT, TAKE US INTO A DIFFERENT LEVEL, THIS IS NOT JUST A CALL OFF THE STREET OR JUST A THAT THIS PERSON DEALS DRUGS BUT GAVE PREDICTABLE CONDUCT, THE EXACTLY WHAT WAS GOING TO HAPPEN HAPPENED.

DOESN'T THAT CHANGE IT?

>> WELL, HE MADE A PHONE CALL, AND SOMEONE SHOWED UP. AND I THINK AT THAT POINT THE POLICE NEEDED TO INVESTIGATE. AND OUR VIEW THAT IS NOT PROBABLE CAUSE.

AND I WOULD LIKE TO MOVE FORWARD TO MY OTHER ARGUMENTS, IF I MAY, AS TO WHAT HAPPENED AFTER HE WAS REMOVED.

BECAUSE I THINK, I WOULD LIKE TO USE MORE OF MY TIME CERTAINING THE STRIP SEARCH STATUE IF THAT IS ACCEPTBLE

>> LET ME ASK YOU RELATING TO THAT WHAT DID THE COURT DETERMINE, IF THE COURT DID DETERMINE, AT WHAT POINT YOUR CLIENT WAS ARRESTED, WAS IT AT THE POINT WHERE THEY TOOK HIM OUT OF THE CAR AND HANDCUFFED HIM OR WAS IT ADVOCATE THEY FOUND THE DRUGS.

>> WELL, THE -- AFTER.

>> THE TRIAL COURT DIDN'T MAKE A DETERMINATION, AS TO THAT PARTICULAR FACT.

>> WHAT DID THE POLICE TESTIFY TO THE THE POLICE WERE CONFLICTED ON THAT.

AND, THE POLICE, THE FIRST --

THE LEAD SEV DANIEL SAID SHE HAD A REASONABLE SUSPICION WHEN THEY TOOK HIM OUT OF THE CAR, AND THEN THE NEXT OFFICER, WHO CAME -- I BELIEVE SAID HE THOUGHT THEY HAD PROBABLE CAUSE, TO ABOUT AN ATTEMPTED SALE.

>> WHICH IS INTERESTING JUST ON THAT, BECAUSE IF THERE IS AS YOU HAD SAID IF REASONABLE SUSPICION I DON'T KNOW WHAT THE \$\$\$STATE'S POSITION IS GOING TO BE BUT THE CASE WAS PRETTY CLEAR, THAT THEY COULDN'T DO WHAT THEY DID -- FOURTH AMENDMENT, DIDN'T REALLY -- SO LET'S GO GOT TO ASSUME I THINK AT THIS POINT THERE WAS PROBABLE CAUSE TO ARREST, TO GET TO THE NEXT POINT.

>> THE NEXT POINT WE HAVE TO ASSUME THAT THOSE THINGS HAD BEEN RESOLVED UNFAVORABLY TO MY CLIENT.

CORRECT.

METAPHOR TO GO THE NEXT POINT WE HAVE TO CONSIDER THE SEIZURE ITSELF THAT OCCURRED. AND I WOULD LIKE TO FOCUS MY BRIEF TIME ON THE STRIP SEARCH STATUTE BECAUSE I BELIEVE I ARGUED THE FOURTH AMENDMENT A PORTION SUFFICIENTLY M MY BRIEF.

>> -- AS YOU BEGIN THAT, ANALYSIS!!\$\$!!!!!!!!!!!!!! ANALYSIS, WOULD YOU TELL US, HOW ARTICLE ONE SECTION 12, PLAYS INTO THIS, BECAUSE UNDER THAT CONSTITUTIONAL PROVISION, WE ARE SUPPOSED TO INTERPRET FOURTH A.M. ISSUES IN CONFORM!!\$\$!!!!!!!!!!!!!! CONFORMITY WITH THE UNITED STATES SUPREME COURT.

AND SO, IF -- IS A VIOLATION OF THAT STATUTE A CONSTITUTIONAL VIOLATION, IF NOT, ONE THAT HAVE BEEN A VIOLATION UNDER FEDERAL LAW?

>> IT IS NOT A VIOLATION UNDER THE CONSTITUTION JUST BECAUSE IT IS A STATUTORY VIOLATION THE CONSTITUTION ACTS AS A

LARGER STATUTE THAT CONTROLS
THE -- THE OTHER STATUTES THAT
ARE ENACTED BY THE LEGISLATURE
AFTERWARDS THAT ARE MORE
SPECIFIC, BUT THE STRIP
SEARCH -- SO AS FAR AS THE
CONSTITUTIONAL ISSUE IN HER
STATE, WE HAVE THE MUTUALITY --
MUTUALITY -- PROVISION I GUESS
IT IS CALLED THAT SAYS THAT WE
HAVE TO HOLD THE SAME AS THE
FEDERAL COURTS DO.

SO IT IS A FEDERAL IF FEDERAL
CAUSES SAYS THIS FOURTH
AMENDMENT VIOLATION THEN WE
HAVE TO AS WELL AND IF THEY
SAY IT IS NOT THEN WE CAN'T.

>> GO AHEAD AND ADDRESS WHAT
YOU REALLY WANT TO TALK TO US
ABOUT.

>> WELL, CONCERNING THE STRIP
SEARCH STATUTE, WHAT HAPPENED
DISASTER COURT THE DISASTER
COURT FOUND THAT -- DISTRICT
COURT FOUND WHAT HAPPENED HERE
WHEN MR. JENKINS WAS PULLED
OUT OF THE CAR THE POLICE TOOK
HIM IN THIS PUBLIC PLACE, THEY
SEARCHED HIM, IN THE PATDOWN
WERE NOT ABLE TO FIND ANYTHING
WERE NOT ABLE TO FIND
ANYTHING, REGARDING
CONTRABAND, ANY DRUGS ON HIS
PERSON OR IN THE CAR.

>> THEY DID FIND 641 DOLLARS!!\$641 IN CASH.
CORRECT.

>> THEY DID FIND CASH ON HIM.
THAT IS TRUE.

BUT THEY DID NOT FIND ANYTHING
THAT TIED HIM DIRECTLY TO
SELLING DRUGS.

AND THERE WERE NO DETAILS
KNOWN THAT THERE WAS GOING TO
BE A DRUG SALE AT THIS
LOCATION, ONLY THAT THIS
PERSON WAS GOING TO APPEAR.

AND SOMETIMES, THESE MATTERS
HAPPEN IN OTHER LOCATIONS, A
LOT OF THINGS THAT REALLY
WEREN'T KNOWN ABOUT HOW THIS
WAS SUPPOSED TO TAKE PLACE.
BUT AT ANY RATE --

>> ARE YOU SAYING THERE WAS NO
DISCUSSION BETWEEN THE CI, AND

THE OFFICER, THAT THIS IS WHAT THAT A DRUG TRANSACTION WAS GOING TO TAKE PLACE?

>> WELL, THERE WAS IN A RECORD THERE IS GENERAL LANGUAGE, BUT I DON'T KNOW WHAT THAT REALLY THE PARTICULARS WERE NEVER SPELLED OUT IN THE RECORD. THAT IS MY ONLY POINT.

>> OKAY.

>> CAN YOU DESCRIBE PARTICULAR!!\$\$!!!!!!!!!!!!!!!!!!!!!! PARTICULARLY HOW THE DRUGS WERE FOUND BECAUSE YOU DESCRIBE IT AS A STRIP SEARCH, THE WAY IED READ IT, IT WASN'T NECESSARILY A STRIP SEARCH AND WHEN YOU DESCRIBE IT, IT SEEMS TO ME THAT THE TRIAL COURT BELIEVED THE POLICE SEV'S VERSION SO COULD YOU DESCRIBE MA WHAT THE POLICE OFFICERS TESTIFIED TO AS TO HOW THE DRUGS WERE FOUND?

