

>> WE NOW WILL MOVE TO THE  
FOURTH AND FINAL CASE ON  
TODAY'S DOCKET.  
BRADSHEER VERSUS THE FLORIDA  
DEPARTMENT OF HIGHWAY SAFETY  
AND MOTOR VEHICLES.  
YOU CAN WAIT A MINUTE OR TWO TO  
CLEAR OUT HERE.  
PLEASE PROCEED.

>> THANK YOU, YOUR HONOR.  
MAY IT PLEASE THE COURT.  
THE TRANSCENDENT QUESTION  
IN THIS CASE IS WHETHER IS A  
STATE AGENCY ACTS WITHOUT  
AUTHORITY CAN UNDO AN ILLEGAL  
PENALTY, INCLUDING PURGING OF  
THE RECORD AND RESTORING MONIES  
THAT HAVE BEEN PAID OUT.  
IN 2002 THROUGH 2005, THE DMV  
WAS PRESUMABLY TRYING TO ACT IN  
THE PUBLIC INTEREST WHERE IT  
PERCEIVED THAT THE CRIMINAL  
COURT, WITH RESPONSIBILITY, HAD  
NOT ACTED, AND THE PROBLEM IS  
THAT THE AGENCY HAD NO  
AUTHORITY ITSELF AND ITS  
ACTIONS THERE FOR VIOLATED  
CONSTITUTIONAL RIGHTS.  
BY THREATENING TO CANCEL  
REINSTATED DRIVER'S LICENSES OF  
THE ALLEGED CLASS, IF THEY DID  
NOT INSTALL AND MAINTAIN THE  
INTERLOCK DEVICE, THE DMV  
EXTRACTED, OR EXACTED  
THE PENALTY ONLY  
UNDER OUR LAW THE CRIMINAL

COURT WAS REQUIRED TO IMPOSE  
BUT CHOSE NOT TO IMPOSE OR  
FAILED TO IMPOSE.

>> WHEN YOU GOT, THE LETTER  
THAT IS ONE OF THE ATTACHMENTS,  
EXHIBIT D, I DON'T KNOW WHAT  
IT'S TO BUT A LETTER DATED  
JANUARY 27th, 2004.

I DON'T KNOW IF THAT WAS A  
GENERAL LETTER BUT IT SAID THAT  
YOU'VE GOT TO IMMEDIATELY  
SCHEDULE AN APPOINTMENT.  
IF YOU DON'T COMPLY, YOUR  
DRIVER'S LICENSE WILL BE  
CANCELED.

AND THEN IT SAYS, APPEALS OF  
THE ORDER MAY BE INITIATED  
WITHIN 30 DAYS.

DID THAT, DID YOUR CLIENT AVAIL  
HIMSELF OF THAT PROCEDURE?

>> NO, NO, FIRST OF ALL  
THERE IS NO  
APPEAL WITHIN 30 DAYS.

THERE IS CERTIORARI.

BUT PERHAPS AVAILABLE.

BUT THERE'S NO NEED TO APPEAL  
AN ILLEGAL ORDER ANYMORE THAN  
YOU HAVE TO APPEAL AN ILLEGAL  
TAX OR AN ILLEGAL FINE.

YOU CAN CHALLENGE THAT FINE,  
YOU CAN PAY AND GO TO COURT AND  
SEEK TO UNDO IT.

>> IS THAT WHAT YOUR CLIENT  
DID?

>> THAT IS WHAT THE CLASS IS  
HERE FOR.

>> THE CLIENT INSTALLED THE INTERLOCK DEVICE?

>> APPARENTLY SOME MEMBERS WHO MAY HAVE NOT INSTALLED AND SIMPLY GOT THEIR LICENSE CANCELED.

BUT PRESUMABLY MOST OF THE CLASS INSTALLED AND NOW WE ARE HERE ARE UNDUE THE HARM.

JUST LIKE THE TAXPAYER WHO PAYS AN ILLEGAL TAX OR AN ILLEGAL FEE COMES INTO COURT AND CAN CHALLENGE THE TAX OR FEE.

>> HAVE YOU CHALLENGED, IT STRIKES ME, I THOUGHT YOU MADE AN INTERESTING ARGUMENT, IF YOU TOOK THIS INTERLOCK DEVICE REQUIREMENT UNDER THE HUDSON FACTORS, YOU WOULD PROBABLY COME UP WITH, OR, VERY EASILY COME UP WITH THE FACT THIS ISN'T A PUNISHMENT.

IT'S, SOMETHING FOR THE PUBLIC GOOD.

BUT, AND SUBSEQUENTLY IN 2005 THE LEGISLATURE AUTHORIZED THE DMV TO ACTUALLY DO THIS.

>> YES.

>> THAT STATUTE IS, HAS NOT BEEN ATTACKED.

IT IS NOT UNDER ATTACK.

>> NOT IN THIS CASE.

NOT IN THIS CASE.

>> IT IS ATTACKED AS BEING UNCONSTITUTIONAL PENALTY?

>> NO. WE'RE NOT ATTACKING THAT.

OUR CLASS IS CONCERNED WITH THE PERIOD OF 2002 THROUGH 2005 WHERE FOUR APPELLATE COURTS OF THIS STATE HELD THAT TO BE ILLEGAL ACTIONS ON THE PART OF THE DMV.

>> ONLY BECAUSE IT WAS ORIGINALLY ORDERED BY THE LEGISLATURE TO BE PART OF THE CRIMINAL SENTENCE AS OPPOSED TO A SEPARATE ADMINISTRATIVE ITEM THAT IT BECOMES ILLEGAL?

>> I THINK THE THRUST OF THE QUESTION IS, COULD THE LEGISLATURE HAVE AUTHORIZED A STATUTE OR COULD IT HAVE PUT IN PLACE A STATUTE TO ALLOW THE DMV TO DO THIS IN THE EVENT THE CRIMINAL PUNISHMENT WAS NOT EXACT OR NOT MEASURED OR NOT IMPOSED.

THAT IS FOR ANOTHER DAY.

WE DON'T HAVE A STATUTE.

I BELIEVE PERSONALLY I THINK IT IS PERMISSIBLE.

