

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

>> GOOD MORNING.

THE NEXT CASE ON THE COURT'S
AGENDA IS THE FLORIDA DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES PURSES HERNANDEZ AND
MCLAUGHLIN.

>> MAY IT PLEASE THE COURT, THE
DEPARTMENT OF HIGHWAY SAFETY AND
MOTOR VEHICLES, THESE
CONSOLIDATED CASES, MCLAUGHLIN
AND HERNANDEZ CERTIFIED MATTERS
OF PUBLIC APPOINTMENTS, BOIL
DOWN TO THE ARGUMENT OF WHETHER
322.165, THE DRIVER'S LICENSE
STATUTE IS AMENDED BY THE
LEGISLATURE IN 2006.

WHETHER IT IS CLEAR AND
UNAMBIGUOUS ON ITS FACE OR
WHETHER THE STATUTE MUST BE READ
WITH SECTION 316, THE APPLIED
CONSENT STATUTE.

IT MUST BE NOTED SECTION 322.42
WHICH HAS REMAINED UNCHANGED
SINCE ITS ADOPTION BY THE
LEGISLATURE IN 1939 EXPRESSLY
COMPELS THE LIBERAL CONSTRUCTION
OF CHAPTER 322 WHERE IT STATES,
QUOTE, THIS CHAPTER SHALL BE
LIBERALLY CONSTRUED TO THE END
THAT FORCE AND A FACT MADE BE
GIVEN TO THE PROMOTION OF PUBLIC
SAFETY.

>> LET ME ASK YOU A QUESTION.

MY CONCERN FLOATING HERE, IS IT TRUE THAT THE ONLY PLACE THAT DESCRIBES WHAT THIS THING IS, LET'S CALL IT ABC, IS FOUND IN 316?

>> ALCOHOL BLOOD CONTENT?

>> WHATEVER YOU WANT TO CALL IT. IS THAT THE ONLY CASE, WHATEVER IT IS THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES ARE GOING TO LOOK AT, IS IT ONLY IN 316 WHERE IT APPLIES TO WHAT THIS THING IS?

>> IF YOU ARE REFERRING TO THE IMPLIED CONSENT STATUTE --

>> I AM REFERRING TO THE TEST YOU ARE GOING TO APPLY TO TAKE SOMEBODY'S LICENSE.

YOU KNOW WHAT WE ARE TALKING ABOUT.

THE ONLY PLACE THAT SETS FORTH THE PARAMETERS OF WHAT IT IS.

>> 316, CRIMINAL PENALTY STATUTE FOR DUI.

>> I UNDERSTAND ALL THAT.

MY QUESTION, IS THAT THE ONLY PLACE THAT DESCRIBES WHAT THIS THING IS THAT THE DEPARTMENT OF HIGHWAYS SAFETY AND MOTOR VEHICLES ARE GOING TO APPLAUD?

>> AGAIN, MAYBE SOMETHING THAT I'M NOT UNDERSTANDING ABOUT THE QUESTION.

>> WHERE DO WE LOOK TO FIND THE PARAMETERS OF WHERE THE BREATH TEST IS OR WHATEVER IT IS THAT

YOU ARE GOING TO USE TO TAKE
AWAY A LICENSE?

WHERE DO YOU LOOK TO SEE WHERE
IS?

>> AS IT RELATES TO THE TESTING,
IN 316.

>> IF IT IS ONLY IN THE 316, WHY
DO YOU NOT LOOK TO 316 TO SEE IF
WHAT YOU ARE LOOKING AT IS WHAT
THE LAW REQUIRES?

>> WHAT THE COURT IN HERNANDEZ
HAS SAID IS YOU READ THE TWO
STATUTES TOGETHER.

THE ARGUMENT IS THE STATUTE,
322, IS CLEAR ON ITS FACE.

THE LEGISLATURE WENT THROUGH THE
STEPS TO REMOVE THE PROVISION
REGARDING --

>> IF LAW ENFORCEMENT OFFICER
RUNS OUT TO WALMART AND PICK UP
SOME KIND OF KIT AND FORCES
SOMEBODY IN THEIR HOME TO
BREATHE INTO THIS THING OR DO
WHATEVER AND THEY BRING IT TO
HIGHWAY SAFETY AND MOTOR
VEHICLES, IS DATABASES TO TAKE
SOMEBODY'S LICENSE?

YOU HAVE TO LOOK AT 316,
CORRECT?

>> CORRECT.

>> I WANT TO FOLLOW UP ON THAT.
ORDINARILY WE LOOK AND SEE HOW
MATERIAL APPLIES ONLY WHEN THERE
IS SOME AMBIGUITY.

IT IS PRETTY CLEAR THE
LEGISLATURE INTENDED THE HEARING

OFFICER WAS NOT CONSIDERING THE
LAWFULNESS OF THE REQUEST.
ANY PERSON HAS A RIGHT TO
LAWFULLY REFUSE A BLOOD ALCOHOL
TEST.

IF IT IS NOT PURSUANT TO A
LAWFUL ARREST.

IN ANOTHER WAY, YOU ONLY HAVE TO
SUBMIT TO APPROVED CHEMICAL
TESTS OR PHYSICAL TEST IF THE
PERSON IS LAWFULLY ARRESTED FOR
ANY OFFENSE WHILE THE PERSON WAS
DRIVING OR IN ACTUAL CONTROL.

IS THAT CORRECT?

I DON'T RUN THE RISK OF LOSING
MY LICENSE OR HAVE ANY CRIMINAL
PENALTIES IF THE ARREST IS NOT
VALID.

>> THE RIGHT TO MAINTAIN YOUR
PRIVILEGE TO HAVE A LICENSE
ESSENTIALLY FOR A URINE TEST OR
BREATH TEST, 316 HAS LANGUAGE
THAT THERE MUST BE INCIDENTS TO
A LAWFUL ARREST.

TERRY NOE SIMILAR LANGUAGE IN
316, SUBJECT TO A LAWFUL ARREST.

>> WHAT ARE WE TALKING ABOUT A
BLOOD TEST?

>> THIS WAS A REFUSAL -- THIS
WAS A BREATH TEST.

>> IT SAYS HERE FOR CONTROLLED
SUBSTANCES APPLY CONSENT
REFUSAL, IF THE PERSON BEAMS TO
HAVE BEEN GIVEN HIS OR HER
SUBMIT TO APPROVED CHEMICAL OR

PHYSICAL TEST OF PROVING --
INCLUDING BUT NOT LIMITED TO IF
THE PERSON IS LAWFULLY --
THAT TELLS ME IF I'M NOT
LAWFULLY ARRESTED -- 316 IS THE
CRIMINAL STATUTE DEALING WITH
THE CRIMINAL LICENSE SIDE.