>> THE DRUGS WERE FOUND WHEN THE OFFICER WHO HAD PATTED HIM DOWN COULDN'T FIND ANYTHING, AND HE WAS GIVEN PERMISSION BY HIS SERGEANT TO THEN LOOK INTO TO ACTUALLY HE WAS TOLD, ON THE RECORD TO DO WHAT HE NEEDED TO DO.

AND WHAT HE DID IS HE PULLED BACK THE BOXER SHORTS THE UNDERWEAR MR. JENKINS WAS WEARING WHEN HE LOOKED INTO HIS PRIVATE PARTS IN THIS BUTTOCKS!!\$\$!!!!!!!!!!!!!!!!!!!!

BUTTOCKS, THERE HE SAW TWO INCH PLASTIC BAG THAT WAS STICKING UP.

IN HIS BUTTOCKS AND AT THAT POINT, HE ROOECHD INTO THIS UNDERWEAR!!\$\$!!!!!!!!!!!!!!!!!!!! UNDERWEAR, AND TO THE CRACK OF HIS BUTTOCKS AND PULLED OUT THE PLASTIC BAG.

>> SO WAY YOU DESCRIBE IT THEY DIDN'T PULL DOWN HIS PANTS OR ANYTHING LIKE THAT?

>> WELL, UNDER THE STATUTE --

>> I UNDERSTAND, THAT YOU HAVE A STATUTORY ARGUMENT I JUST WANT TO KNOW FACTUALLY WHAT HAPPENED THEY DID NOT PULL

DOWN HIS PANTS.

>> THE RECORD ACCORDING TO THE POLICE HE DIDN'T SAY HE PULLED DOWN HIS PANTS HE SAID HE PULLED HIS PANTS BACK AND LOOKED INTO HIS BUTTOCKS. AT THAT POINT.

>> HOW DOES THAT FIT WITH THE STATUTORY VIOLATION IN YOUR VIEW.

>> BECAUSE THE STATUTE SAYS IF YOU REARRANGE CLOTHING AND LOOK IN AND LIFT THE SPECIFIC PRIVATE PARTS THAT ARE PROTECT!!\$\$!!!!!!!!!!!!!! PROTECTED.

AND THIS IS ONE OF THOSE PRIVATE PARTS.

>> I HAVE A -- SINCE I WAS THE AUTHOR OF THE ACT -- OF COURSE 11 YEARS HAVE GONE BY LEGISLATURE DIDN'T CHANGE ANYTHING -- MY QUESTION TO YOU, IS -- IS THE EXCLUSIONARY RULE IF THERE IS A STATUTORY VIOLATION DOES IT IS THERE ON DEPEND ON THE FLAG RANSY OF THE VIOLATION, AND, OR, SAY THIS WAS AN ISSUE JUST AS IT WASN'T WRITTEN OR -- BUT EVERYTHING ELSE WERE A -- WAS DONE APPROPRIATELY, AND IF THAT IS OR IS IT JUST ANY VIOLATION OF THE STATUTE WOULD GIVE RISE TO THE APPLICATION OF A EXCLUSION --

>> WELL, I DON'T THINK THAT IS THIS CASE I DON'T THAT IS NOT MY POSITION TODAY, BECAUSE IT IS NOT REQUIRED FOR MY CLIENT. IN THIS CASE, THERE WAS IT WAS PUBLIC SEARCH AND I THINK THAT IS THE GIST OF THE MAIN OFFENSE HERE.

>> BUT THAT IS WHERE YOU GET BACK TO YOUR CONSTITUTIONAL ARGUMENT AS TO WHEN UNDER THE OTHER CASES THAT IF WE GO BACK, TO THE STATUTORY INTENT THERE IS GOOD FAITH, WHERE DOES THAT ALL FIT IN IN THE STATUTORY --

>> WELL THE DS CASE A LOT OF THESE OTHER STRIP SEARCH SITUATIONS OCCUR IN AN

INSTITUTION, WHEREAS WE HAVE THIS OCCURRING IN A PARKING LOT, WHERE THERE IS BUSINESS GOING ON.

AND I THINK, CERTAINLY, YOU HAVE LEGISLATION THAT IS DESIGNED NOT ONLY TO PROTECT THE ACCUSED, AND TO TELL THE POLICE HOW TO PROCEED IN THIS VERY PRIVATE WAY, BUT WE HAVE WILLING -- LEGISLATION THAT IS DESIGNED TO PROTECT THE PUBLIC, BECAUSE THE PUBLIC DOES NOT WANT TO GO GET GAS, AND SEE THE POLICE LOOKING INTO \$PEOPLE'S UNDERWEAR, AND DOING THESE REALLY OFFENSIVE ACTIVITIES!!\$\$!!!!!!!!!!!!!!!!!!!! ACTIVITIES, UNLESS THERE IS AN EXINTELLIGENCEY, UNLESS THAT MEANS THERE IS, HE AN MESSAGE SAFETY OF THE PERSON WHO IS BEING SEARCHED.

>> AGAIN WHEN YOU TALK ABOUT OFFENSIVE ACTIVITIES I COULD SEE IF THIS PERSON'S PANTS WERE PULLED DOWN, IN PLAIN VIEW OF EVERYBODY AROUND, BUT THAT IS NOT WHAT HAPPENED HERE, SO GET BACK TO JUSTICE PARIENTE!!\$\$!!!!!!!!!!!!!!!!!!!!

PARIENTE'S QUESTION ARE YOU ARGUING EVEN DE MINIMIS VIOLATION OF THE STATUTE REQUIRES EXCLUE SHOURN DOES IT HAVE TO BE A SUBSTANTIAL VIOLATION RECOGNIZING THAT SOME SUBSTANTIAL VIOLATIONS ARE THEN GOING TO BE UNCONSTITUTIONAL WOULD REQUIRE, THE EXCLUSION ANYWAY, SO, IS IT A DE MINIMIS VIOLATION, PROVIDES EXCLUSION OR WINDOW BETWEEN DE MINIMIS AND CONSTITUTIONAL VIOLATION THAT REQUIRES EXCLUSION?

>> I BELIEVE THAT I DON'T BELIEVE THAT IS DE MINIMIS CASE, AND I DON'T I THINK IT IS OFFENSE\$\$!!!!IIVE WHAT HAPPENED I SUPPOSE THAT IS VERY -- WHERE WE CAN JUST DISAGREE I DON'T THINK ANYBODY LOOKING INTO \$\$ SOMEBODY'S UNDERWEAR IN PUBLIC

IS ACCEPTABLE AND I THINK THE LEGISLATURE HAS SPELLED THAT OUT IN THE STATUTE.

>> THERE IS A DIFFERENCE BETWEEN SAYING IT IS ACCEPTABLE!!\$\$!!!!!!!!!!!!!! ACCEPTABLE, AND SAYING THAT THE EVIDENCE THAT WAS SEEN THERE HAD MUST BE EXCLUDED THAT IS EVERYBODY RECOGNIZES THAT THAT IS A DRASTIC MEASURE, THAT IS REQUIRED, WHEN THE STATE, VIOLATES, SOMEONE!!\$\$!!!!!!!!!!!!!! SOMEONE'S CONSTITUTIONAL RIGHTS TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES!!\$\$!!!!!!!!!!!!!! SEIZURES, HERE, THERE -- IF WE FIND THAT THERE IS NO CONSTITUTIONAL VIOLATION ALL YOU HAVE IS A VIOLATION OF A STATUTE.