I THINK YOU CAN HAVE, I DON'T WANT TO COMMIT A FUTURE CASE BUT I THINK YOU COULD HAVE A CIVIL PENALTY OR A CIVIL REMEDIAL STATUTE IMPOSED THAT WOULD, THAT COULD BE ON TOP OF A CONVICTION.

>> THEN IT WOULD MEET, IN THAT SITUATION IT WOULD MEET THE HUDSON -- AGAIN, I UNDERSTAND YOU'RE NOT, YOU DON'T WANT US

TO LOOK AT THAT BUT SINCE THEY BROUGHT UP THE HUDSON FACTORS, COULD YOU THEN EXPLAIN WHY HUDSON WOULD APPLY IF THE LEGISLATURE AUTHORIZED THE DMV TO ENACT THIS PROCEDURE BUT NOT WHERE THE LEGISLATURE AUTHORIZED OR ORDERED THE JUDGE TO INCLUDE IT AS PART OF THE CRIMINAL SENTENCE.

>> HUDSON WOULD NOT COME INTO PLAY UNLESS WE HAVE A CIVIL PENALTY THAT IN EFFECT TRANSLATES TO A CRIMINAL PENALTY.

SO YOU COULD HAVE ANALYSIS UNDER HUDSON THAT SAID WHILE THE LEGISLATURE IS SAYING THIS IS CIVIL, IT IN FACT IS A PUNISHMENT AND THEREFORE SHOULD BE A CRIMINAL STATUTE.

HERE WE HAVE THE LEGISLATURE CLEARLY DENOMINATING THIS A CRIMINAL ACT.

THERE'S NO QUESTION IT'S A CRIMINAL ACT.

IT IS IN EVERY STATUTE THAT YOU READ, MULTIPLE STATUTES AND IT'S CLEAR.

>> YOU MEAN CRIMINAL ACT, YOU SAID CRIMINAL ACT?

>> IT IS A CRIMINAL SENTENCE.

IT IS PART OF A SENTENCE.

IT IS NO QUESTION PART OF A SENTENCE.

AND THE LEGISLATURE WAS CLEAR

AND, AS I SAY, FOUR DISTRICT COURTS OF APPEAL AND THIS DISTRICT AND THE DISTRICT COURT OF APPEAL IN THIS DECISION RECOGNIZED IT TO BE A CRIMINAL ACT, A CRIMINAL SENTENCE.

>> SO WHAT IS THE, WHAT IS THE CONFLICT ISSUE WE'RE HERE ON?

>> THE CONFLICT WE'RE HERE ON CERTIFIED BY THE COURT IS THE DOUBLE JEOPARDY ISSUE.

>> ONLY ON THE ISSUE THAT BECAUSE IT WAS THE DMV THAT, THAT ORDERED IT, IT COULDN'T BE CONSIDERED DOUBLE JEOPARDY?

>> THE OPINION BELOW REASONED THAT SINCE THE DMV HAD NO AUTHORITY TO PUT THE, TO ORDER THE INTERLOCK DEVICE, IT COULD NOT BE ENHANCING THE SENTENCE TO CAUSE DOUBLE JEOPARDY.

THIS WAS JUDGE HAWK'S MAJORITY DECISION.

JUDGE BENTON DISSENTED.

THAT WAS THE REASONING OF THE COURT AND IT IS COMPLETELY FALLACIOUS BECAUSE ONCE YOU UNDERSTAND OR ONCE YOU ACCEPT THAT PART OF DOUBLE JEOPARDY IS THAT THE SENTENCE SHALL NOT BE INCREASED OR CAN NOT BE INCREASED AFTER BEGINNING SENTENCE. HERE WE HAVE A COMPLETE SENTENCE. SENTENCE IS SERVED.

THE COURT ORDERED REINSTATEMENT OF THE LICENSE SO THERE IS NO

ISSUE.

BUT ONCE YOU HAVE THE, ONCE YOU ACCEPT THAT, THEN WHO ELSE BUT AN ADMINISTRATOR OF THE PUNISHMENT WOULD CAUSE AN INCREASE OF THE PUNISHMENT? THAT IS TO SAY IF THE JAILER GAVE YOU FIVE EXTRA DAYS THAT WOULDN'T BE A VIOLATION OF DOUBLE JEOPARDY, BECAUSE AFTER ALL HE HAD NO AUTHORITY TO DO SO. THAT DOESN'T ADD UP FOR ME. JUDGE HAWK'S OPINION OR ILLEGAL OR IS ILLOGICAL FOR THE CONCLUSION TO BE OTHERWISE, I THINK HIS CONCLUSION IS ILLOGICAL BECAUSE I THINK THAT IS THE ONLY PERSON, THE ONLY ENTITY OTHER THAN THE COURT THAT COULD POSSIBLY INCREASE THE PENALTY IS THE PERSON BEING CHARGED WITH EXECUTING THE PENALTY.

>> TELL ME WHY THE CHARACTERIZATION OF THIS ACT BY THE DEPARTMENT WHICH TO BE UNLAWFUL BUT MIGHT NOT BE DOUBLE JEOPARDY BUT CHARACTERIZING IT AS A VIOLATION OF DOUBLE JEOPARDY IS IMPORTANT FOR YOUR CLASS ACTION AND IS SOMETHING THAT HAS --

>> I THINK IT'S ONE OF THE COUNT, YOUR HONOR. IT IS ONE OF THE RIGHTS THAT ARE VIOLATED. THEY VIOLATED DOUBLE JEOPARDY.

THEY VIOLATED DUE PROCESS.  
THEY VIOLATED, THEY VIOLATED  
ARTICLE 1, SECTION 18, BY  
IMPOSING A PENALTY WITHOUT  
AUTHORITY.

>> BUT WHAT DOES THAT HAVE TO  
DO WHETHER THEY HAVE GOT TO  
COUGH UP MONEY BECAUSE THEY DID  
THAT?

THERE IS OVERARCHING ISSUE?

>> WE COUGHED UP MONEY.

WHY SHOULDN'T THEY PAY US BACK?