>> THEN JUSTICE LEWIS'S
QUESTION, WHETHER IN 322 DOES IT
TALK ABOUT THE PARAMETERS UNDER
WHICH A PERSON CAN REFUSE SO IF
I AM TEACHING THIS TO CITIZENS,
WOULD I TELL THEM ABOUT THE
LICENSE REPLICATION?

WHERE DOES IT TELL ME IT DOESN'T
HAVE TO BE PURSUANT TO A LAWFUL
ARREST TO LOSE MY LICENSE?

>> FOR PURPOSES OF 316, IF YOU
REFUSE, BASICALLY WHAT HAPPENS
TO YOUR LICENSE IN 322, YOUR
LICENSE MAY BE SUBJECT TO BEING
SUSPENDED.

>> WHERE IN 322 DOES IT EXPLAIN
THAT?

THE LEGISLATURE MAY HAVE
INTENDED TO HAVE ELIMINATED --
INTENDED TO HAVE PEOPLE LOSE
THEIR LICENSE BECAUSE THEY DON'T
REFUSE -- BECAUSE THEY REFUSE.
THEY MAY HAVE INTENDED THAT BUT
BY SIMPLY TAKING THE ISSUE AWAY
FROM THE HEARING OFFICER, DOES
IT CHANGE THAT THERE IS NO WHERE
ELSE IN 322, ANSWERING JUSTICE
LEWIS'S QUESTION IN 316, THAT
TELLS THE CITIZEN THE PARAMETERS

UNDER WHICH THEY COULD LOSE
THEIR LICENSE?

>> AGAIN --

>> IS THERE SOMETHING ELSE?
IS THERE SOME OTHER PLACE THAT
YOU WOULD SAY TOMORROW THEY SEND
OUT SOMETHING AND SAYS HERE IS
WHERE IT SAYS -- DOESN'T HAVE TO
BE PURSUANT TO A LAWFUL ARREST,
NOT JUST WHAT HAPPENS AFTERWARDS
AND WHEN THE HEARING OFFICER
CLAIMS.

>> THAT IS IN 322.615.

THE STATUTE PROVIDED IT HAD TO
BE -- THE HEARING OFFICER HAD TO
BE ESTABLISHED THERE WAS
PURSUANT TO A LAWFUL ARREST, THE
LEGISLATURE REMOVED THAT
PROVISION.

>> BY REMOVING THAT PROVISION, I
AM REALLY DISTURBED BECAUSE IF
YOU ARE NOT CHARGED WITH
ANYTHING ELSE BUT YOU GET YOUR
LICENSE SUSPENDED, WHERE IS THE
DRIVER'S OPPORTUNITY TO EVER SAY
THIS WAS NOT PURSUING TO A
LAWFUL ARREST?

>> THE LEGISLATURE REMOVED THE
LAWFUL ARREST QUESTION FROM THE
PROCESS.

THEY'RE STILL HAS TO BE PROBABLE
CAUSE --

>> WHAT YOU ARE TELLING ME IS
THE POLICE CAN STOP ME, I CAN
REFUSE TO TAKE A BREATH TEST --

>> YOU DON'T HAVE A RIGHT TO

REFUSE A BREATH TEST.

>> OKAY, TAKE THE BREATH TEST
OUT OF IT BUT THESE OTHER TESTS,
I CAN REFUSE TO TAKE IT, MY
LICENSE GETS SUSPENDED EVEN
THOUGH I AM NEVER CHARGED WITH
DUI OR ANY KIND OF OFFENSE, HAVE
LOST THE RIGHT TO DRIVE.

>> PART OF THE PRIVILEGE TO HAVE
A DRIVER'S LICENSE, IT IS ON
YOUR LICENSE, THE APPLIED
CONSENT STATUTE, YOU AGREE THAT
YOU WILL SUBMIT TO ANY TEST BY
LAW ENFORCEMENT.

THAT IS THE CONTRACT YOU MAKE
WITH THE STATE.

>> IF LAW-ENFORCEMENT ASK ME TO
DO, EVEN THOUGH THERE IS NO
INDICATION THAT I HAVE DONE
ANYTHING?

>> THERE STILL MUST BE
ESTABLISHED THAT THERE WAS
PROBABLE CAUSE TO BELIEVE YOU
WERE DRIVING UNDER THE
INFLUENCE.

THAT IS PART OF THE HEARING
PROCESS THAT REMAINS.

THERE MUST BE PROBABLE CAUSE TO
SHOW THAT YOU WERE DRIVING, THAT
YOU WERE DRIVING UNDER THE
INFLUENCE, THAT YOU REFUSED AND
YOU REFUSE YOU WILL LOSE YOUR
LICENSE.

THERE ARE DUE PROCESS
PROTECTION.

THE REVIEW CASES REGULARLY TO

DETERMINE THIS.

THIS GOES TO 322.42, PUBLIC SAFETY ALWAYS AN INDIVIDUAL'S RIGHT TO MAINTAIN A PRIVILEGED LICENCE.

>> LET ME ASK HOW YOU RESPOND TO THE ARGUMENT MADE BY THE OPPOSING SIDE CONCERNING THE REFERENCES IN SECTION 322.2615 TO LAWFUL BREATH, BLOOD OR URINE TESTS.

THE NOTICE OF SUSPENSION THAT THE DRIVER REFUSED TO SUBMIT TO A LAWFUL BREATH, OR URINE TEST.

>> THE LAWFUL BREATH, BLOOD OR URINE TEST IS RELEGATED AND PROVIDED BY RULE.

THEY HAVE SPECIFIC BREATH TESTS, CERTAIN MACHINES HAVE TO BE TESTED, CERTIFIED, THAT IS THE LAWFUL TEST.

IT DOES NOT --

>> HAS NOTHING TO DO WITH WHETHER IT IS ADMINISTERED TO CIRCUMSTANCES THAT WERE JUSTIFIED BY LAWFUL ARREST.

>> 316?

>> I BELIEVE IT IS 322.

>> MY QUESTION IS THE ADMINISTRATIVE REGULATIONS, THAT FLOW FROM IT EVERYWHERE, THEY REFERENCED THE STATUTE PURSUANT TO WHICH THEY ARE DOING IT, REFERENCE 316.

>> YES, IT DOES.

