>> OKAY.
THE NEXT-- LET'S JUST WAIT FOR
EVERYBODY TO GET OUT.
WHO WANTS TO LEAVE.
OKAY.
THE NEXT CASE ON THE DOCKET IS
BRETHERICK V. STATE.
COUNSEL?
>> MAY IT PLEASE THE COURT,
ERIC--
[INAUDIBLE]
ON BEHALF OF THE APPELLANT,
JARED BRETHERICK, I'D LIKE TO
RESERVE FIVE MINUTES FOR
REBUTTAL.
SEVEN MINUTES.
AFTER DEREK DINING APPROACHED
THE BRETHERICK FAMILY TO
THREATEN THEM, THEY WAITED SEVEN
LONG MINUTES ON 911 FOR HELP
TO ARRIVE.
FOR OVER SEVEN MINUTES RONALD
BRETHERICK WAS TRAPPED IN HIS
VEHICLE AGAINST HIS WILL.
FOR OVER SEVEN MINUTES THE ONLY
THING KEEPING DEREK DUNNING AT
BAY FROM CONTINUING HIS ATTACK
ON THIS FAMILY WAS THE GUN IN
JARED BRETHERICK'S HANDS.
FOR OVER SEVEN MINUTES DEREK
DUNNING SAT IN HIS CAR IN A
SITUATION OF HIS OWN MAKING,
TRAPPING A DISABLED VET FROM
ESCAPING THE SITUATION THAT
DUBBING HAD CREATED-- DUNNING
HAD CREATED.
>> LET ME INTERRUPT.
>> YES, SIR.
>> MAKE SURE I UNDERSTAND THE
SCENARIO YOU'RE DESCRIBING.
NOW, WASN'T THE VEHICLE IN WHICH
THE DEFENDANT WAS LOCATED IN THE
MIDDLE LANE OF A, ON ONE SIDE OF
A HIGHWAY IN THE MIDDLE OF THREE
LANES?
>> YES, YOUR HONOR.
THIS IS A DIVIDED HIGHWAY
DIVIDED BY A GRASS MEDIAN WITH
THREE LANES PLUS GOING EACH
DIRECTION, AND THE BRETHERICKS

WERE-- MR. DUNNING SLAMMED HIS
BRAKES ON--
>> SO I'M HAVING, I'M HAVING
REAL TROUBLE UNDERSTANDING HOW
SOMEBODY IS TRAPPED AND IS
UNLAWFULLY DETAINED OR SUBJECT
TO AN UNLAWFUL CONFINEMENT IN
CIRCUMSTANCES LIKE THAT WHEN
THERE ARE THESE OTHER TWO LANES
THAT ARE THERE ASK THAT ARE SO
FAR AS I CAN TELL FROM THE
RECORD ARE NOT CLOSE TO TRAFFIC.
>> YOUR HONOR, THIS OCCURRED ON
THE WEDNESDAY BETWEEN CHRISTMAS
AND NEW YEAR'S IN 2012.
IN A BUSY SHOPPING AREA ON
BRONSON PARKWAY.
THE TESTIMONY WAS CONSISTENT
BOTH FROM THE STATE'S WITNESSES
AND FROM IF THE BRETHERICKS THAT
THE TRAFFIC FLOWING ON EAST SIDE
OF THE BRETHERICKS AND THE
TRAFFIC BACKING UP BEHIND THEM
AROUND DUNNING'S TRUCK, THE
DISTANCE OF CALLING FOR LESS
BETWEEN THE TWO VEHICLES DID NOT
ALLOW SUFFICIENT ROOM TO PULL
AROUND ON EITHER SIDE.
AND I THINK THE TRIAL COURT'S
ORDER IS CONSISTENT WITH THAT.
AND I THINK I THE TRIAL COURT
ACTUALLY SAYS THAT IT'S NOT AN
ISSUE THAT MR. BRETHERICK,
RONALD BRETHERICK COULD HAVE
DRIVEN AROUND.
THE ISSUE THE TRIAL COURT HAD
WAS DID THE FAMILY HAVE A
REASONABLE FEAR THAT THEY WERE
ABOUT TO BE ATTACKED?
SELF-DEFENSE DOES NOT REQUIRE
THAT THE VICTIM, SUCH AS JARED
BRETHERICK, BE RIGHT AS TO
WHETHER OR NOT THERE WAS A
FIREARM OR OTHER WEAPON OR
WHETHER DUNNING WAS INTENDING TO
USE HIS CAR AS A WEAPON.
IT REQUIRES THAT MR. BRETHERICK
HAVE BEEN REASONABLE.
>> SO ISN'T THAT, AND YOU MAKE A
VERY GOOD JURY ARGUMENT, AND I