>> PEOPLE MAY HAVE SENTENCES  
IMPOSED ON THEM IN VIOLATION OF  
DOUBLE JEOPARDY.

THAT DOESN'T MEAN THERE IS A  
CAUSE OF ACTION TO, AGAINST THE  
PROSECUTOR OR THE COURT FOR  
THAT.

>> NO. AGAINST THE PROSECUTOR HAS  
QUALIFIED IMMUNITY.

ABSOLUTE IMMUNITY IN SOME  
INSTANCES.

WE'RE NOT TALKING ABOUT THAT.

WE'RE TALKING ABOUT THE STATE.

THE STATE IMPROPOSING A  
PENALTY, THERE IS NO QUESTION  
IT'S A PENALTY.

THE STATE IMPOSING A PENALTY  
AND IN THOSE INSTANCES YOU GIVE  
IT BACK.

IF THE STATE SEARCHES AND TAKES  
MY PROPERTY AND GIVES IT BACK.

IF THE STATE IMPOSES A FINE  
THAT IS IMPROPER IT PAYS IT  
BACK. THIS IS ESTABLISHED

JURISPRUDENCE.

IF WE DON'T HAVE THE STATE  
OBLIGATED TO RETURN THE MONEY,  
THEN ARTICLE I, SECTION 18 IS  
ESSENTIALLY MEANINGLESS.

>> [INAUDIBLE].

THAT IS ONE IMPORTANT TO YOU?

>> 1983 WOULD BE TRIGGERED  
BECAUSE YOU HAVE FEDERAL RIGHTS  
BEING VIOLATED THAT WOULD  
ENTITLE US TO ATTORNEY FEES  
UNDER 1938.

THE CLEAR REMEDY OF RESTITUTION  
WOULD BE APPROPRIATE.

>> SEEMS TO ME INSTALLING AN  
INTERLOCKING DEVICE IN A CAR IS  
PUNISHMENT AS OPPOSED TO SOME  
MATTER OF PUBLIC SAFETY TO  
PROTECT PEOPLE FROM THIS PERSON  
GETTING DRUNK AND HURTING  
PEOPLE. HOW IS THAT PUNISHMENT?

>> WELL, IF THE COURT, LET ME  
ASK IT, LET ME RETURN A  
QUESTION.

IF THE COURT HAD ORDERED US TO  
PAY \$5,000, THE COST OF  
INSTALLING AND PAY MADD,  
MOTHERS FOR DRUNKEN DRIVING  
ASSOCIATION WHICH IS MADD,  
THAT, CLEARLY THE COURT WOULD  
HAVE NO PROBLEM DOING THAT.  
WE'RE PAYING MONEY AND LIMITING  
OUR RIGHTS TO DRIVE AND  
LIMITING RESTRICTIONS.

I THINK THE COURT'S QUESTION  
IS, DOES IT ALSO OR COULD IT

ALSO BE SEEN AS A REMEDIAL ACT?  
THE ANSWER IS YES IF THEY WERE  
GIVEN THAT AUTHORITY.

I THINK THAT JUDGE I THINK THAT  
JUDGE PARIENTE'S QUESTION.

>> AS THE LAW EXISTED AT TIME,  
IS THE PERSON REFUSED TO  
INSTALL THE DEVICE IN THE CAR,  
A JUDGE COULDN'T SEND THEM TO  
JAIL.

ALL HE CAN DO IS JUST REVOKE  
HIS LICENSE.

>>, NO.

>> AND A LICENSE IS PRIVILEGE.

>> I'M SORRY, YOUR HONOR. --

[INAUDIBLE]

>> DMV IN YOUR CASE ORDERED THE  
DEFENDANT TO INSTALL THIS  
DEVICE IN THE CAR.

>> BUT THEY WOULD HAVE NO  
AUTHORITY TO DO THAT --

>> I'M GOING BACK TO WHETHER IT  
IS PUNISHMENT OR NOT.

THEY SAID THEY ORDERED HIM TO  
INSTALL THE DEVICE IN THE CAR  
AND THE PERSON DIDN'T DO IT.  
ALL THAT COULD HAPPEN WITH THE  
PERSON IS, THAT HE OR SHE WOULD  
LOSE THE DRIVER'S LICENSE,  
WHICH IS A PRIVILEGE IN THIS  
STATE.

>> IT DEPENDS ON THE CONTEXT OF  
WHAT YOU'RE ARGUING PRIVILEGE.

>> IT IS A LITTLE DIFFERENT  
THAN THE JAILER, ADDING FIVE  
DAYS IN JAIL AS A SENTENCE.

THAT IS CLEARLY PUNISHMENT.

>> WHAT ABOUT IF HE EXACTS A FINE IN ORDER TO GET OUT OF JAIL? THAT IS THE PROBLEM.

>> WHERE IS THE FINE?

>> THE PROBLEM IS, THE PROBLEM HERE IS THAT WHAT YOU'RE DOING YOU'RE ASSUMING THEY HAVE A AUTHORITY.

IF THEY HAVE AUTHORITY, THEN THEY MAY ACT.

THEY HAD NO AUTHORITY.

THEY DIDN'T DO ANYTHING UNTIL THE CRIMINAL SENTENCE WAS IMPOSED OR NOT IMPOSED AND SERVED.

AND THE LICENSE IS RESTORED.

THEN THEY FOUND OUT OR DECIDED, THAT THEY WOULD ISSUE A CANCELLATION OF THE LICENSE.

WHICH IS, BY THE WAY, UNDER 322.29 AT THAT TIME, THE DEPARTMENT IS SPECIFICALLY PRECLUDED, UNLESS AUTHORIZED UNDER ITS ACT, FROM TAKING ANY ACTIONS.

322.29 IS A, SAYS, DO NOT CAUSE A SURRENDER OF THE LICENSE UNLESS YOU ARE SO AUTHORIZED UNDER OUR CODE.

SO THEY'RE TAKING AN ACTION THEY HAVE ABSOLUTELY NO AUTHORITY TO DO AND WHICH ONLY IN THIS STATE THE CRIMINAL COURT DID.

ULTIMATELY THE CRIMINAL COURT AT THAT TIME COULD TAKE THAT

ACTION.