>> WELL, THE COURTS HAVE FOUND, AND THE COURTS THE LAWS OF THIS COURT HAVE FOUND WHAT STATUTES ESPECIALLY THOSE THAT ARE EXPOUNDING UPON, CONSTITUTIONAL RIGHTS, THAT THEY WILL EXCLUDE EVIDENCE, BECAUSE YOU HAVE -- THEN, OTHERWISE OF YOU THE STATE, COMING IN, AND MAKING A LAW, THEN OF YOU THE STATE VIOLATING THE LAW, THEN YOU HAVE THE STATE TRYING TO USE OUR COURT SEARCH -- SYSTEM AND PRESENT EVIDENCE THAT VIOLATES THE LAWS THEY DIDN'T SEE FIT TO FOLLOW.

>> THOSE ARE THE SAME REMEDY APPLY UNDER A STATUTORY ANALYSIS AS WOULD APPLY TO JUSTIFY THE EXCLUSIONARY RULE? UNDER A CONSTITUTIONAL VIOLATION?

DO WE NOT HAVE A DIFFERENT STANDARD THAT THE STATUTE MUST LOOK TO SEE TO THAT TO SEE WHAT THE REMEDY IS OR IS IT ALSO A BLANKET EXCLUSION IF IT IS JUSTIFIED THE OR SATISFIES THE CONSTITUTIONAL VIOLATION.

>> WELL IT IS A CONSTITUTIONAL

VIOLATION THE EVIDENCE IS
EXCLUDED!!\$\$!!!!!!!!!!!!!!
EXCLUDED.

--

>> BY -- FOR THE REASONS YOU
STATED BUT IF THERE HAPPENS TO
BE JUST A STATUTORY VIOLATION,
IS THE REASONING THE SAME AND
IF SO WHY WOULD OO WHY SO?

>> THE REASONING IS NOT THE
SAME, BUT THE REASONING,
REGARDING HOW WE HAVE ARE YOU
GO TO GO DO WITH THE STATUTE
IF WE DON'T EXCLUDE THE
EVIDENCE?

WE HAVE, HERE, A PARTY THE
STATE, THAT IS COMING TO THE
COURT, ESSENTIAL WITH UNCLEAN
HANDS BECAUSE THEY'VE GOTTEN
EVIDENCE THAT VIOLATES THE
STATUTE.

>> BUT --

>> THE LEGISLATURE DIDN'T
PROVIDE THAT AS A REMEDY THE
LEGISLATURE DIDN'T PROVIDE IN
THIS.

>> THEY DIDN'T EXCLUDE IT THEY
DIDN'T EXCLUDE IT EITHER
JUSTICE SO HERE WE ARE, YOU
ARE --

>> BUT THAT BRINGS US BACK TO
WHETHER THE EXCLUSIONARY RULE
ESPECIALLY NOW UNDER HUDSON IN
OUR OBLIGATION TO FOLLOW THE
UNITED STATES SUPREME COURT ON
FOURTH AMENDMENT QUESTIONS
THAT THE EXCLUSIONARY RULE IS
TO BE USED ONLY IN NARROW AND
EGREGIOUS CIRCUMSTANCES.
ISN'T THAT RIGHT IS NOT THAT
WHAT HUDSON SAYS.

>> HUDSON IS A FOURTH
AMENDMENT CASE, JUSTICE, AND
IF YOU LOOKING TO INTERPAT THE
TIME A STATUTE, THIS COURT HAS
NOT INTERPRETED STATUTES TO
EITHER EXCLUDE THE USE OF THE
EXCLUSIONARY ROOM OR NOT TO
ESPECIALLY WHEN THE STATUTE
DOESN'T SAY ANYTHING ABOUT IT
WHICH WHAT IS OCCURRED IN THIS
CASE.

>> I WANT YOU TO SAVE SOME OF
YOUR TIME YOU ARE ALMOST OUT

WITH OUR QUESTIONERS.

>> I WILL RESERVE FINE -- FIVE
MINUTES FOR REBUTTAL THANK
YOU!!\$\$!!!!!!

>>.

>> PLAY I MAY IT PLEASE THE
COURT KATHRYN KLEIN, ATTORNEY \$\$
TORN'S OFFICE CRIMINAL APPEAL
-- YEAH --

>> -- IS THIS A SEARCH
INCIDENT TO LAWFUL ARREST OR
WAS THIS A SEARCH DUE TO
EXIGENT CIRCUMSTANCES?

>> THE STATE'S POSITION IS
THAT THIS WAS A SEARCH,
INCIDENT TO A LAWFUL APREST.

>> WHAT WAS HE ARRESTED FOR.

>> HE WAS ARRESTED FOR
POSSESSION WITH INTENT TO
DELIVERER.

>> WAIT A MINUTE -- IT WILL
SEEMS YOU ARE PUTTING THE CART
BEFORE THE HORSE IF YOU ARE
SAYING THIS IS A SEARCH
INCIDENT TO LAWFUL ARREST AND
HE WAS ARRESTED BEFORE THE
DRUGS WERE FOUND, SO IT
COULDN'T HAVE BEEN ARRESTED
FOR POSSESSION OF DRUGS.
HE HAD TO BE ARRESTED FOR
SOMETHING ELSE, BECAUSE THEY
FOUND IT ADVOCATE HE WAS
ARRESTED ACCORDING TO YOUR
POSITION.

>> UNDER CASES FROM THIS
COURT, INCLUDING BUTLER,
FLORIDA SUPREME COURT DECISION
1995 -- -- RELIABLE INFORMANT
MAY CONSTITUTE CAUSE FOR
ARREST OR SUFFICIENTLY
ACCURATE TO LEAD OFFICER TO
ARREST -- A SUSPECT.

>> ARREST FOR WHAT YOU CAPITAL
ARREST FOR POSSESSING
SOMETHING UNTIL YOU FOUND WHAT
HE POSSESSED MAYBE ARRESTED
FOR CONSPIRACY TO DISTRIBUTE
COCAINE, FOR ATTEMPT TO
DISTRIBUTE BUT SEEMS HE CANNOT
HAVE BEEN ARRESTED FOR
POSSESSION OF COCAINE, BEFORE
THE COCAINE WAS FOUND.

>> WELL, IN BUTLER THERE WAS A
SIMILAR SITUATION, IN WHICH A

NONCI DESCRIBED -- A PERSON WHO WOULD BE A SPECIFIC LOCATION, ON A STREET CORNER, AND A SPECIFIC MANNER, WHICH HE PACKAGED HIS COCAINE. AND ON THIS DESCRIPTION, PACKAGING THE ADDRESS -- THE OFFICER, WAS APPROACHING THINK DEFENDANT, AND THEN, HE STOPPED AND WENT THE OTHER WAY, AND THEN THE OFFICER, PROCEEDED TO STOP AND SEARCH HIM.

AND THE SUPPORT FOUND THERE WAS PROBABLE CAUSE TO ARREST IN THAT CASE.