DON'T, YOU KNOW, YOU IN YOUR
BRIEF TALKED ABOUT HOW THE
DEFENDANT IN THIS CASE HAD NEVER
BEEN CHARGED WITH A CRIME, AND
THE VICTIM IS SOMEBODY WITH A
LONG HISTORY WHICH IS NOT, WHICH
I'M NOT SURE HOW THAT WILL COME
OUT AT TRIAL.
BUT WHAT WE'RE HERE TO, AS I
UNDERSTAND, TO LOOK AT IS
WHETHER THE COURT SHOULD GO
FARTHER IN EFFECTUATING THE
LEGISLATIVE INTENT FOR IMMUNITY.
AND MY CONCERN IS THIS, IS THAT
AT EVERY STAGE UNDER THE STATUTE
PROBABLE CAUSE TO ARREST, POLICE
ARE INSTRUCTED UNDER THE STATUTE
THAT IF THEY FIND THAT THE USE
OF FORCE WAS JUSTIFIABLE, THEN
THEY'RE NOT TO ARREST.
IT IS PART OF THE STATUTE FOR
PROBABLE CAUSE.
YOU ARGUE AND THE CON CURRENTS
ARGUES THAT KENTUCKY AND KANSAS
DID SOMETHING THAT WE SHOULD DO.
BUT I READ THOSE TWO DECISIONS
AND DECISIONS WHERE WHAT WAS
BEING TESTED WAS THE STATE'S
PROBABLE CAUSE DETERMINATION
WHICH, OF COURSE, THE STATE HAS
THE BURDEN TO SHOW PROBABLE
CAUSE IF IT'S CHALLENGED.
SO YOU ARE HERE TO ARGUE THAT AT
THE PRETRIAL HEARING THAT THE
BURDEN SHOULD BE ON THE STATE TO
PROVE BEYOND A REASONABLE DOUBT
THAT THE USE OF FORCE WAS NOT
JUSTIFIED WHICH IS WHAT THEIR
BURDEN WOULD BE AT TRIAL.
AND I'M ASKING IS THERE-- I SEE
NOTHING IN THE LEGISLATION THAT
INDICATES THAT IS THE STANDARD.
I SEE NOTHING IN ANY OTHER STATE
THAT HAS EVER GONE THAT WAY, AND
SO I'M TRYING TO SEE WHERE OTHER
THAN SORT OF PULLING IT OUT OF
THE STRATOSPHERE WE WOULD COME
UP WITH THAT ADDITIONAL BURDEN
BEYOND WHAT WE HELD IN DENNIS.
>> YOUR HONOR, I THINK THERE'S A

FEW PLACES THAT COMES FROM.
FIRST, THE LEGISLATURE'S
PRESUMED TO BE AWARE OF THE LAWS
OF THIS STATE.
THE LEGISLATURES WOULD KNOW, IS
PRESUMED TO KNOW THAT IN A
SELF-DEFENSE CASE ONCE THE
DEFENDANT RAISES A PEOPLE
FASCIA-- PRIMA FASCIA, THEN THE
BURDEN IS THEN ON THE STATE TO
PROVE AT LEAST ONE ELEMENT OF
SELF-DEFENSE BEYOND A REASONABLE
DOUBT.
TO VOID THE SELF-DEFENSE CLAIM.
THAT'S THE FIRST PLACE IT COMES
FROM.
THE SECOND PLACE IT COMES FROM
IS THAT THE LEGISLATURE NEVER
DISCUSSED OR AUTHORIZED ANY
SHIFT IN THE BURDEN OF PROOF
EXCEPT FOR ONE PLACE.
IN ONE PLACE THE LEGISLATURE
ADDED AN ELEMENT TO THE PROBABLE
CAUSE DETERMINATION.
THE LEGISLATURE SAID NOT ONLY DO
YOU HAVE TO HAVE PROBABLE CAUSE
THAT A CRIME WAS COMMITTED, BUT
YOU ALSO HAVE TO HAVE PROBABLE
CAUSE THAT THE FORCE YOU USED
WAS NOT USED IN SELF-DEFENSE.
>> SO IT SEEMS TO ME WE MAY HAVE
BEEN WRONG IN DENNIS AND NOT
JUST ENFORCING THE PROBABLE
CAUSE DETERMINATION, INSTEAD AT
THE BEHEST, I MIGHT ADD, OF THE
DEFENDANT WHO IN THAT CASE
ARGUED FOR THE BURDEN TO BE ON
THE, TO HAVE A PRETRIAL HEARING
WHERE THE BURDEN WOULD BE ON THE
DEFENDANT TO PROVE THAT THE
FORCE WAS JUSTIFIED BY ONLY A
PREPONDERANCE, THEY ASKED AND WE
HELD THAT THEY GET THAT EXTRA
LAYER OF PROTECTION.
TO GIVE CREDENCE OR GIVE FORCE
TO THE IMMUNITY.
SO NOT ONLY DO YOU HAVE THE
STATE HAVING TO FIRST HAVE
PROBABLE CAUSE, BUT THEN WE
ADDED SOMETHING NOT IN THE