I DON'T KNOW IF THAT HELPS YOU.

>> I THINK WHAT THE QUESTION IS, BECAUSE I WAS THINKING ABOUT SOMETHING LIKE, SAY RANDOM DRUG TESTING WHICH IS IMPOSED AND HAS A PUBLIC PURPOSE BUT IT'S IMPOSED AS A CONDITION OF PROBATION AND IF THE JUDGE FORGETS TO IMPOSE IT THEY CAN'T GO BACK AND IMPOSE IT AFTER THE SENTENCE.

>> THAT'S CORRECT.

>> EVEN THOUGH --

>> OR ELECTRONIC MONITORING.

>> BUT IF THEY DON'T, FOR THE VIOLATION OF THAT CONDITION, OF PROBATION, WHICH WOULD BE A, NOT GOING TO DRUG TESTING OR EVALUATION, IT WOULD BE, THE TRIAL COURT WOULD HAVE THE AUTHORITY TO REVOKE PROBATION, CORRECT?

>> IF IT WAS A CONDITION OF PROBATION AND PROPERLY IMPOSED.

>> WHAT JUSTICE LABARGA IS ASKING, AND I WOULD ASK, I'M NOT SURE YOU ANSWERED IT, IF A JUDGE IN THIS SITUATION HAD ACTUALLY IMPOSED THIS REQUIREMENT AS A JUDGE WAS OBLIGATED TO DO UNDER THE LAW, AND THE DEFENDANT DID NOT COMPLY, WHAT WOULD BE -- AND IT COMES BACK TO THE JUDGE, WHAT

DOES THE JUDGE HAVE THE  
AUTHORITY TO DO?

>> I WOULD ASSUME IF HE DIDN'T  
OBEY THE COURT'S ORDER THE  
COURT COULD IMPOSE SANCTIONS  
WHATEVER THE COURT WANTS.

>> IT IS NOT A CONDITION OF  
PROBATION.

ISN'T IT THAT, IF IT DOESN'T  
HAPPEN, OF DRIVERS IS THEN  
REVOKED.

>> REVOKED I WOULD PRESUME  
WHICH WOULD BE DONE BY THE  
DEPARTMENT OF MOTOR VEHICLES.

>> PRESUMABLY, YES, MA'AM.

>> THEY WOULDN'T REALLY IN THAT  
SITUATION WHERE THE JUDGE HAD  
IMPOSED IT, IT WOULDN'T GO BACK  
TO THE JUDGE.

IT WOULD GO TO THE DMV WHO  
WOULD --

>> IT WOULD GO BACK TO THE  
JUDGE IN ESSENCE BECAUSE THE  
LAW REQUIRES THE COURT TO  
REINSTATE THE LICENSE.

THE COURT IS THE ONE THAT  
REINSTATES THE LICENSE UNDER  
THE STATUTES.

I WILL PROVIDE THAT QUOTE TO  
YOU.

IT'S, I BELIEVE IT IS 322.,  
322.282. 2-C.

THE COURT UPON FINISHING THE  
SUSPENSION, YOU THEN COME BACK  
TO THE COURT AND THE COURT  
ISSUES A REINSTATEMENT WHICH

DMV FOLLOWS.

SO THAT'S THE WAY THE PROCESS  
WAS LINED UP TO WORK.

THE COURT SIMPLY WOULDN'T ISSUE  
THE REINSTATEMENT OF THE  
LICENSE IF IN FACT YOU HADN'T  
SERVED THE SENTENCE.

>> THERE WAS A QUESTION JUSTICE  
CANADY ASKED AND I WANT TO MAKE  
SURE I UNDERSTAND YOUR ANSWER.

THIS APPEARS TO BE AN  
UNAUTHORIZED ACT ON THE PART OF  
THE DMV. THERE WAS NO STATUTORY  
AUTHORITY. BUT IF IT IS NOT DOUBLE  
JEOPARDY, HOW DOES THAT AFFECT  
YOUR CLAIM, YOUR OTHER CLAIMS,  
UNDER THE CONSTITUTION, DUE  
PROCESS AND EXACTING A PENALTY  
WITHOUT AUTHORITY?

DOES IT CHANGE THE NATURE OF  
THE RELIEF YOU'RE SEEKING? IS  
IT CRITICAL FOR THIS CASE THAT  
THERE BE A DOUBLE JEOPARDY  
VIOLATION?

>> IS IT CRITICAL FOR THIS  
CASE?

CRITICAL THAT THE OPINION BELOW  
WOULD HAVE BLOCKED US FROM  
BECAUSE NUMBER ONE THE OPINION  
BELOW HOLDS THAT WE DON'T HAVE  
A PROPERTY RIGHT WHICH THE  
ATTORNEY GENERAL HAS NOW  
CONCEDED WE DO.

BUT THEY HELD THAT WE HAVE A  
PROPERTY RIGHT THAT HAS TO BE  
PROVEN BY THE FACTS.

WELL THAT'S CLEARLY WRONG.  
SO, UNLESS THIS COURT REVERSES  
THE OPINION BELOW, WE'RE STUCK  
WITH THIS FACTUAL BUSINESS ON  
THE DRIVER'S LICENSE.  
>> THAT IS NOT PART OF THE  
CONFLICT.  
THAT MAY BE A PROBLEM FOR YOU.  
BUT OUR POINT OF VIEW IN  
RESOLVING A CONFLICT THAT'S  
NOT, WE CAN DECIDE TO  
STRAIGHTEN IT OUT OR NOT  
DECIDE, CORRECT?  
>> YOU CAN BUT IT IS VERY  
CONFUSING IN THE LAW TO HAVE A  
COURT CONTRARY, WHEN THE  
ATTORNEY GENERAL COMES IN HERE  
AND TELLS US TO THE CONTRARY IT  
IS CONFUSING.  
AND ON --  
>> SIR, I WANT YOU TO KNOW YOU  
HAVE FOUR MINUTES THERE. YOU CAN  
KEEP GOING.  
>> I WAS JUST ANSWERING THE  
COURT'S QUESTION.  
>> I UNDERSTAND.  
>> I THINK WE COVERED IT PRETTY  
WELL.  
>> THANK YOU.  
>> MAY IT PLEASE THE COURT.  
LOUIS HUBENER.  
WITH THE OFFICE THE ATTORNEY  
GENERAL REPRESENTING THE  
DEPARTMENT OF HIGHWAY SAFETY  
AND MOTOR VEHICLES.  
THE COURT SEEMS MOST CONCERNED

WITH THE DOUBLE JEOPARDY ISSUE

I WANT TO ADDRESS THAT FIRST.