>> IF YOU SAID IN ANSWER TO THE

QUESTION THAT THERE WAS, AS PART OF THE CONTRACT BETWEEN WHEN YOU GET A DRIVER'S LICENSE, MY QUESTION, MAYBE IT SAYS SOMETHING ON MY DRIVER'S LICENSE, I DON'T KNOW, WHAT IS IT IN 316, 322, I AM SORRY, THAT TELLS ME THAT ANY TIME I AM STOPPED BY POLICE, THAT I HAVE TO SUBMIT TO A TEST, A BREATH TEST OR LOSE MY LICENSE?

>> THAT IS IN 316.192, THE APPLIED STATUTE, WHEN YOU ARE STOPPED AND THERE IS PROBABLE CAUSE, WHERE THE IMPLIED CONSENT

--

>> THAT IS WHY IT HAS TO BE READ.

THE LEGISLATURE -- IT MAY BE PERFECTLY LEGAL.

I DON'T THINK THEY DID A FEW. THEY NEED TO SAY THAT IF IT IS A CONDITION, WHEN YOU ARE STOPPED, AS LONG AS THERE IS PROBABLE CAUSE TO ARREST YOU, IT DOESN'T HAVE TO BE A LAWFUL ARREST BUT I AM TRYING TO FIGURE OUT HOW THAT WOULD WORK OUT.

WOULDN'T THEY HAVE TO SAY THAT SOMEWHERE?

THE PUBLIC IS PUT ON NOTICE OF THIS CHANGE IN THE APPLIED CONSENT LAW?

>> YOU WOULD HAVE TO READ 322.6215.

PRIOR TO 2006 THAT WAS AN

ELEMENT OF THE SCOPE OF REVIEW,
IT HAD TO BE PURSUANT TO LAWFUL
ARREST.

THEY REMOVED THAT.

THE STATUTE IS CLEAR ON ITS
FACE.

>> I DON'T WANT TO BEAT A DEAD
HORSE BUT IT IS CLEAR TO ME THE
LEGISLATURE INTENDED FOR THE
HEARING OFFICER NOT TO CONSIDER
THAT.

I AGREE WITH YOU.

THAT DOESN'T ANSWER THE QUESTION
ABOUT WHETHER IT IS LAWFUL TO
SUSPEND A DRIVER'S LICENSE IF
THEY DO NOT CONSENT TO A BLOOD
TEST OR A BREATH TEST AND THE
ARREST IS NOT LAWFUL.

THAT IS WHAT I THINK THE NOTICE,
THAT IS MISSING FROM THE
CALCULUS AND THAT IS WHY YOU
HAVE TO GO BACK TO THE 316.

>> IF SOMEONE IS STOPPED AND
ARRESTED FOR DUI AND IT IS AN
UNLAWFUL ARREST, IT WOULD BE
SUPPRESSED AND THE CHARGES WOULD
BE DISMISSED.

>> THE CHARGES ARE FILED.

>> CHARGES ARE NOT FILED -- IT
IS SUSPENDED.

>> WHO GETS TO FIX THAT?

>> THEY HAVE OUR PROCESS BY
REQUESTING A FORMAL REVIEW, THE
HEARING OFFICER MUST DETERMINE,
IT MUST BE ESTABLISHED THERE WAS
PROBABLE CAUSE TO BELIEVE THIS

PERSON WAS DRIVING, THEN THEY WERE DRIVING A NEW THE INFLUENCE, THEY REFUSED A TEST THAT THEY WOULD BE SUSPENDED AND THEY REFUSED.

>> WHAT IF THE EVIDENCE THAT THE OFFICER DID NOT HAVE PROBABLE CAUSE TO STOP THE VEHICLE TO BEGIN WITH?

WHO GETS TO DECIDE THAT?

IF THE HEARING OFFICER DOESN'T DO THAT?

>> THE LEGISLATURE HAS DEEMED THAT THAT IS NO LONGER AN ELEMENT WITHIN THE SCOPE AND NOT TO BE CONSIDERED BY THE HEARING OFFICER.

FOR THIS COURT TO SAY -- THE STATUTE IS CLEAR WE DON'T UNDERSTAND --

>> HERE'S MY CONCERN WITH THAT. POLICE OFFICERS ARE GOING TO BE AFFORDED AN OPPORTUNITY TO PRE MUCH AS EVERYONE, YOU WANT TO SUBMIT TO A BREATH TEST?

AND THERE IS NO ONE LATER ON TO CAN DEAL WITH THAT IF CHARGES ARE FILED AND THERE WILL BE PEOPLE LOSING THEIR DRIVER'S LICENSES, I AM PROBABLY GOING TO SAY NO, THERE'S NOTHING WRONG WITH ME.

>> THERE WOULD HAVE TO BE PROBABLE CAUSE THAT YOU WERE DRIVING UNDER THE INFLUENCE, THEY WOULD HAVE TO ARTICULATE

THEIR WAS SOME ISSUE OF
DRUNKENNESS.

>> I SAW HIM WEAVING, SOMETHING
LIKE THAT, THAT MAY NOT BE
ENOUGH.

>> WE HAVE CASES THAT ARE
INVALIDATED IF THAT IS THE ONLY
ELEMENT.

WHERE THERE IS SIGNIFICANT
INDICIA, SUFFICIENT PROBABLE
CAUSE, PUBLIC SAFETY OUTWEIGHS
THE PRIVILEGE OF A LICENSE FOR A
YEAR.

FOR THIS COURT TO ABROGATE THAT
IF IT DETERMINES THE STATUTE IS
-- FOR THE LEGISLATURE WAS
INARTFUL IN THEIR LANGUAGE WOULD
BE AN ABROGATION OF LEGISLATIVE
POWER.

>> NOT REALLY.

WE HAVE A STATUTORY SCHEME THAT
OUTLINES WHEN THINGS CAN HAPPEN
AND WHEN THEY CANNOT AND THE
LEGISLATURE CAN'T IGNORE THOSE.
BY LOOKING AT THIS, THE STATUTE
HAS A HUGE GAP IN IT.

BY SAYING YOU HAVE TO CONSIDER A
LAWFUL ARREST DOESN'T REMOVE IT
FROM OTHER PARTS OF THE STATUTE.

WE ARE NOT SHOOTING THE
MESSENGER, PLEASE UNDERSTAND.

THERE'S A PROBLEM WITH THE
STATUTE, BUT IT CAN BE CORRECTED
POSSIBLY BUT NOT IN ITS PRESENT
FORM.

FOR YOU TO STAND THERE AND SAY

WE ARE ABROGATING WITH THE
LEGISLATURE DID, THAT IS NOT
FACTUAL AT ALL.

WE ARE SAYING MAYBE YOU HAVE TO
READ STATUTES TOGETHER WHEN
THERE ARE HOLES IN THEM.

THAT IS A WELL RECOGNIZED
PRINCIPLE OF LAW.