>> I GUESS THIS IS THE STATE -- IT SEEMS TO ME, AND THIS IS WHERE I BECAME CONCERNED, AND I -- BUTLER IS OUT THERE I THINK THAT IS THE TEST CASE -- OFFICER DANIELS TESTIFIED THE APPELLANT WAS SUSPECT IN A NARCOTICS INVESTIGATION AND MAY HAVE REASONABLE -- I REALIZE WHAT THE OFFICERS SAY IS NOT -- STANDARD -- TESTIFIED THEY HAVE TO THE THEY HAD PROBABLE CAUSE HE WAS ABOUT TO COMMIT A FELONY, ON A -- BUT, THEY WERE JUST DETAINING HIM, IT CERTAINLY, CRITICAL ABOUT THE LAWFULNESS OF THE SEARCH IF THERE WAS NO PROBABLE CAUSE TO ARREST HIM BUT ONLY WITH -- YOU DO AGREE THAT IS AN IMPORTANT --

>> IT IS IMPORTANT THAT THERE WAS -- WHO TO HAVE THE RIGHT TO DO THE FULL SEARCH INSTANT, TO ARREST, WE HAVE TO HAVE PROBABLE CAUSE TO ARREST, AND THE STATE WOULD ASSERT THAT THE POLICE OFFICERS, ALTHOUGH KNOWLEDGEABLE IN THEIR PRO SESSION AREN'TES INLY THE ONES TO MAKE --

>> IT IS SORT OF LIKE WHAT WAS IN HER MIND, BECAUSE IT THEN THIS IDEA THAT HE COULD BE -- WHAT LETS ASSUME THAT -- HOW DO YOU HAVE POSSESSION OF COCAINE IF YOU DON'T FIND COCAINE LETS ASSUME THEY

ARRESTED HIM FOR IT.
AND THEN, THEY NEVER FOUND THE
COCAINE.

OR IS THERE THE CRIME OF
POSSESSION OF YOU KNOW,
POSSESSION OF COCAINE OCCUR?

>> IT WOULD BE AN ATTEMPT, TO
DELIVER COCAINE.

THERE WAS CERTAINLY EVIDENCE
THAT CI HAD CONTACTED THIS
DEFENDANT, WITH THE INTENT TO
PURCHASE COCAINE?

>> HOW MUCH COCAINE?

IS THAT --

>> IN THE TRANSCRIPT THE
OFFICERS JUST SAY A QUANT.
A QUANTITY, LATER IF YOU WANT
TO KNOW HOW MUCH WAS RECOVERED
FROM HIM, IT WAS 5.9 GRAMS,
ACCORDING TO THE ARREST
AFFIDAVIT!!\$\$!!!!!!!!!!!!!!!
AFFIDAVIT.

>> WAS THERE ANYTHING ABOUT
THE IDEA AND YOU KNOW AGAIN
THIS IS -- ALWAYS -- TALK
ABOUT PRIVATE PARTS, YOU KNOW,
THAT -- THAT OFFICERS KNEW
THAT WHEN HE PEOPLE ARE GOING
TO HAVE A STREET SALE THAT THE
LIKELY PLACE THAT THEY ARE
GOING TO KEEP THE DRUGS IS IN
THEIR BUTTOCKS?

>> WELL THERE WAS NO TESTIMONY
SUPPRESSION HEARING CONCERNING
THAT, BUT, FROM READING THE.

>> HE CASES I HAVE -- RESEARCH!!\$\$!!!!!!!!!!!!!!!

RESEARCHING FOR THIS CASE,
KA-- CASE THAT DOES SEEM TO BE
A COMMONPLACE -- COMMONPLACE
WHERE DEFENDANTS STORE THEIR
-- SUPPLIES, FOR SELLING DRUGS
IT IS CONCEALED, AND THAT IS
NOT OBVIOUS TO THE PUBLIC.

>> BUT AS YOU SAID THERE IS NO
EVIDENCE IN THIS RECORD, THAT
THESE OFFICERS BELIEVE DZ THAT
THIS WAS A PLACE WHERE DRUGS
ARE COMMONLY KEPT.

>> WELL IN THIS RECORD, WHAT
HAPPENED IS THEY -- THEY HE
WAS COMING TO THE SCENE TO
SELL COCAINE.

>> --

>> ANOTHER ISSUE, IS WHAT

THERE SEEMS TO BE SOME GAP IN THIS RECORD, AS TO WHAT THE CONVERSATION WAS, BETWEEN THE CI, AND THIS PERSON CALLED D, AND WHAT THE CONVERSATION WAS BETWEEN THE CI, AND THE OFFICER.

SO WHERE DO WE HAVE -- AND WHAT TESTIMONY BY HUMAN SAYS THAT THIS -- BY WHOM SAYS THIS WAS GOING TO BE A DRUG DEAL.

>> THE TESTIMONY WAS THE OFFICER, OFFICER DANIEL, PROVIDED THE CI WITH HIS EXCUSE ME HER CELL PHONE THAT SHE OVER HEARD THE \$CI'S SIDE OF THE CONVERSATION BUT DID NOT OVER HEAR --

>> WHAT WAS THE \$CI'S SIDE OF THE CONVERSATION WAS SHE ACTUALLY SAY WHAT THAT SIDE OF THE CONVERSATION WAS?

>> I DON'T RECALL FROM THE RECORD EXACT TESTIMONY AS TO HIS YOU KNOW, EXACT WORDS -- IN THE CONVERSATION.

>> -- TO KNOW EVEN WHAT HE WAS SAYING, SO THAT WE KNOW THAT IN FACT A DRUG DEAL WAS BEING TRANSACT!!\$\$!!!!!!!!!!!!!! TRANSACTED, THAT ONE WAS GOING TO BE TRANSACTED.

>> THERE WAS TESTIMONY THAT SHE OVER HEARD HIM ARRANGE\$\$!!ING A DRUG BUY.

AND THAT AND THAT THEN HE REPORTED THAT THE CI WOULD BE COMING TO THAT LOCATION, AT THE TEXACO STATION DRIVING A FOUR-DOOR BROWN BOXY CHEVY, AND THAT IT WOULD HE WOULD BE COMING IN 15 MINUTES.

AND ALL THESE THINGS HAPPENED. AND --

>> -- THERE IS SOME TESTIMONY HERE THAT SOMEONE ELSE SHOWED UP AT THIS -- GAS STATION -- FIT DESCRIPTION ALSO.

>> THERE WAS NO TESTIMONY THAT ANOTHER PERSON WHO SHOWED UP FIT THE DESCRIPTION THERE, WAS TESTIMONY THAT WHILE THEY WERE WHILE THEY WERE DOING THIS DRUG BUY, ANOTHER PERSON WHO

THE CONFIDENTIAL INFORRANT
KNEW TO BE A DRUG DEALER ALSO
HAD PULLED INTO THIS SAME
TEXACO STATION.

AND PART OF THE SAME -- WHICH
IS A NARCOTICS DETECTION UNIT
IN HILLSBOROUGH COUNTY, HAD
ALSO GONE IN INVESTIGATED THAT
INDIVIDUAL.

BUT THAT WASN'T A SUBJECT OF
THIS SUPPRESSION HEARING BUT
IT WOULD INDICATE THE -- THAT
THIS IS LIKE A HIGH DRUG AREA.
AND.

>> OFFICER DANIEL SAID IT WAS,
THAT -- THE TRIAL COURT IN
TERMS OF TRYING TO FIND OUT
WHETHER WE CONVERTED THIS INTO
A WHOLE DIFFERENT CASE, ABOUT
PROBLEM WILL CAUSE TO ARREST
AND THEN -- INCIDENT, THE
TRIAL COURT FOUND, THAT
EXIGENT CIRCUMSTANCES IN THIS
REALLY FALLS INTO JUSTICE
CANTERO!!\$\$!!!!!!!!!!!!!!

CANTERO'S QUESTION ABOUT WHEN
SEARCH WAS EXISTED TO JUSTIFY
A WARRANTLESS SEARCH BY MIRT
-- VIRTUE OF THE MOBILITY OF
THE VEHICLE AND THE CALLFANITY
AND THE SMALL AMOUNT OF TIME,
THAT THE POLICE HAD TO TAKE
CUSTODY OF HIM.