>> THAT IS THE REASON WE'RE  
HERE ON CONFLICT ABOUT IT OR IS  
THAT CORRECT.

>> WE HAVE CONFLICT WITH THE  
DOYON DECISION.

DECIDING WHETHER THERE IS  
DOUBLE JEOPARDY THAT THERE ARE  
TWO IMPORTANT THINGS THE COURT  
SAID IN THE LESHER DECISION I  
WOULD LIKE TO CALL IN YOUR  
ATTENTION.

FIRST THE POSSESSION OF A  
DRIVER'S LICENSE IS A PRIVILEGE  
AND ITS REVOCATION IN THAT CASE  
LESH IN THAT CASE THE COURT  
DESCRIBE IT AS CIVIL REMEDY.  
THE REVOCATION OF A LICENSE IS  
MUCH MORE SERIOUS MATTER THAN  
IMPOSITION OF AN INTERLOCK  
DEVICE THAT IS THE SUBJECT OF  
THE 316.193.

AND SECONDLY, THIS COURT SAID  
THAT THE FACT THAT THE CONDUCT  
ADDRESSED BY A STATUTE IS ALSO  
CRIMINAL IS INSUFFICIENT TO  
MAKE A CIVIL REMEDY IN THIS  
CASE, LESHER, OF REVOCATION  
LESHER YOU HAVE TO READ THE TWO  
STATES WHAT THAT IN MIND.

316.197.

THEIR WHOLE CASE THE COURT  
UNDER THAT STATUTE IMPOSES THE  
INTERLOCK DEVICE AND BECAUSE  
THAT THERE ARE ALSO CRIMINAL

PENALTIES THAT CAN BE IMPOSED UNDER THAT STATUTE, THAT THE INTERLOCK DEVICE IS NECESSARILY CRIMINAL.

THAT DOES NOT FOLLOW AS A MATTER OF LOGIC OR LAW.

>> BUT I GUESS, EXCEPT IN THIS RESPECT.

THERE ARE OTHER THINGS THAT A COURT DOES IN A DUI CASE THAT IS IMPOSED AT THE TIME OF THE SENTENCE THAT THE COURT IS AUTHORIZED TO IMPOSE, SUBSTANCE ABUSE EVALUATION, AND I, AS I UNDERSTAND WHAT'S BEING SAID IS THAT THE LEGISLATURE COULD HAVE CHOSEN TO HAVE ADDRESSED THIS AS A NOW SUBSEQUENTLY DID IN 2005, BUT BECAUSE OF THE WAY THE LEGISLATURE CHOSE TO HAVE IT IMPOSED, THAT AS PART OF WHAT THE TRIAL COURT IS DOING, THAT RENDERS IT PART OF THE CRIMINAL PENALTY.

>> I DON'T THINK THE LEGISLATURE SAID ANYTHING THAT INDICATED THAT THIS, THAT THE INTERLOCK DEVICE WAS ITSELF A CRIMINAL PENALTY.

IT JUST AMENDED THAT STATUTE TO MAKE THE IMPOSITION OF THE INTERLOCK DEVICE MANDATORY AFTER TWO DUI CONVICTIONS.

>> SO YOU THINK ALL FIVE APPELLATE COURTS GOT IT WRONG?

>> INSOFAR THEY SAID IT WAS A

DOUBLE JEOPARDY VIOLATION I DO  
THINK IT WAS WRONG.

INSOFAR AS THEY SAID THE  
DEPARTMENT DIDN'T HAVE  
AUTHORITY TO DO THIS, YES.

>> YES WHAT? THAT'S CORRECT?

>> THAT THEY DID NOT HAVE  
AUTHORITY.

BUT THE LEGISLATURE IN 2002  
WHEN IT MADE THIS AMENDMENT DID  
NOT INDICATE ANY INTENT TO  
OVERTURN NUMEROUS DECISIONS OF  
THE APPELLATE COURTS OF THIS  
STATE HOLDING THAT, YOU KNOW,  
IMPOSITIONS OR SANCTIONS ON  
LICENSES ARE CIVIL.

AND IN 2005, IMMEDIATELY AFTER  
THE FIRST CASE CAME DOWN  
AGAINST HIGHWAY SAFETY, THE  
AULTMAN CASE, THAT WAS THREE  
YEARS LATER, THEY IMMEDIATELY  
GAVE THE AUTHORITY TO THE  
DEPARTMENT TO IMPOSE THAT  
INTERLOCK DEVICE WHEN THE COURT  
FAILED TO DO SO.

>> LET ME ASK YOU THIS.

YOU ACKNOWLEDGED DURING THIS  
TIME PERIOD WE'RE TALKING  
ABOUT, THE DEPARTMENT DID NOT  
HAVE THE AUTHORITY TO ORDER  
THESE KIND OF DEVICES IS THAT  
CORRECT?

>> THAT'S CORRECT, IT DID NOT  
HAVE THAT AUTHORITY.

WELL IT DID -- EXCUSE ME, IT  
DID HAVE THAT AUTHORITY WHEN A,

WHEN A PERSON APPLIED FOR  
HARDSHIP LICENSE.

>> BUT UNDER THESE  
CIRCUMSTANCES THEY DID NOT HAVE  
THE AUTHORITY, CORRECT?

NEIL:.

>> RIGHT.

>> WHAT IS YOUR POSITION ABOUT  
WHAT REMEDY SHOULD BE APPLIED  
FOR THE CLEAR VIOLATION OF  
THESE PEOPLE'S RIGHTS BY THE  
DEPARTMENT?