>> IF THIS COURT DETERMINED IT
IS AMBIGUOUS ON ITS FACE --

>> NOT THAT IT IS AMBIGUOUS ON
ITS FACE BUT JUSTICE LEWIS SAID
FROM THE BEGINNING, IT DOESN'T
GIVE YOU THE COMPLETE
INFORMATION ABOUT THE
CIRCUMSTANCES UNDER WHICH A
DRIVER CAN BE STOPPED AND THE
CIRCUMSTANCES UNDER WHICH A
DRIVER CAN REFUSE TO SUBMIT TO 8
TEST.

THAT IS THE MISSING PART OF THE
LEGISLATURE, THE WAY IT WAS.

THEY JUST REMOVE IT FROM THE
HEARING OFFICER, THAT IS WHERE
THE PROBLEM COMES.

NOT SOMETHING THAT IS NOT CLEAR
-- YOU HAVE GOT TO READ IT
TOGETHER.

THE TWO STATUTES.

>> I WOULD LIKE TO RESERVE THAT.

I APPRECIATE --

>> GOOD MORNING.

>> PLEASE WATCH THE CLOCK, YOU
HAVE TEN MINUTES.

>> MR. ROBBINS IS THE ATTORNEY
ON THE END AND TONY DODDS IS TO

THE RIGHT.

MAY IT PLEASE THE COURT?

WE AGREE WITH THE POINT SET OUT BY THE JUSTICE, WE WOULD LIKE TO POINT OUT CLEARLY AND LOOKING AT LEGISLATIVE INTENT, LOOKING AT WHAT WAS REMOVED FROM THE STATUTE, ORIGINALLY UNDER 316, ALA ONLY REQUIRED THE LAWFUL ARREST, YOU COULD BE ARRESTED FOR RECKLESS DRIVING, ROBBERY, ANY NUMBER OF THINGS AS LONG AS THERE IS REASONABLE CAUSE TO BELIEVE YOU WERE IN CONTROL OF THE MOTOR VEHICLE AND YOU WERE UNDER THE INFLUENCE OF DRUGS OR ALCOHOL DEPENDING ON --

>> UNDER THE WAY THE HEARING OFFICER DOES THAT, THOSE ARE ISSUES THAT THE HEARING OFFICER CAN DEAL WITH.

WHETHER OR NOT THERE WAS REALLY PROBABLE CAUSE TO BELIEVE YOU WERE DRIVING A CAR WHILE IMPAIRED.

WHAT IS WRONG WITH THE LEGISLATURE SAYING THAT ALONE IS SUFFICIENT TO TAKE YOUR DRIVER'S LICENSE?

BEYOND WHETHER OR NOT YOU WERE ARRESTED.

IN ONE OF THESE CASES THE PERSON WAS NEVER CHARGED WITH ANYTHING OR ANY OF THAT.

BEYOND THE ARREST AND WHETHER YOU WERE CHARGED WITH ANYTHING,

IF IT IS DEMONSTRATED AT THIS HEARING THAT THERE WAS PROBABLE CAUSE TO BELIEVE YOU WERE IMPAIRED, WHY ISN'T THAT SUFFICIENT TO TAKE AWAY YOUR LICENSE?

>> THE STATUTE REQUIRES YOU BE LAWFULLY ARRESTED FOR SOMETHING BEFORE YOU CAN BE COMPELLED TO TAKE THE TEST.

316.932.

THE ONLY THING THE LEGISLATURE REMOVED WAS A STRICTER STANDARD THAT HAD TO BE FOR DUI.

>> CANDIDLY HERE, WHEN THEY REMOVED WAS LANGUAGE THAT SAID IN THIS LIST OF THINGS WITHIN THE SCOPE OF REVIEW, WHETHER THE PERSON WAS PLACED UNDER LAWFUL ARREST FOR A VIOLATION OF SECTION 316.193.

IF THEY WERE DOING WHAT YOU ARE SUGGESTING INSTEAD OF REMOVING THAT WHOLE LINE, THEY WOULD HAVE REMOVED JUST THE WORDS AFTER LAWFUL ARREST.

THEY WOULD HAVE LEFT WHETHER PERSON WAS PLACED UNDER LAWFUL ARREST IN THERE IF THAT IS WHAT THEY WERE TRYING TO DO.

>> POSSIBLY OR IT COULD BE TAKEN OUT OF REDUNDANCY.

THE NEXT PRONG REQUIRES THE BREATH TEST, THE REFUSAL BE OBTAINED PURSUANT TO IN 1932, THAT SET THE PARAMETERS.

THERE ARE NO PARAMETERS FOR WHAT TYPE OF TEST, WHEN YOU HAVE TO BE REQUIRED TO SUBMIT TO A TEST, THERE ARE NO CHECKS AND BALANCES ON THAT AT ALL, THE LEGISLATURE IF THEY WANT TO, IT COULD.

WE HAVE SUBMITTED A SUPPLEMENTAL AUTHORITY, THE RECENT ACTIONS OF THE LEGISLATURE DURING THIS PAST SESSION, THERE WAS A PROPOSED BILL WE'RE IN THE LEGISLATURE LOOKING AT STAFF ANALYSIS, IN RESPONSE TO THE POSITION, THE FIRST DECISION ON THIS ISSUE OUT OF THIS DISTRICT COURT OF APPEAL, DECIDING TO HAVE A DECISION WHERE IF YOU INTEND FOR A DRIVER TO BE ABLE TO LOSE THEIR LICENSE REGARDLESS OF THE ACTIONS OF LAW ENFORCEMENT, THE LEGISLATURE MUST CLEARLY STATE THAT.

IN THIS LAST SESSION THERE WAS A BILL PROPOSED WHICH ADDED A SECTION TO THE STATUTE THAT DIDN'T ADDRESS THAT ISSUE TOTALLY BUT IT PUT IN NOT WITHSTANDING 316.1932, ANY LAWFUL TEST APPROVED -- THAT HOUSE BILL SUBSEQUENTLY WAS REMOVED FROM THE HOUSE BILL AND IT WAS CONNECTED TO THE LEGISLATION, THE SENATE BILL THAT SUBSEQUENTLY PASSED IS NOT IN THERE.

>> TO ENTER SOME INTENT ABOUT

THE PRESENT STATE OF THE LAW
BECAUSE THE LEGISLATURE DIDN'T
PASS SOME BILL WHICH COULD HAVE
HAPPENED FOR ANY NUMBER OF
REASONS UNRELATED TO THE INTENT
OF THE LEGISLATURE WHEN IT
PASSED THE STATUTE THAT IS
ACTUALLY BEFORE US, ISN'T THAT A
BIT OF A STRETCH?