I DON'T UNDERSTAND, WHAT THAT
TIMING -- FINDING IS, BECAUSE
IF THEY YOU COULD POSSIBLY
ARREST HIM, AND PUT HIM INTO
AND THERE WAS 10 OR 12 PEOPLE
THERE, THE THERE WAS NO
MOBILITY -- THE CAR -- NEITHER
THE CAR NOR THE DEFENDANT WERE
GOING ANYWHERE, SO CAN YOU
EXPLAIN WHAT THAT YOU KNOW IS
THAT AN ALTERNATIVE THEORY?
IF YOU DON'T GET IT ON THE IF
PROBABLE CAUSE TO ARREST, HAS
THE -- STATE --

>> I BELIEVE WHAT WHAT THE
TRIAL COURT MAY HAVE BEEN
GETTING TO THERE IS THAT THE
DEFENDANT WAS GOING TO BE
TRANSPORTED IN A POLICE
VEHICLE, AND HE IS NOT -- DID
NOT WANT TO TRANSPORT SOMEONE

IN A POLICE VEHICLE, WITHOUT
KNOWING WHAT THEY HAVE THEN
OUR PERSON, WHETHER THEY ARE
GOING TO DISPOSE OF THAT
EVIDENCE, OR WHETHER THEY HAVE
SOME OTHER YOU KNOW, SOMETHING
HIDDENEN WEAPON, OR YOU KNOW!!\$\$!!!!!!
KNOW --

>> -- THEY ALREADY PATTED HIM
DOWN.

>> THEY PATTED HIM DOWN YEE
THEY FOUND A LARGE AMOUNT OF
CASH.

>> HOW WOULD HE DISPOSE OF IT
IN THE POLICE VEHICLE?

>> I SUPPOSE ON SOME
DEFENDANTS HAVE BEEN KNOWN TO
EAT THEIR PRODUCTS, AND -- I
SUPPOSE -- SOMEHOW, YOU KNOW,
GET THEM OFF THEIR PERSON
CLAIM IT WAS NOT THEIRS THAT
IT IS SOME OTHER PERSON,
COULDN'T HAVE BEEN MINE THINGS
LIKE THAT SO YOU DON'T WANT A
THE POLICE VEHICLE, WITH COMAD
THEY PRETTY MUCH KNEW HE HAD
IT BECAUSE HE HAD COME TO THE
SCENE TO SELL COCAINE, AND
THEY HADN'T FOUND IT IN THE
CAR THEY FOUND ALL THIS CASH.
AND --

>> HOW -- OIK.

>> LET ME GETTING TO STATUTORY
INTERPRETATION PART, THE
STATUTE DOESN'T SEEM TO
PROVIDE ANY REMEDIES FOR
VIOLATION IT JUST SEEMS NOT TO
EXCLUDE CIVIL REMEDIES COMMON
LAW REMEDIES BUT DOESN'T
PROVIDE ANY REMEDIES IN THE
STATUTE ITSELF, WOULD YOU
AGREE?

>> I AGREE THERE IS NO NO
PROVISION FOR AN EXCLUSION OF
EVIDENCE IN THE STATUTE YOU --

>> THERE IS NO PROVISIONS OR
ANYTHING WHAT IS I AM SAYING.

>> THERE IS PROVISION FOR A
PROVISION THAT IT DOES NOT
PREVENT THEM FROM SEEKING
CIVIL REMEDIES.

>> THAT IS THE ONE I
MENTIONED, THIS DOESN'T
EXCLUDE ANY CIVIL OR COMMON

LAW REMEDIES.

>> IT DOES NOT PROVIDE ANY, THE STATE WOULD ASSERT THAT THE REMEDIES, THAT WOULD BE AVAILABLE, WOULD BE THOSE THAT WOULD BE AVAILABLE UNDER THE FOURTH AND IF A SEARCH VIOLATED THE FOURTH AMENDMENT, THEN, IT WOULD -- YOU WOULD -- UNDER FOURTH AMENDMENT LAW FOR SEARCH AND SEIZURES --

>> I MAINTAIN THE -- I MAINTAIN IF IT IS SETTING FORTH!!\$\$!!!!!!!

FORTH, THIS IS HOW YOU SELL -- THE FIRST, STRIP SEARCH, AND IT INDUSTRY\$\$!!!!ILATED!!\$\$!!!!!!!INDUSTRILATED, AND THE -- VIOLATED AND THERE IS A VIOLATION, BUT THERE IS NO FOURTHAD VIOLATION, THEN THE STATUTE CAN BE IGNORED AT WILL.

>> --.

>> THE STATUTE TO BE IGNORED AT WILL, THE \$\$STATE'S POSITION THAT IT IS A STATUTE THAT PROVIDES GUIDELINES FORESEARCHES OF AND ALSO -- FOR THE STATE WOULD -- BACKTRACK BIT WE WOULD ASSERT THAT THERE IS NO EXPRESS AND DIRECT CONFLICT, WITH DF, THE STATE FINDS THAT THIS -- THIS STATUTE, PLAIN LANGUAGE, INDICATES THAT 90120 -- CASES, WHICH INVOLVE ARRESTS FOR MINOR OFFENSES SUCH AS TRAFFIC WARRANTS THINGS LIKE THAT, WHICH IS THE -- DEFENDANT AND -- THERE IS NOTHING IN THERE IN THE PLAIN LANGUAGE OF THAT STATUTE AS APPLIES TO THE CASE THAT WOULD INVOLVE A FELONY ARREST.

>> SO YOU ARE RELYING ON ONE OF THE SUBSECTIONS THAT OUTLINES WHEN IT APPLIES SO THEREFORE!!\$\$!!!!!!! THEREFORE, THIS HAS NO APPLICATION!!\$\$!!!!!!! APPLICATION, TO THIS --

>> WELL.

>> CIRCUMSTANCE AT ALL IS THAT THE \$\$STATE'S POSITION?

>> IF YOU READ THE STATUTE THE FIRST WHERE IT IS DEFINING, STRIP SEARCH IT SAYS UNDER THIS SECTION, AND THAT SEEMS TO BE DEFINING, THE STRIP SEARCH.

FOR THE FOLLOWING SECTION WHICH THEN FOR THE WHOLE SECTION BUT THEN IT GOES ON TO DISCUSS ARRESTS FOR MINOR --

>> THAT IS -- THAT YOU CAN'T BE STRIP SEARCHED -- IF YOU ARE ARRESTED FOR THESE MINOR OFFENSES!!\$\$!!!!!!!!!!!!!! OFFENSES.

>> CORRECT.

AND THAT IS THE CASE AS IN --

>> THAT DOESN'T ANSWER THE QUESTION, HOWEVER, OF WHAT DO YOU DO WHEN YOU DO HAVE A STRIP SEARCH OF A PERSON RN WHO IS ARRESTED FOR A FELONY, AND IT IS A VIOLATION OF THIS STATUTE.

>> IF SOMEONE -- IS STRIP A FELONY ARREST STRIP SEARCHED AND THAT STRIP SEARCH VIOLATES THE FOURTH AMENDMENT HIS REMEDY IS SEEKING EXCLUSION UNDER THE FOURTHALD. NOT UNDER THIS STATUTE.

>> UNDER THE FOURTH AMENDMENT, IN ORDER TO BE -- THE SEARCH WOULD HAVE TO BE A REASONABLE, BASED ON PROBABLE CAUSE, AND SO WAS THIS SEARCH REALLY REASONABLE?