>> I THINK THAT TAKES US RIGHT  
TO THE DUE PROCESS QUESTION.  
WHEN THEY GOT THIS LETTER, THE  
COURT SAID, I MEAN THE LETTER  
SAID, YOU MAY HAVE JUDICIAL  
REVIEW UNDER 322.321 IN THE  
CIRCUIT COURT.

NONE OF THESE PEOPLE AVAILED  
THEMSELVES OF THAT REMEDY.  
THEY NOW COME TO THIS COURT AND  
SAY OH, IT WAS JUST COMPLETELY  
INADEQUATE.

>> WHAT WOULD THEY HAVE HAD  
JUDICIAL REVIEW OF?

>> THE DIFFERENCE, THEY  
DISPUTED THE DEPARTMENT'S SHORT  
TO IMPOSE THAT REQUIREMENT  
WITHOUT A COURT ORDER.

IF THEY HAD GONE TO COURT AND  
HIGHWAY SAFETY COULD NOT HAVE  
COME UP WITH THAT ORDER, THE  
CIRCUIT COURT WOULD HAVE  
REVERSED.

>> WHAT WOULD HAVE HAPPEN IN

THE MEANTIME?

>> WELL --

>> EXCUSE ME.

IF THEY SAY YOU CAN'T GET YOUR LICENSE REINSTATED UNLESS YOU DO THIS AND THEY DECIDE TO CHALLENGE IT, THEY WOULD HAVE BEEN WITHOUT A LICENSE DURING THAT PERIOD?

>> THEY WOULD HAVE BEEN WITHOUT A LICENSE DURING THAT PERIOD.

BUT I, YOU KNOW, THEY HAD BEEN WITHOUT A LICENSE, ANOTHER 30 DAYS OR SO, I DON'T THINK MAKES A BIG DIFFERENCE.

>> MORE THAN 30 DAYS.

>> LOOK AT SOME OF THESE CASES THEY WENT RIGHT INTO CIRCUIT COURT.

GOT AN ORDER, SUSPENDING OR STAYING THE DEPARTMENT'S ACTION.

AND RESOLVED THE MATTER.

THEY WERE IN THE SAME POSITION BASICALLY THAT ANYONE WHO RECEIVES AN ADVERSE AGENCY RULING, SAY UNDER 120 IS.

YOU EITHER COMPLY WITH IT OR YOU APPEAL IT.

AND IN THE MEANTIME, YOU MAY HAVE TO, ON THE, DURING THE APPEAL --

>> ORDINARILY, ORDINARILY, SINCE THE AGENCY HAS MADE A MISTAKE, AND, THEY LOSE IN THE REVIEW PROCEEDINGS, THEY'RE NOT

GOING TO HAVE TO COUGH UP MONEY  
BECAUSE OF THE MISTAKE THEY  
MADE?

>> WELL, THAT'S EXACTLY RIGHT.  
HERE WE HAVE, I THINK FOR THE  
FIRST TIME EVER, THIS  
CONTENTION THAT THERE ARE THREE  
PROVISIONS OF THE FLORIDA  
CONSTITUTION, THE DUE JEOPARDY  
PROHIBITION, DUE PROCESS  
CLAUSE, ARTICLE I, SECTION 18,  
THAT ARE SELF-EXECUTING IN THAT  
THEY PROVIDE A MONETARY REMEDY  
AGAINST THE DEPARTMENT FOR NOT  
IMPOSING AN ILLEGAL PENALTY.  
THE PENALTY WAS PERFECTLY LEGAL  
BUT FOR AN ERRONEOUS AGENCY  
ACTION.

THE DEPARTMENT, THE DEPARTMENT  
MAY HAVE BEEN IN ERROR BUT NONE  
OF THESE, THREE CONSTITUTIONAL  
PROVISIONS PROVIDE A MONETARY  
REMEDY.

NO COURT HAS EVER HELD THAT.  
AND I THINK YOU CAN DISTINGUISH  
THE FEW CASES THEY DO CITE, THE  
TAX CASES.

THERE IS A LONG LINE OF  
AUTHORITY THAT SAYS WHEN A  
PERSON PAYS AN UNCONSTITUTIONAL  
TAX THEY'RE ENTITLED TO A  
REFUND.

YES YOU PAY IT AND THEN YOU GO  
LITIGATE THE MATTER.

>> SO IF THESE PEOPLE HAD IN  
FACT BOUGHT THESE DEVICES PUT

THEM IN, COULD THEY STILL AVAIL  
THEMSELVES OF THIS APPEAL  
PROCESS?

>> IN THE CIRCUIT COURT?

>> YES.

>> YES?

>> YES, ONCE THEY GOT TO THE  
CIRCUIT COURT AND THEY  
DEMONSTRATED THE DEPARTMENT WAS  
ACTING OUTSIDE THEIR AUTHORITY,  
WHAT COULD THE CIRCUIT COURT  
THEN ORDER THE DEPARTMENT TO  
DO?

>> TO GIVE THEM THEIR LICENSE.  
THEY HAVE ALREADY HAVE THEIR  
LICENSE.

>> THEY COULD NOT DO ANYTHING,  
YOU'RE SAYING THEY COULD NOT DO  
ANYTHING ABOUT THE MONIES THAT  
HAVE BEEN EXPENDED TO ACTUALLY  
PURCHASE THESE DEVICES?

>> THERE IS ABSOLUTELY NO  
AUTHORITY FOR THAT.

ARTICLE I, SECTION 18 DOES NOT  
SAY ANYTHING ABOUT A MONETARY  
REMEDY NOR DOES, NOR DOES THE  
OTHER TWO PROVISIONS.

NOW YOU KNOW, THE LEGISLATURE  
COULD ADDRESS THE MATTER,  
WAIVING SOVEREIGN IMMUNITY FOR  
ERRONEOUS AGENCY ACTIONS OF  
THAT NATURE BUT THERE IS NO  
CASE AUTHORITY.

THEY CITE A FEW CASES WHEN A  
COURT HAS BEEN REVERSED ON  
APPEAL AND OF, AND IN ITS

INHERENT AUTHORITY ORDERS THE  
REPAYMENT OF A FINE SOMEBODY  
HAS PAID BUT THAT IS NOT,  
THAT'S NOT WHAT WE'RE TALKING  
ABOUT HERE.