WE INFER THAT FROM LEGISLATIVE
INACTION, THAT WILL LEAD TO ALL
SORTS OF CONCLUSIONS THAT HAVE
NO BASIS IN REALITY.

>> THE LEGISLATURE COULD HAVE,
IF IT CHOSE, IT RECOGNIZED THERE
WAS AN ISSUE RAISED BY DISTRICT
COURT OF APPEAL.

>> THE LEGISLATURE MIGHT
RECOGNIZE THIS IS A MATTER BEING
LITIGATED, AND ONE APPROACH
COULD BE THAT THEY WOULD WAIT
FOR IT TO RUN ITS COURSE AND THE
REVIEW WAS FINISHED HERE AND IT
WAS ULTIMATELY -- THERE IS
CONFLICT ON THIS ISSUE.

>> THE CONFLICT RELATES TO THE
STATUTORY INTERPRETATION.
IF FOR CONFLICT RELATES TO
STATUTORY INTERPRETATION OF THE
STATUTE, THAT IS WHERE THE COURT
HAS THE CONFLICT, WHETHER THEY
SHOULD BE READ TOGETHER OR NOT.
THE STATUTE ITSELF, THE
LEGISLATURE HAD THE OPPORTUNITY,
THE COURT CAN LOOK TO THAT AS TO
WHETHER OR NOT THE LEGISLATURE

IS PRESUMED TO KNOW, THEY
MENTIONED --

>> I HAVE A QUESTION ON WHAT THE
SCOPE WOULD BE OF WHEN YOU COULD
LOSE YOUR LICENSE UNDER THE
CURRENT STATE OF THE LAW.

THE LAW ENFORCEMENT OFFICER HAS
PROBABLE CAUSE TO BELIEVE THE
PERSON DRIVING WHILE UNDER THE
INFLUENCE, THEY STOP THAT
PERSON, THEY HAVE PROBABLE CAUSE
TO BELIEVE IT, THAT PERSON
REFUSES.

THERE IS NO LAWFUL ARREST, THERE
IS NO UNLAWFUL ARREST, THEY ARE
NOT ARRESTED.

IS YOUR POSITION IF THERE IS NO
ARREST, THERE ISN'T THE BASIS TO
SUSPEND THE PERSON'S DRIVER'S
LICENSE?

>> YOU STILL HAVE THE RIGHT TO
SUSPENDED IS A LAWFUL -- I WILL
TAKE THAT BACK.

NO.

AS SET OUT NOW THE ISSUE
REGARDING THE DRIVER'S LICENSE

--

>> ISN'T THE PROBLEM THAT WE
DON'T WANT UNLAWFUL ARRESTS, BUT
IF FOR WHATEVER REASON THE
POLICE ARE BENIGN AND DECIDE
THIS PERSON SHOULD GET A PASS
AND WE ARE NOT GOING TO
PROSECUTE THIS PERSON FOR DUI
BUT THEY SHOULD LOSE THEIR
LICENSE, THAT WOULD BE A PROPER

-- THERE WOULD BE A GAP THE OTHER WAY.

WE WOULD BE ENCOURAGING LAW ENFORCEMENT TO SAY LET'S ARREST PEOPLE BECAUSE THAT IS THE ONLY WAY TO GET THEIR LICENSES SUSPENDED.

>> THE LEGISLATURE HAS DONE SIMILAR ACTS, YOU DON'T HAVE TO BE ARRESTED IF YOU'RE A COMMERCIAL DRIVER -- THE LEGISLATURE CAN DO THAT.

>> IS THAT IN 316?

GOING BACK TO JUSTICE LEWIS'S QUESTION --

>> IT SETS OUT WHEN YOU HAVE TO SUBMIT, WHAT TYPE OF MACHINE SHOULD BE USED, IT SETS EVERYTHING OUT IN ONE STATUTES. THE COMMERCIAL DRIVER'S LICENSE IS IN 322.

IF YOU'RE IN A COMMERCIAL VEHICLE AND THEY HAVE PROBABLE CAUSE TO BELIEVE YOU HAVE ANY ALCOHOL BECAUSE OBVIOUSLY THERE IS STATE INTEREST IN BEING MORE CONCERNED, THIS IS WHAT HAPPENS, AND THE STATUTE NEXT TO IT SETS OUT LIFE IN THESE TWO STATUTES, HOW THE HEARING IS HELD AND THE NATURE OF THAT.

THE LEGISLATURE DID AMEND THAT BECAUSE THEY HAVE RECENTLY AMENDED THE PROVISION TO APPLY TO THOSE WHO HAVE LICENSES THAT ARE NOT DRIVING COMMERCIAL

VEHICLES.

>> IF SOMEONE IS IN A VEHICLE AND THEY PULL OVER TO THE SIDE OF THE ROAD, THEY ARE NOWHERE NEAR THEIR HOUSE OR ANYTHING LIKE THAT, AND THEY GO TO SLEEP AND A POLICE COME BEHIND THEM AND GO TO THE CAR AND THEY HAVE THE SMELL OF ALCOHOL AND, ALL OF THIS, AND THE PERSON REFUSES TO TAKE WHATEVER TEST YOU NEED TO TAKE.

CAN THAT PERSON'S LICENSE BE SUSPENDED IF THE POLICE OFFICER COMES INTO THE HEARING AND SAYS, YOU KNOW, THIS CAR WAS PARKED ON THE SIDE OF THE ROAD AND IT WAS MIDNIGHT AND I COULD SMELL ALCOHOL AND THERE WAS EMPTY BOTTLE ON THE BACK SEAT, AND ALL OF THIS?

>> I WOULD SAY NO AND FOR SEVERAL REASONS.

WE DON'T KNOW WHATEVER TESTS, WHATEVER TESTS.

THERE IS NOTHING IN 2615.

>> I MEANT SINCE WHETHER IT WAS BREATH TEST OR URINE TEST.

THE TESTS YOU NORMALLY TAKE IF SOMEONE SUSPECTS THAT YOU ARE IMPAIRED.

>> I WOULD SAY NUMBER ONE THAT POINTS OUT ONE OF THE PROBLEMS. SECOND, IF THE LEGISLATURE CHOOSES TO DO THAT, THAT IS CLEARLY A SECOND QUESTION WHICH

IS GOING TO DEAL WITH WHETHER
OR NOT --

>> WHICH SEEMS TO ME WHAT THIS,
WHAT THIS, PARAMETERS OF WHAT A
HEARING OFFICER COULD LISTEN
TO, IF YOU WANT TO SUSPEND
SOMEONE'S LICENSE.