I MAINTAIN SOME OF THE FACTORS THAT YOU LOOK AT AS -- JUSTIFICATION FOR THE SEARCH, AND THE PLACE WHERE THE SEARCH WAS CONDUCTED, AND THE MANR IN WHICH THE SEARCH WAS CONDUCTED AND HERE WE HAVE, OUT OF THE -- OUT IN THE OPEN, SOMEONE -- PULLING, SOMEONE\$\$'S PRIVATE UNDERWEAR AND EFREACHING THEIR HAND IN, AND GETTING SOMETHING, AND -- AS YOU ACKNOWLEDGE, IN THIS RECORD, THE OFFICERS DON'T SAY THAT THIS IS A PLACE, WHERE PEOPLE KEEP DRUGS ALL THE TIME. SO IS THIS SEARCH REALLY

THERE IS NO -- NUMBER OF TIMES
THERE IS NO -- THAT WE FOUND
THE NUMBER BEFORE WE --
SEARCHED HIM.

>> I'M CONFUSED ABOUT YOUR
ARGUMENT, IT SEEMS FIRST OF
ALL YOU ARE SAYING THERE IS NO
CONFLICT WITH DF -- BUT
ASSUMING THERE IS CONFLICT
WITH -- CONFLICT -- ARE YOU
SAYING, THAT SUBSECTION 34 --
3, 4, AND 5, DON'T APPLY TO
ALL THE STRIP AS MUCH AS THAT
ARE -- STRIP SEARCH THARZ DONE
IN THIS CASE.

>> THE STATE WOULD OBSER--
ASSERT THAT THE STATUTE IS
MEANT TO APPLY TO THOSE
SITUATIONS WHICH WHAT THEY ARE
TALKING ABOUT IN SUBSECTION
TWO WHICH IS A PERSON'S
ARRESTED, FOR MISDEMEANOR
TRAFFIC.

>> HAS DID THE SECOND DISTRICT
INTERPRET THE STATUTE THAT
WAY.

>> NO THE SECOND DISTRICT --
INTERPRETED IT A DIFFERENT WAY
AND FOUND THAT THE ARREST THAT
AN ARRESTED PERSON ENCOMPASSED
ALL ARRESTED PERSONS.

>> THE PROBLEM IS THAT THIS
STRIP SEARCH IS DEFINED BROAD!!\$\$!!!!!!!
BROADLY IN SUBSECTION ONE,
THEN YOU GO TO THREE, AND THEN
IT GIVES THE REQUIREMENTS,
THREE, FOUR, AND FIVE GIVE THE
REQUIREMENTS OF HOW, STRIP AS
MUCH AS -- STRIP SEARCHED
SHALL BE PER FORMED, SECTION
TWO ONLY DEALS WITH LIMITING
WHO IS GOING TO BE STRIP
SEARCHED SO I DON'T REALLY --
PROBLEMS WITH THAT STATUTORY
ARGUMENT, MAINTAINING ALL --
LINKING ALL PROVISIONSES
TOGETHER.

>> THE STATE WOULD POINT OUT
THE LANGUAGE AT THE VERY
BEGINNING OF THAT DEFINITION,
WHICH SAYS UNDER THIS SECTION,
AND WOULD SEEM TO APPLY TO THE
DEFINITION BEING RESTRICTED TO
THIS SECTION OF THE STATUTE

901211 AND THE IMMEDIATE FOLLOWING SECTION BEING THAT DESCRIPTION OF WHAT TYPE OF ARREST.

>> LET'S ASSUME WE GET PAST THAT AND SAY THAT STATUTE DOES APPLY!!\$\$!!!!!!!

APPLY, I AM MORE INTERESTED IN ON WOULD THINGS FIRST OF ALL DF CAME OUT IN 1996, SAYING THAT THE STATUTORY REMEDY IS -- EXCLUSION -- I THOUGHT I HEARD YOU SAY THAT NOT ONLY IS NOT THAT THE REMEDY BUT THAT THERE ISN'T ANY REMEDY FOR SOMEBODY WHO HAS HAD A STATUTORY VIOLATION.

IS THAT WERE A YOU ARE SAYING.

>> THE \$\$STATE'S POSITION IS THAT THERE IS THE EXCLUSIONARY RULE WAS NOT PERFORMED APPROXIMATE -- PROVIDED AS REMEDY THE REMEDY FOR A VIOLATION WOULD BE, OF A STRIP SEARCH THAT IS NOT A CONSTITUTIONAL VIOLATION, AND WOULD YOU HAVE TO ANALYZE ANY STRIP SEARCH ASSERTED VIOLATION OF SOMEONE\$\$'S RIGHTS UNDER THE FOURTH AMENDMENT.

>> YOU COULDN'T HAVE SO WHAT YOU ARE SAYING IS THERE IS NO STATUTORY CAUSE OF ACTION THAP HE BROUGHT SO THERE SO, AGAIN, THEN WE GO BACK TO WHAT YOU ARE SAYING THIS WHOLE STATUTE EVEN IF IT APPLIES IT REALLY HAS GUIDELINES THAT HAVE NO TEETH IN THEM.

>> WELL, IT DOES PROVIDE THAT IT IS NOT PREVENTING SOMEONE FROM FILING A CIVIL SUIT.

>> BUT YOU ARE SAYING THERE WOULDN'T A CIVIL SUIT WOULD BE BASED ON IF IT IS 1983 VIOLATION WOULD YOU HAVE TO HAVE THE CONSTITUTIONAL VIOLATION, IF IT IS A IF IT DOESN'T UNDER LIKE MURPHY, THE QUESTION IS IS THERE A -- STATUTORY VIOLATION, THIS DOESN'T CREATE A STATUTORY CAUSE OF ACTION EITHER, DOES IT?

>> IT IS CREATES I MAINTAIN IT SAYS YOU CAN PURSUE, CIVIL REMEDIES!!\$\$!!!!!!!!!!!!!!
REMEDIES, I THINK THIS STATUTE IS MORE PROVIDING THE GUIDELINES AND HAS WAS A REACT!!\$\$!!!!!!!!!!
REACTION TO CASES WHICH ARE SOME CITED BY SIMILAR CASES CITED BY DEFENSE COUNCIL IN HER BRIEF, WHERE -- COUNSEL IN HER BRIEF WHERE PEOPLE WERE BEING INDISCRIMINATELY SEARCHED FOR MINOR OFFENSES, AND I THINK THIS -- THIS STATUTE WAS AN EFFORT TO RESTRICT THE NUMBER OF STRIP SEARCH THAT'S WOULD BE DONE THAT THESE PEOPLE WHO WERE BEING BROUGHT INTO -- IN FOR MINOR OFFENSES THIS WAS NO REASON TO BELIEVE --
>> DOESN'T -- IF IT APPLIED LIKE IN DF WOULD YOU STILL SAY THAT THERE WOULDN'T HAVE BEEN A STATUTORY REMEDY, OR EXCLUSIONARY RULE UNLESS A CONSTITUTIONAL VIOLATION.
>> THE \$\$STATE'S IS REMEDY WOULD BE THROUGH THE FOURTH AMENDMENT EVEN DF THE \$\$COURT'S OPINION -- SEEMS TO BE ANALYZING IT'S UNDER A FOURTH AMENDMENT STANDARD BUT IT DOES NOT REACH THE FOURTH AMEND QUESTION --
>> ONCE YOU START GETTING INTO 1983 ACTIONS IT IS NOT MERELY WHETHER IT IS A CONSTITUTIONAL VIOLATION BUT WHETHER IT IS A WELL ESTABLISHED SO THE FIRST TIME IT HAPPENS, I MAINTAIN, THERE IS NO REMEDY AT ALL, BECAUSE -- REALLY IS NOT, AREN'T THE 1983 ACTIONS VERY FEW AND FAR BETWEEN WITH REGARD TO THE CONSTRUCTION OF THAT STATUTE REALLY?
>> I DON'T KNOW, ABOUT THE NUMBER OF -- OF 19 # # I KNOW SOME ACTIONS THAT ARE REVIEW!!\$\$!!!!!!!!!!!!!!
REVIEWED, WHILE PREPARING FOR THIS CASE THE ARGUMENTS, TO END TO DEAL WITH CLASS ACTIONS ON BEHALF OF A NUMBER OF THE

DEFENDANTS SUCH AS ONE OF THE
CASES!!\$\$!!!!!!!!!!
CASES.