>> AREN'T THEY ABLE TO GET IT  
IN UNDER 1983?

>> PARDON?

>> AREN'T THEY TRYING TO GET  
THIS IN AS A CIVIL RIGHTS  
ACTION?

>> THEY ARE NOT SEEKING AND ARE  
NOT ENTITLED TO MONETARY RELIEF  
UNDER SECTION 1983.

>> THEY'RE NOT SEEKING --  
THEY'RE NOT SEEKING RELIEF  
UNDER 1983?

>> I HAVE NOT READ ANYTHING IN  
THE RECORD OF THIS CASE THAT  
SAYS THAT.

THEY'RE SEEKING MONETARY  
RELIEF.

AND I ADDRESSED THIS IN MY  
BRIEF BECAUSE, YOU KNOW, IN THE  
EVENT THE QUESTION CAME UP THAT  
THEY ARE NOT ENTITLED TO IT  
BECAUSE THEY DID NOT, UNDER  
1983 YOU HAVE TO SUE A PERSON  
WHO VIOLATES YOUR  
CONSTITUTIONAL RIGHTS.

THE STATE IS NOT A PERSON.

A STATE AGENCY IS NOT A PERSON  
UNDER SUPREME COURT AUTHORITY.

A AGENCY, EXCUSE ME, AN AGENCY  
OFFICIAL SUED IN HER OFFICIAL  
CAPACITY IS NOT A PERSON

EITHER.

IF YOU WANT DAMAGES UNDER 1983  
YOU HAVE TO SUE THE AGENCY  
OFFICIAL IN HER INDIVIDUAL  
CAPACITY.

THIS IS NOT AN OFFICIAL  
CAPACITY SUIT SO THE ONLY THING  
THAT 1983 PROVIDES THEN IS  
ATTORNEY'S FEES FOR VIOLATIONS  
OF FEDERAL CONSTITUTIONAL  
RIGHTS.

>> THERE IS A PRETTY BIG  
SECTION IN THE FIRST DCA  
OPINION DEALS WITH THAT 1983  
CLAIM.

ARE YOU SAYING THEY DON'T HAVE  
ANY CLAIMS ON THAT?

>> WELL, WHAT I'M SAYING IS  
THAT THEY'RE NOT ENTITLED TO  
INJUNCTIVE RELIEF UNDER THAT  
BECAUSE THERE WAS NOT A  
VIOLATION OF DUE PROCESS OR,  
EXCUSE ME OR DOUBLE JEOPARDY.

>> I MISUNDERSTOOD.

I THOUGHT YOU WERE SAYING THEY  
DIDN'T HAVE ANY SUCH CLAIMS.

WHAT THEY'RE SAYING THEY DON'T  
HAVE ANY MERITORIOUS CLAIMS?

>> I'M SAYING THEY DON'T HAVE,  
THEY DID NOT MAKE A CLAIM FOR  
DAMAGES UNDER 1983 WHAT THEY  
SOUGHT WAS INJUNCTIVE RELIEF  
ONLY, PLUS ATTORNEY'S FEES.

BUT, AS I, TRIED TO POINT OUT  
TO THE COURT IN THE SUGGESTION  
OF MOOTNESS, AS TO THE TWO

PLAINTIFFS IN THIS CASE, ANY REQUESTS FOR INJUNCTIVE RELIEF IS MOOT BECAUSE THE, THE DEPARTMENT HAS REMOVED THAT REQUIREMENT AND, REINSTATED THEIR LICENSES.

>> WHAT IS THE STATUS OF THE CLASS ACTION?

BECAUSE I GUESS THIS IS, YOU KNOW, CERTAIN CASES ARE ABOUT CERTAIN ISSUES.

I'M CONCERNED ABOUT THE DOUBLE JEOPARDY STATEMENT BY THE FIRST DISTRICT THAT JUST SAYS BECAUSE THEY'RE THE DMV THERE COULDN'T BE DOUBLE JEOPARDY.

BUT WE'RE REALLY, WHAT IS THE STATUS OF THE CLASS ACTION?

>> IT'S JUST BEEN, BACK IN CIRCUIT COURT AND THE, AND IT'S AWAITING THIS COURT'S DECISION. NOTHING IS GOING ON IN THAT CASE.

>> SO NOTHING, A CLASS HAS NEVER BEEN CERTIFIED?

>> A CLASS HAS NEVER BEEN CERTIFIED.

THERE WAS AS FAR AS I KNOW A MOTION TO CERTIFY A CLASS. THE CASE WAS DISPOSED IN TRIAL COURT ON A MOTION TO DISMISS. I THINK THAT LEAVES ME THE FINAL ISSUE WITH BEING, A TAKING, TAKING CLAIM.

YOU KNOW, THIS COURT HAS SAID REPEATEDLY THAT A LICENSE IS

NOT, IS NOT PROPERTY, SO IT  
CAN'T BE SUBJECT TO A TAKING.  
IT IS NOT OWNERSHIP OF  
ANYTHING.  
IT DOESN'T CONFER OWNERSHIP.  
IT DOESN'T ENHANCE THE VALUE OF  
PROPERTY.  
IT IS PROTECTED BY THE DUE  
PROCESS CLAUSE.  
SO, THERE IS, AND CAN BE NO  
TAKING CLAIM HERE.  
THIS COURT'S DECISION IN, SOME  
YEARS AGO IN KEYHAVEN WHICH  
SAYS IF YOU WANT TO CONTEND A  
AGENCY ACTION IS A TAKING IN  
CIRCUIT COURT, THEN YOU HAVE TO  
CONCEDE THAT IT ACTED PROPERLY  
IN ITS ADMINISTRATIVE ACTION.  
AND THIS CASE IS JUST THE  
OPPOSITE OF THAT.  
IT CONTESTS THE LEGALITY OF THE  
ACTION.  
SO KEYHAVEN ALONE PRECLUDES THE  
TAKING CLAIM.  
UNLESS THERE ARE ANY OTHER  
QUESTIONS I WILL, THANK YOU.  
>> THANK YOU.  
>> YOUR HONOR I THINK WE  
PREPARED THIS PRETTY WELL.  
I'M HAPPY TO ANSWER ANYMORE  
QUESTIONS.  
I CAN TELL YOU THAT KUHNLEIN HAS  
HELD WE'RE ENTITLED TO GET FEES  
PROPERLY TAKEN.  
I THINK CONSTITUTION  
PROHIBITION AGAINST AN AGENCY

EXACTING OR IMPROPOSING A  
PENALTY THAT IS UNLAWFUL HAS NO  
MEANING IF YOU DON'T RESTORE  
THE PENALTY.