>> ACCEPT UNDER 316.1932 WE
TELL DRIVERS IF YOU ARE
LAWFULLY ARRESTED THEN YOU HAVE
TO SUBMIT --

>> IN THE CASE I'M TALKING
ABOUT THERE WAS NO ARREST.
THEY LET HIM CALL SOMEONE TO
COME GET HIM.

>> THAT IS ONLY TIMES YOU ARE
REQUIRED IF YOU ARE ARRESTED.
THAT IS WHAT 316.192.

THE SUPREME COURT HAS SET
GREATER PROTECTIONS FOR THE
CITIZENS OF FLORIDA.
BY PUTTING THAT IN THE STATUTE.
SO THEY HAVE NOT PROVIDED THAT
UNDER THOSE CIRCUMSTANCES.
YOU CAN JUST DO IT.

WE CAN'T LOOK AT FACTUAL
SCENARIOS, BECAUSE
UNDERSTANDING IN THAT CASE
THERE MAY BE BENIGN BEHAVIOR
BUT THERE MAY BE OTHER CASES
WHERE IT IS NOT BENIGN BEHAVIOR
AND THE STATUTE CAN'T CHANGE
AND SCOPE OF REVIEW CAN NOT
CHANGE BASED ON THE BEHAVIOR OF
THE OFFICER.

THE SCOPE OF REVIEW AND

PROTECTIONS OF THE CITIZENS IS
SAME ACROSS THE BOARD.

>> YOU ARE NOW INTO YOUR
REBUTTAL TIME.

>> GOOD MORNING, YOUR HONORS.
TONY DODDS ON BEHALF OF GEORGE
McLAUGHLIN.

MY IS UNUSUAL FACTUAL SCENARIO,
THAT MR. ^McLAUGHLIN
WAS ARRESTED INSIDE HIS OWN
HOME.

THIS EXACERBATES THE LAWFULNESS
OF THE ARREST.

>> I DON'T KNOW IF IT IS THIS
CASE WAS HE IS IN ACCIDENT
FIRST.

>> FENDER-BENDER IN THE
NEIGHBORHOOD.

>> HE RAN.

>> NOT RAN.

>> NOT SUCH LIKE INNOCENT THAT
HE WAS JUST PURSUED BY,
RANDOMLY INTO HIS HOUSE.

>> NO. BUT IT DOES GO TO SHOW
HOW FAR AN OFFICER COULD GO
UNDER THE

CIRCUMSTANCES OF THE STATE'S
POSITION IN THIS PARTICULAR
CASE, WITHOUT REQUIRING A
LAWFUL ARREST OUT OF IT.

IN FACT JUDGE LANGFORD FOUND
THAT WAS UNLAWFUL ARREST IN HIS
ORIGINAL CIRCUIT COURT OPINION.
HE ALSO KIND OF, DEMONSTRATED
THE SAME THINGS THAT THIS
COURT'S DEALING WITH RIGHT NOW,

CALLING THIS UNNERVING QUAGMIRE
TO HAVE TO DEAL WITH THE WAY IT
IS BEING --

>> I GUESS MY QUESTION THOUGH
HERE IS, OKAY, THAT WAS A
LAWFUL ARREST.

WHEN THEY SEE HIM LATER AND GO
TO HIS HOME AND ARREST HIM
THERE. BUT DOES IT CHANGE THE FACT
OF HIS CONDUCT AND HIS STATE OF
IMPAIRMENT AT THE TIME THAT THE
ACCIDENT TOOK PLACE?

>> I'M HAVING DIFFICULTY
ANSWERING THAT THAT WAY.

>> I'M TRYING TO FIGURE OUT WHY
A DRIVER'S LICENSE CAN NOT BE
SUSPENDED IF YOU IN FACT HAVE
ALL OF THOSE ELEMENTS OF WHY,
THERE WAS PROBABLE CAUSE TO
BELIEVE THAT HE WAS IMPAIRED?

>> ANSWER FOR THAT IS WITHIN
316 ITSELF, WHICH IS ENABLING
IMPLIED CONSENT STATUTE IT
REQUIRES A LAWFUL ARREST.
THAT'S WHAT HE SIGNED OFF ON
WITH REGARDS TO ACCEPTING THAT
DRIVING PRIVILEGE TO BEGIN
WITH.

THAT IS THE CONTRACT WITH THE
STATE.

>> THAT IS THE PART.

REALLY 316.1932 THAT NEEDS TO
BE AMENDED BUT THAT NEEDS TO BE
AMENDED BY THE LEGISLATURE
BECAUSE THERE IS NOTHING, I'M
NOT GOING TO SAY NOTHING

CONSTITUTIONAL BUT IT WOULD SEEM THAT IF, BUT FOR THAT SETTING FORTH THE PARAMETERS, IT WOULD NOT BE A, AT LEAST A PROBLEM FROM AN ADMINISTRATIVE POINT OF VIEW, IF SOMEBODY IS IN FACT PROBABLE CAUSE TO BELIEVE THEY'RE DRIVING UNDER THE INFLUENCE THAT YOU COULD SUSPEND THEIR DRIVER'S LICENSE.

>> CORRECT.

>> NOW COULD THIS, YOUR CLIENT HAVE BEEN PROSECUTED FOR DUI? NOTWITHSTANDING THE UNLAWFUL ARREST, IF THERE WAS OTHER EVIDENCE, OTHER THAN THIS IMPLIED CONSENT THAT HE WAS DRIVING WHILE INTOXICATED OR UNDER THE INFLUENCE?

NOTHING ABOUT THIS, THERE ARE TWO SEPARATE ISSUES.

HE COULD STILL BE PROSECUTED AT SOME POINT.

HE COULD HAVE BEEN PROSECUTED.

>> WELL, THEORETICALLY OF THE WITNESSES THAT WERE THE, TO BEGIN WITH, BUT ANYTHING POST-ARREST WOULD HAVE BEEN EXCLUDABLE AS UNLAWFUL ARREST.

>> IT IS A SEPARATE ISSUE WHETHER YOU'RE PROSECUTED FOR DUI.

>> EXACTLY.

>> ONLY THING WE'RE TALKING ABOUT REFUSING IS BLOOD-ALCOHOL, I KEEP SAYING BLOOD-ALCOHOL, A

BREATHALYZER TEST.

>> THAT'S CORRECT.

AND I DON'T KNOW WHETHER THIS COURT WOULD NEED TO KNOW THAT BUT THE STATE ELECTED NOT TO PROSECUTE ON THIS CASE BECAUSE THE SITUATION WITH THE UNLAWFUL ARREST.