>> UNDER 1983?

>> UNDER 1983 OR THERE ARE
ALSO CASES WHERE THEY HAVE YOU
KNOW SUED I BELIEVE, YOU KNOW
A POLICE DEPARTMENT, OR
SOMETHING LIKE THAT.

>> INJUNCTIVE RELIEF OR
DAMAGES!!\$\$!!!!!!!!!!!!!!
DAMAGES.

>> YES.

>> UNJUFNRNIVE IN JUNKIVE
RELIEF!!\$\$!!!!!!!!!!!!!!
RELIEF.

>> YOU ARE OVER YOUR TIME I
WILL GIVE YOU A FEW MORE
MINUTES WE HAVE TAKEN A GREAT
DEAL OF TIME WITH QUESTIONS.

>> WELL, THE STATE WOULD I WAS
LOOKING TO SEE IF THERE O
COULD ANSWER ANY QUESTIONS,
SAID THAT THERE WAS QUANTITY
OF COCAINE, ACTUALLY RECOVERED
WAS 5.9 GRAMS ONE OF THE
JUSTICE PARIENTE DID HAVE THAT
QUESTION EARLIER.

>> BUT I WAS REFERRING TO WHAT
THEY KNEW AT THE TIME.

>> THEY JUST SAID QUANTITY AND
I MAINTAIN SOME OF THAT IS
BECAUSE, I THINK, I MAINTAIN
THE OFFICERS WHEN THEY ARE
TESTIFYING ARE TRYING TO BE
VERY YOU KNOW -- RESPECT
BELIEVE PRECISE SOMETIMES
LANGUAGE IS NOT ACTUALLY AS
DESCRIPTIVE AS WE WOULD LIKE.
AND CONCLUSION, THE JUSTICES
HAVE NO OTHER QUESTIONS?

>> JUST BRING THERE IS TOANO
CONCLUSION ARE YOU SAYING THAT
BUTLER IS THE CASE THAT AFFORD!!\$\$!!!!!!!!!!!!!!
AFFORDED PROBABLE CAUSE FOR AN
ARREST, BEFORE ANYTHING ELSE
HAPPENED, AND YOUR CASE RISES
AND FALLS ON THAT THEORY, IS
THAT A FAIR --

>> FOR THIS -- FOR THE SEARCH,
WE KNEW PROBABLE CAUSE FOR
ARREST TO HAVE THIS SEARCH BE
PROPER BECAUSE OTHERWISE IT
WOULD JUST BE A TERRY STOP AND

THEY WOULD HAVE HAD TO -- TO
FEEL SOMETHING, OR WOULD DO
LIKE THE PLAINFIELD --
SOMETHING MANIFEST THAT STOP
AND FRISK STATUE FOR EXAMPLE
DOES SPECIFICALLY PROVIDE FOR
EXCLUSION OF EVIDENCE FOUND IN
VIOLATION OF THAT.

>> AN UNUSUAL IS CASE -- AS
FAR AS WHAT THE POLICE DID,
AND NOT WAITING UNTIL THE
TRANSACTION HAD BEEN
COMPLETED, IS NOT THAT THE
YOUR PROCEDURE?

>> I THINK THAT WOULD BE USUAL
PROCEDURE, IN WHAT THEY INTEND!!\$\$!!!!!!!!!!!!
INTENDED TO DO IF THIS CASE
BUT IN THIS CASE THE
CONFIDENTIAL INFORMANT, GOT --
AND RATHER THAN LETTING THE
DEFENDANTS GO ON HIS MERRY
WAY, THEY -- THEY CAME IN, AND
DETAINED HIM AND ARRESTED HIM,
AND IT WAS ON IDENTIFICATION
AND PREDICTABLE BE AHAVOR --
DEFENDANT HAD COME TO THE
SCENE WITH DRUGS.

>> MY COLLEAGUES HAVE NO OTHER
QUESTIONS WE THANK YOU FOR
YOUR ARGUMENTS.

>> THANK YOU.

>> MISS WILSON GIVE YOU A FEW
MORE MINUTES.

WE HAVE USED UP A LOT OF YOUR
TIME WITH OUR QUESTIONS.

>> THANK YOU.

>> LET ME ASK YOU ONE MORE
QUESTION.

YOUR -- OPPONENT JUST SAID
THAT THE STOP AND IS FROMK LAW
-- FRIFK LAW DIFFERENT STATUTE
SAIRNLD CLOSE TO THIS ONE
SPECIFICALLY PROVIDES IN
SUBSECTION 6.

NO EVIDENCE SEES BAIDZ LAW
ENFORCEMENT OFFICER IN ANY
SEARCH UNDER THIS SECTION
SHALL BE ADMISSIBLE AGAINST
ANY PERSON IN ANY COURT OF
THIS STATE OR POLITICAL
SUBDIVISION THEREOF, UNLESS
THE SEARCH I WOULD -- WHICH
DISCLOSED EXISTENCE WAS
AUTHORIZED BY AND CONDUCTED IN

COMPLIANCE WITH PROVISIONS OF
SUBSECTIONS TWO THROUGH
FIVE.

IT SEEMS THE LEGISLATURE KNEW
EXACTLY WHAT IT WANTED TO DO,
WHEN IT WANTED TO EXCLUDE
EVIDENCE THAT WAS OBTAINED IN
VIOLATION OF THE STATUTE.

YET IT DIDN'T INCLUDE SUCH A
PROVISION HERE.

>> IT DIDN'T, AND I THINK,
THAT WHEN YOU LOOK AT HOW
THESE LAWS WERE ENACTED, I
BELIEVE THAT THAT LAW FIRST
CAME INTO BEING, RIGHT AFTER
THE TERRY DECISION CAME OUT.
WHICH WAS IN 1968.

WHEN YOU LOOK AT THIS STATUTE
THAT WE ARE TALKING ABOUT,
THAT IS IN 1981.

AND IN 1981, WE HAD HAD MATT
VERSUS OHIO WHICH ACLOOIZ THE
EXCLUSIONARY RULE TO THE
STATES FOR 20 YEARS I THINK IT
IS JUST AS REASONABLE, THAT
THE LEGISLATURE, TO HAVE
BELIEVED AT THAT POINT,
BECAUSE WE DIDN'T HAVE THAT
AMENDMENT IN OUR STATE
CONSTITUTION, WHERE WE ARE --
SAY CONSTITUTION UNDER THE
FOURTH IS THE SAME, WE DIDN'T
HAVE THAT TILL 82.

BUT IN 1981 I THINK IT IS JUST
AS REASONABLE THAT THE
LEGISLATURE BELIEVED THAT
STATES WOULD USE THAT
EXCLUSIONARY RULE IN THE CASE
WHERE THEY SAW FIT AND I
BELIEVE THIS IS SUCH A CASE.

>> WELL, SPEAKING OF THE WHAT
THE LEGISLATURE INTENDED IN
1981, IS NOT IT REASONABLE, AS
THE STATE ARGUES HERE, THAT
WHAT THE LEGISLATURE WAS DOING
IN RESPECT TO STRIP SEARCHES
WAS AIMING AT TRAFFIC OFFENSES!!\$\$!!!!!!!!!!!!!!
OFFENSES?