I DON'T SEE WHY THE COURT  
VIEWING US PAYING FOR SOMETHING  
ANY DIFFERENT THAN PAYING OUT  
MONEY AND CERTAINLY WOULD  
RESTORE IT.

>> THERE SEEMS TO BE THERE IS  
NO AUTHORITY UNDER ANY OF THESE  
PROVISIONS FOR ANY KIND OF  
MONETARY RELIEF.

AND SO WHAT IS YOUR AUTHORITY  
THAT THEY SHOULD BE ENTITLED  
TO --

>> THE COURT'S KUHNLEIN  
DECISION IS FOLLOWED ALWAYS  
BECAUSE IT IS NO DIFFERENT THAN  
ARTICLE, THE ARTICLE DEALING  
WITH TAXES, ARTICLE 7, SECTION  
1 SAYS YOU CAN'T IMPOSE A TAX  
OR A FEE.

IT IS SAME THING.

DOESN'T SAY YOU HAVE TO GIVE IT  
BACK OR ANYTHING LIKE THAT, THE  
YOU ARE COURT'S POWERS WE  
BRIEFED IS EXTENSIVE AND THE  
COURT FOUND THIS REMEDY IS PART  
OF JURISPRUDENCE.

>> THE PROBLEMS I SEE FOLLOWING  
THAT LINE, GENERALLY WHEN  
YOU'RE TALKING ABOUT A TAX OR A  
FEE THERE IS ACTUALLY SOMETHING  
PAID OVER TO THE ENTITY OR THE  
DEPARTMENT THAT YOU'RE TALKING

ABOUT.

IT'S MY UNDERSTANDING AND MAYBE I'M INCORRECT, THAT THESE KIND OF DEVICES, THAT YOU PUT ON CARS AREN'T ACTUALLY GOTTEN FROM THE DEPARTMENT BUT, DON'T YOU GO TO SOME OUTSIDE VENDOR OR SOMETHING AND PURCHASE THESE KINDS OF DEVICES?

>> AND SO THE STATE CAN AVOID IT BY SIMPLY HAVING US PAY A THIRD PARTY, ITS AGENT.

I HOPE THAT IS NOT THE JURISPRUDENCE OF THIS COURT. IT IS CERTAINLY NOT THE TAKING LAW.

THE TAKING LAW IS IF YOU CAUSE ME TO GIVE MY PROPERTY TO A THIRD PARTY, THAT'S A TAKING. SO THE STATE CAN'T AVOID THE FACT THAT IT'S IMPOSED A PENALTY WITHOUT AUTHORITY OF LAW AND IT'S INDEED IMPOSED A CRIMINAL PENALTY.

ONLY THE CRIMINAL COURT AT THE TIME COULD IMPOSE THAT.

THE ONLY JURISPRUDENCE IT HAS WAS A CRIMINAL PENALTY.

SO IT IMPLICATES ALL OF THESE PROVISIONS WE CITED, YOUR HONOR, INCLUDING DUE PROCESS CLAUSE WHERE WE COULDN'T OPERATE AND WE WERE WITHOUT A PENALTY.

I NEVER HEARD OF A SITUATION IN CERTIORARI, TURN AROUND IN 30 DAYS.

IT TAKES A LONG TIME TO GET THROUGH THE COURT SYSTEM AND IT COSTS MONEY.

THE PEOPLE THAT ARE HURT HERE ARE PEOPLE THAT ARE SMALL.

THE PEOPLE, THE AVERAGE CITIZEN WHO CAN'T REALLY AFFORD ANY OF THIS, IS BEING ATTACKED CONSCIOUSLY BY AN AGENCY.

THEY KNOW THIS IS WRONG --

>> LET'S NOT, LET'S NOT GET THE THINGS GOING.

THESE WERE ALL DEFENDANTS CONVICTED OF DUI.

>> I UNDERSTAND THEY'RE NOT SYMPATHETIC.

FOR PURPOSES OF ANALYSIS YOU CAN NOT LOOK AT THAT I'M NOT A DRINKER.

THAT DOESN'T MEAN I CAN'T REPRESENT THESE PEOPLE.

>> I THOUGHT YOU WERE SORT OF GIVING, YOU WERE SORT OF GIVING EMOTIONAL SIDE OF THIS AND, THIS, DOES SEEM TO BE A VERY GOOD DEVICE FOR THE SAFETY OF THE PUBLIC.

>> WITHOUT AUTHORITY.

>> IF YOU HAVE AUTHORITY.

>> NO ONE DISPUTES THAT.

>> THE APPOINTMENT IS IF YOU HAVE AUTHORITY.

YES I GET EXCITED ABOUT PROPERTY RIGHTS BECAUSE I THINK IT IS VERY IMPORTANT THAT WE PROTECT PEOPLE'S PROPERTY

RIGHTS.

I THINK IT IS VERY CRITICAL IN  
THIS STATE THAT WE DO PROTECT  
PROPERTY RIGHTS DESPITE THE  
FACT THERE MAY BE A DOWN CYCLE  
HERE IN THE ECONOMY.

THE PROPERTY RIGHTS ARE THE  
FOUNDATION OF OUR DEMOCRACY AND  
THEY SHOULD BE PROTECTED.

WHETHER THEY'RE BIG PROPERTY  
RIGHTS OR SMALL PROPERTY  
RIGHTS.

THANK YOU, YOUR HONORS.

>> THANK YOU, SIR.

WE THANK BOTH SIDES.

THAT IS THE LAST CASE AND THE  
COURT IS NOW ADJOURNED.

>> PLEASE RISE.

SUPREME COURT IS NOW ADJOURNED.