BUT TO GO ON FURTHER WITH THAT THOUGH, YOU REALLY DON'T HAVE ANYTHING OTHER THAN 316.1932 TO TELL YOU.

THAT IS EXACTLY WHAT WE ALL SIGNED OFF ON FOR PURPOSES OF OUR DRIVER'S LICENSE IS THAT PROVISION UNDER IMPLIED CONSENT.

>> BUT YOU AREN'T ARGUING THAT THE LEGISLATURE'S LIMITATION ON THE SCOPE OF THE REVIEW IS UNCONSTITUTIONAL BECAUSE OF SOMETHING SAID SOMEWHERE ELSE IN ANOTHER STATUTE?

>> WHAT I'M ARGUING IS THE ONLY WAY HE COULD PROBABLY UPHELD TO BE CONSTITUTIONAL TO LOOK AT 316.1932, OTHERWISE YOU HAVE NO PROVISION.

>> HAVE YOU ARGUED THAT THE INTERPRETATION OF THE STATUTE ADOPTED BY THE SECOND DISTRICT MAKES THE STATUTE UNCONSTITUTIONAL?

>> I DIDN'T WANT TO STEP OVER

THAT LINE.

>> YOU HAVEN'T ARGUED THAT?

>> WHAT I SAID WAS IT WAS TO BE
IN PARI MATERIA.

>> WHAT I'M SAYING YOU HAVEN'T
RAISED A CONSTITUTIONALITY
ARGUMENT IN THIS PROCEEDING?

>> NO, I DID NOT SAY THAT 322
IN OF ITSELF WAS
UNCONSTITUTIONAL BUT TO BE ABLE
TO READ IT CONSTITUTIONAL YOU
HAVE TO READ IT IN PARI
MATERIA.

>> I HAVEN'T READ THE CASE
RECENTLY.

I MEAN IN THE LAST DAY OR SO TO
REMEMBER.

BUT IS ANOTHER POSSIBLE
CONSTRUCTION THAT GIVES EFFECT
TO THE LEGISLATIVE INTENT IS TO
SAY, THE HEARING OFFICER CAN'T
CONSIDER IT BECAUSE IT'S NOT
AMONG HIS OR HER DUTIES?
CAN'T DO, BUT THAT DOESN'T
PREVENT A DEFENDANT WHO
BELIEVES THAT HIS OR HER ARREST
WAS UNLAWFUL, FROM THEN
CHALLENGING IT IN COURT WHERE
THE JUDGE CAN SAY, WELL, I'M
LOOKING AT 216.1932 AND, THIS IS
NOT A PROPER REVOCATION OF A
LICENSE.

THAT'S NOT THE WAY THE
DEPARTMENT OF MOTOR VEHICLES
WOULD LIKE THIS TO HAPPEN BUT
WOULDN'T THAT BE THE RECOURSE?

AND IT IS UNWIELDY IN SOME
CASES BUT PUTS A LITTLE MORE
BURDEN ON A DEFENDANT WHO IS
SAYING I'M NOT LAWFULLY
ARRESTED BUT IT STILL AFFECTS
THE STATUTE, INTENT THE
STATUTORY SCHEME OF SAYING IT
HAS GOT TO BE PURSUANT TO
LAWFUL ARREST BUT THE HEARING
OFFICER DOESN'T CONSIDER IT?
>> THE PROBLEM WITH THAT IS, I
DON'T THINK THAT YOUR CIRCUIT
COURTS IN THEIR REVIEW UNDER A
WRIT OF CERTIORARI ARE SUPPOSED
TO LOOK AT UNLAWFUL ARREST.
THEY'RE SUPPOSED TO DO DE NOVO
REVIEW WHAT HAPPENED AT THAT
LOWER HEARING.
THEY'RE NOT ABLE TO INTERJECT
ANOTHER ISSUE THAT WAS NOT
ALREADY AN ISSUE TO BE
DETERMINED BY --
>> YOU WOULD BE SAYING IT IS
NOT A LAWFUL SUSPENSION BECAUSE
IT HAD TO BE PURSUANT TO 316.
>> CORRECT.
>> HOW IN A REVIEW PROCEEDING
COULD THEY MAKE A, THEY WOULD
HAVE TO MAKE A FACT WALL
DETERMINATION CONCERNING A FACT
THAT HAD NOT BEEN ADDRESSED IN
THE PROCEEDING BELOW.
>> THAT IS MY POINT.
TO THE EXTENT IT NEEDS TO BE
DONE BELOW AS WELL OR OTHERWISE
THAT CIRCUIT COURT IS

CONSTRAINED ON WHAT PARAMETERS.

>> I WOULDN'T DO IT.

THE ANSWER WOULD BE IT WOULD
HAVE TO BE A SEPARATE
PROCEEDING ATTACKING THE
LEGALITY OF THE LICENSE SUSPENSION
ON THE BASIS THAT IT WASN'T
INCIDENT TO A LAWFUL ARREST.
AND YOU WOULD PUT ON EVIDENCE
IT WASN'T LAWFUL.

>> I THINK YOU'RE CORRECT IN
THAT. THE PROBLEM WITH THAT IS
IT DEFEATS THE PURPOSE OF HAVING
THE HEARING OFFICER PROCESS.

>> JUST TRYING TO THINK WHAT
WOULD THE CAUSE OF ACTION.

>> THE LEGISLATURE WOULD HAVE
TO CREATE SOMETHING AT THAT
POINT.

>> THEY HAVEN'T. IN THE ABSENCE --

>> WE DON'T HAVE IT.

>> IT IS CERTAINLY A POSSIBLE
WAY TO APPROACH IT.

>> IT IS BUT UNDER THE WRIT OF
CERTIORARI THE CURRENT REVIEW
PROCESS YOU CAN'T DO IT THAT
WAY.

>> WOULDN'T HELP PEOPLE WHO ARE
NOT EVEN ARRESTED.

>> CORRECT.

>> TALKING ABOUT PEOPLE BEING
DEPRIVED THAT LICENSE THAT MUCH
LONGER WHILE IT IS UNDER THE
REVIEW PROCESS.

THAT'S WHY THEY DO HEARINGS WAY
THEY DO WITH HEARING OFFICER

WITHIN 30 DAYS OF ARREST AND
TEMPORARY PERMIT COMES DOWN AS
PART OF THAT PROCESS.