BECAUSE I THOUGHT HE THAT IN
THE SENATE STAFF ANALYSIS OF
THAT BILL, IT SAYS THAT THERE
HAS BEEN NO REPORTED APPELLANT
COURT DECISION IN FLORIDA
DEALING WITH A STRIP SEARCH

CONDUCTED ON A PERSON ARRESTED FOR A TRAFFIC VIOLATION OR MISDEMEANOR OFFENSE, AND THAT IS WHAT THIS STATUTE THAT IS INVOLVED IN THIS CASE WAS DEALING WITH, WAS STRIP SEARCHES!!\$\$!!!!!!!!!!!!!! SEARCHES, IN RESPECT TO TRAFFIC OFFENSES.

>> ON THAT I'M NOT PRIVY TO THAT LEGISLATIVE HISTORY BUT I DON'T THINK THAT IS WHAT THE STATUTE DOES IN AND OF ITSELF, I THINK, IT DOES ADDRESS THE PROBLEM OF SUBJECTING PEOPLE WHO ARE ARRESTED FOR MINOR OFFENSES!!\$\$!!!!!!!!!!!!!! OFFENSES, TO A STRIP SEARCH AT ALL.

BUT THEN THE STATUTE IS MORE EXPANSIVE AND EXPLAINS WHEN THIS KINDS OF INVASIVE TYPE OF SEARCH IS GOING TO OCCUR, BUT IT ONLY OCCUR UNDER THESE!!\$\$!!!!!!!!!! THESE9999SPECIFIC SITUATIONS.

NOW, THIS COURT HAS DECIDED IN BEENFIELD AND JOHNSON, THAT THE EXCLUSIONARY RULE CAN BE APPLIED TO STATUTE, AND THERE IS NOTHING IN THE RULES OF EVIDENCE OF THIS STATE, WHICH WHAT IS THIS COURT IS IN CHARGE OF THAT PROHIBITS IT FROM EXCLUDING THE EVIDENCE FOR A STATUTORY VIOLATION. THIS COURT IS NOT BOUND BY WHAT THE UNITED STATES SUPREME COURT IN MY VIEW MAY DECIDE SHOULD BE EXCLUDED AS EVIDENCE IN A CONSTITUTIONAL FRAMEWORK.

>> DON'T YOU MAINTAIN -- STATUTORY FRAMEWORK -->> RIGHT -- IT IS USEFUL FOR GUIDANCE OF COURSE, JUSTICES VERY WELL EXPERIENCED KNOWLEDGE BEING BUT NOT BINDING PRECEDENT.

>> -- IF STATUTE WE ARE INTERPRETING WE ARE FOUND BY LEGISLATIVE INTENT IN ANN ACCOUNTING THAT STATUTE; RIGHT? -- ENACTING THAT STATISTIC RIGHT.

>> YES, YOU ARE.

>> IF LEGISLATURE CLEARLY EXPRESSED ITS INTENT WHEN IT DIVIDE TO EXCLUDE EVIDENCE OBTAINED IN VIOLATION OF THE STAT IS NOT THAT SOME INDICATION WHEN IT DOESN'T INCLUDE THAT PROVISION IN THIS STATUTE IT DIDN'T INTEND SUCH CONSEQUENCE?

IN THE STAT FOR INSTANCE THAT YOU RECEIVE TO JUSTICE CANTERO THAT LEGISLATION WAS ENACTED RIGHT AFTER TERRY AND PROVIDED JUST AS TERRIZATION THAT THEY WOULD EXCLUDE THAT EVIDENCE.

>> THAT WAS REDUNDANT TO TERRY, BECAUSE --

>> IT POSSIBLY WAS BUT YOU ARE TALKING ONLY A FEW, SEVEN YEARS AFTER MATT VERSUS OHIO, THIS IS A FAIRLY RECENT DEVELOPMENT AT THAT TIME IN THE LAW.

I THINK, AFTER 20 YEARS, YOU ARE LOOKING AT THE LAW IN A DIFFERENT WAY.

AND I THINK, THEREFORE, YOU LOOK AT THE LEGISLATIVE INTENT IN A DIFFERENT WAY.

I BELIEVE, THAT UNDER THE CIRCUMSTANCES, OF THIS CASE, THAT THERE IS AN EGREGIOUS PUBLIC SITUATION THAT NEEDS TO BE ADDRESSED BY THIS COURT AND I DON'T BELIEVE THAT THE PEOPLE HAVE COME TO THIS TOWN, FROM ALL OVER THE STATE TO ENACT GUIDELINES.

I THINK THEY ENACT LAWS.

AND I DON'T BELIEVE THAT --

>> IF THE STATE INITIALLY HAD PROBABLE CAUSE TO ARREST AND, THEREFORE!!\$\$!!!!!!!!!!!!!!!

THEREFORE, TO SEARCH, ALSO, WOULD THIS BE AN INVALID OR ARE YOU SAYING IT IS UNREASONABLE EVEN IF THEY HAVE PROBABLE CAUSE?

>> YES, IT IS A VIOLATION UNDER THE FOURTH AMENDMENT, THE TYPE OF SEARCH PUBLIC SEARCH THAT OCCURRED HERE. SO EVEN IF THEY -- THERE ARE

LIMITS TO WHAT A POLICE CAN DO
TO A PERSON EVEN IF THEY HAVE
GROUNDS TO ARREST THEM --
THEM.

?

BECAUSE WHAT YOU SAID, IF IF
SO, THEY MIGHT NOT BE ABLE TO
DO A PUBLIC PLACE BUT NOW HE
IS ARRESTED, FOR -- WHATEVER
HE IS ARRESTED FOR -- WHATEVER
CRIME I WANT IS GOING TO BE A
FELONY AND -- HE I HAD BOOKED
IN, DON'T THEY HAVE A RIGHT AT
THAT POINT, TO PER FORM A YOU
KNOW, GOING TO BE GIVEN JAIL
-- ISSUED CLOTHING TAKE THE
CLOTHING AND -- IS NOT REALLY
A STRIP SEARCH THEY ARE DOING
NOBODY ARGUED THAT INEVITABLE
DISCOVERY WHY IS NOT IT
INEVITABLE DISCOVERY.

>> THERE WOULD BE NO POINT IN
THESE KIND OF CASES THE
INSTITUTION WOULD TAKE OVER
THE PROBLEM YOU ARE ADDRESSING!!\$\$!!!!!!!!!!!!!!!!!!!!
ADDRESSINGS I PRIVACY

VIOLATION IN MANNER THERE IS
NOTHING THAT WOULD HAVE
PRECLUE THEY HAD POLICE FOR
INSTANCE, THERE ARE 8 OR TEN
OF THEM GOING THE GAS STATION
RESTROOM REMOVING ANYBODY THAT
MIGHT BE THERE TAKE\$\$!!ING MR.
JENKINS IN THERE CONDUCT THIS,
SO YOU ARE ENFORCING A STASHED
OF DECENCY THROUGH THIS
STATUTE, WE BELIEVE THAT IS
WHAT THE SURE INTENDED.

>> WITH OUR HELP OF YOU FAR
EXCEEDED YOUR TIME.

>> THANK YOU VERY MUCH GOOD
QUESTIONS.

>> WE WILL TAKE THE CASE UNDER
ADVISEMENTS YOUR COUNCIL IS
MOST IMPORTANT TO US WE THANK
YOU FOR THE GOOD WORK THAT YOU
HAVE DONE COURT WILL STAND IN
RECESS!!\$\$!!!!!!!!!!!!
RECESS.

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>> ALL RISE.