>> I FEEL THE LEGISLATURE, AS
JUSTICE LEWIS SAY, SOMETIMES
WE'RE ACCUSED OF LEGISLATING
FROM THE BENCH OR THIS.
THE PROBLEM, THE QUAGMIRE
PRESENTED IS IF THEY ONLY
INTENDED TO MAKE SURE THAT THE
ARRESTS WERE BROADER THAN JUST
DUI, THEY DIDN'T DO THAT.
IF THEY REALLY INTENDED TO
REMOVE LAWFULNESS OF THE ARREST
FROM THE, FROM THE REASON A
LICENSE CAN BE SUSPENDED, THEY
HAD TO AMEND 316.

>> CORRECT. OTHERWISE WE'VE
ALL AGREED TO
SOMETHING TOTALLY DIFFERENT
THAN WHAT THEY'RE TRYING TO NOW
ENFORCE.

AND THAT IS PRETTY MUCH THE
NUTSHELL OF MY ARGUMENT ON
THIS.

THANK YOU.

>> ALL RIGHT.

THANK YOU. REBUTTAL?

>> THANK YOU.

THE FACTS OF McLAUGHLIN, THERE
WAS AN ACCIDENT.
HE LEFT THE SCENE.
WENT TO HIS HOUSE.
LAW ENFORCEMENT KNOCKS ON THE
DOOR. HE STEPS OUT.
THEY QUESTION HIM.

THEY DETERMINE, THEY SMELL
ALCOHOL.

THERE IS INDICIA OF
DRUNKENNESS.

THEY INITIATE TO PLACE HIM
UNDER ARREST.

HE STEPS BACK OVER HIS
THRESHOLD INTO HIS HOUSE BUT
THEY, TAKE HIM OUT, ARREST HIM,
PUT HIM IN THE CAR.

AS HE INDICATED PROSECUTION
DETERMINED NOT TO CONTINUE THE
CASE BECAUSE OF ISSUES OF THE
LAWFULNESS OF THE ARREST,
CRIMINAL SIDE, THE ABILITY TO
PROVE A CRIMINAL DUI.

BUT THE LEGISLATURE SAID THIS
PERSON WAS IN HIS CAR, DRUNK,
HAD AN ACCIDENT AND BECAUSE
LEAVES THE SCENE AND GETS TO
HIS HOUSE AND THE POLICE,
PROCEDURE THAT HE WAS ARRESTED
WAS, UNLAWFUL, THAT WE'RE GOING
TO IGNORE THAT HE WAS DRIVING
DRUNK AND WE'RE NOT GOING TO
TAKE ANY ACTION AGAINST HIS
LICENSE.

THE LEGISLATURE SAID, YOU KNOW,
WE DON'T CARE IF THERE WAS AN
UNLAWFUL ARREST.

WHAT WE CARE IS WE NEED TO TAKE
DRUNKS OFF THE ROAD.

IMPROPRIETY SOMETHING DONE
INCORRECTLY BY LAW ENFORCEMENT
IN THE ARREST PROCESS IT --

>> BUT DOESN'T THE QUESTION

THEN BECOME, IN ORDER TO NOT
HAVE THE RIGHT TO CONSENT, YOU
STILL HAVE TO HAVE THE
LAWFULNESS OF THE ARREST?

THAT'S WHAT THE PROBLEM IS.

YOU ONLY HAVE THE RIGHT NOT TO
CONSENT BASED ON THAT STATUTE.
THAT STATUTE SAYS, YOU DON'T
HAVE THE RIGHT TO NOT CONSENT.

>> TO REFUSE.

>> IF THE ARREST IS LAWFUL.

>> YOU HAVE THE RIGHT TO REFUSE
BUT IF YOU DO THERE'S A
CONSEQUENCE.

THE LEGISLATURE DEEMED THAT --

>> AGAIN IT'S ONLY IF THERE IS
A LAWFUL ARREST IS WHEN, YOU
CAN REFUSE, IF IT IS NOT A
LAWFUL ARREST, CORRECT?

>> NO.

>> YOU CAN NOT?

>> NO. YOU DO NOT HAVE A RIGHT TO
REFUSE A LAWFUL TEST IF THERE
IS PROBABLE CAUSE TO BELIEVE
THAT YOU WERE DRIVING --

>> UNDER 316 THERE DOES NOT
HAVE TO BE A LAWFUL ARREST AS
PRECONDITION FOR THE REQUIRED,
ABSOLUTE REQUIRED BREATHALYZER?

>> FOR PURPOSES OF IT BEING
USED IN THE CRIMINAL ARENA.

>> I SAID 316.

YOU'RE TRYING TO AGAIN GET BACK
TO THAT.

UNDER 316, MAKE SURE I
UNDERSTAND THIS, MAYBE I'M

WRONG, AS I UNDERSTOOD, IF A
CITIZEN IS NOT LEGALLY
ARRESTED, THEN THE REFUSAL TO
TAKE THE BREATHALYZER IS FINE?

>> NO.

>> IT IS NOT.

>> THEIR LICENSE IS SUBJECT TO
SUSPENSION UNDER REFUSAL?

>> UNDER 316.

>> UNDER 322.

>> THE PROBLEM WE HAVE 322 IS
NOT THE CONSENT STATUTE, RIGHT.

>> CORRECT.

>> SO 322 DOESN'T SAY THAT.

>> CORRECT.

>> 322 DOESN'T SAY, NO MATTER
WHAT HAPPENS YOU CAN NOT TELL
AN OFFICER, I'M NOT GOING TO
SUBMIT TO THIS TEST.

THAT IS NOT IN 322.

>> PREVIOUSLY IT WAS.

THE LEGISLATURE TOOK IT OUT AND
THE QUESTION WHETHER THIS COURT
SHOULD GIVE FORCE AND EFFECT TO
THAT.

THE SET OF FACTS --

>> BUT HOW WOULD A CITIZEN KNOW
BASED ON LOOKING WHAT THE SCOPE
OF A HEARING OFFICER'S REVIEW
WHAT THEIR RIGHTS ARE ABOUT
IMPLIED CONSENT?

>> THE SCOPE, IT LAYS IT OUT
CLEARLY THAT IF YOU WERE
DRIVING, IF YOU WERE DRIVING
UNDER THE INFLUENCE, IF YOU
WERE TOLD THAT IF YOU REFUSED

AND THAT YOU DO REFUSE, THAT
YOUR LICENSE IS SUBJECT TO
SUSPENSION.

THAT IS WHAT THE PUBLIC IS PUT
ON NOTICE OF.

>> WHERE AGAIN?

>> THAT IS IN 322.2165,
7-B.

THAT IS REFUSAL PROVISION.

>> WITH THAT, MR.^SUNSHINE, YOU
HAVE USED MORE THAN YOUR TIME.

>> THANK YOU.

>> THANK YOU.

>> THANK ALL OF YOU FOR YOUR
ARGUMENTS HERE TODAY.