STATUTE AS AN ADDITIONAL
PROTECTION FOR THIS IMMUNITY.
SO I'M NOT SURE I UNDERSTAND.
SO DO YOU AGREE THAT KENTUCKY
DID NOT HOLD WHAT YOU'RE NOW
ARGUING FOR, NOR DID KANSAS?
>> YOUR HONOR, I WOULD AGREE
THAT NEITHER KANSAS NOR KANSAS
WENT AS PASS AS WE'RE SUGGESTING
THE LEGISLATURE INTENDED.
THAT IS ABSOLUTELY CORRECT.
HOWEVER, WHEN YOU REVIEW, FOR
EXAMPLE, THE AMICUS BRIEF FROM
THE NRA WHICH DISCUSSES IN DEPTH
SOME LEGISLATIVE HISTORY AND
SOME LEGISLATIVE FINDINGS OF THE
STAFF ANALYSIS AS TO WHAT THIS
LAW WAS INTENDED TO DO, IT WAS
INTENDED TO PROVIDE A TRUE REAL
IMMUNITY.
YOUR HONOR REFERENCES THE DENNIS
CASE.
I'D LIKE TO QUOTE JUSTICE
CANADY'S OPENING IN THAT CASE.
WE CONSIDER WHETHER A TRIAL
COURT SHOULD CONDUCT A PRETRIAL
EVIDENTIARY HEARING AND RESOLVE
ISSUES OF FACT WHEN RESOLVING
ISSUES OF IMMUNITY.
THAT IS ALL BEFORE THE COURT IN
DENNIS.
>> LET ME ASK THIS QUESTION.
YOU RAISED SOMETHING EARLIER.
YOU USED THE SELF-DEFENSE
ANALOGY WHERE THE STATE HAS TO
DISPROVE BEYOND A REASONABLE
DOUBT THE SELF-DEFENSE CLAIM
ONCE A PRIMA FACIA CASE IS MADE
BY THE DEFENDANT.
ARE YOU SUGGESTING IN THIS
PRETRIAL HEARING SETTING WHERE
IT IS BASICALLY JUST A JUDGE,
THAT THE STATE IS TO HAVE THE
BURDEN OF PROOF AND THAT BURDEN
OF PROOF IS BEYOND A REASONABLE
DOUBT?
IT WOULD SEEM TO ME, IF THAT IS
YOUR CASE OR IF THAT IS YOUR
POSITION IT WOULD REQUIRE AN
ENTIRE TRIAL BEFORE?

HOW CAN YOU MAKE THAT
DETERMINATION BEYOND A
REASONABLE DOUBT UNLESS YOU HEAR
ALL THE EVIDENCE?
>> YOUR HONOR, FIRST OF ALL I
WOULD SUGGEST ABSOLUTELY I DON'T
THINK THERE IS ANY QUESTION
GIVEN THE WAY THE LEGISLATURE
WROTE THE LAW THAT THE STATE
SHOULD HAVE THE BURDEN OF PROOF.
I HAVE ARGUED IN MY BRIEF IT
SHOULD BE BEYOND A REASONABLE
DOUBT AND I, JUSTIFIED THAT
REASON THAT IF THEY CAN'T PROVE
THAT CASE INITIALLY TO A JUDGE,
THE JUDGE IS ALREADY HAD THE
RIGHT, EVEN BEFORE THE LAW WAS
PASSED, TO GRANT A JUDGMENT OF
ACQUITTAL AT THAT POINT.
MY ARGUMENT IN MY BRIEF AT
MINIMUM IT SHOULD BE SOME
HEIGHTENED STANDARD.
YOUR HONOR, I EQUATE IT TO THE
1983, SECTION 42 USC 1983 ISSUE.
>> IN ESSENCE SEEMS TO ME YOU'RE
ARGUING AT THIS MOTION TO
DISMISS HEARING THE STATE WILL
REALLY HAVE TO PROVE ITS CASE?
>> YES, YOUR HONOR, I AM.
I WOULD TELL YOU THAT JUST
LOOKING AT THE CASES THAT HAVE
COME UP THROUGH THE APPELLATE
COURTS SO FAR SINCE 2011 WHEN
THIS COURT ISSUED ITS OPINION IN
DENNIS IT IS REQUIRING MULTI-DAY
HEARINGS ALREADY WHERE THE
DEFENDANT IS BEARING THE BURDEN
OF PROOF AND TRYING TO PRESENT
THEIR CASE.
>> SO IF THE STATE PROVES THEIR
CASE, AT ITS MOTION TO DISMISS
HEARING, THEN WE HAVE TO GO
THROUGH ANOTHER TRIAL WERE THE
STATE PRESENTS ANOTHER HEARING
WHERE THE STATE PRESENTS THE
SAME ARGUMENT?
THE SAME EVIDENCE AND THEN WE
CAN CONVICT?
>> YOUR HONOR, I WOULD SUGGEST
TO YOU THAT WE'RE DOING, ALMOST

DOING THAT ANYWAY ALREADY
BECAUSE OF THE STATE'S, BECAUSE
THE STATE IS TRYING TO REBUT THE
PREPONDERANCE OF THE EVIDENCE
STANDARD THAT THE DEFENDANTS
HAVE, I WOULD ARGUE TO YOU IT IS
RESULTING IN MINI TRIALS ALREADY
IF NOT FULL TRIALS, THE CASE
BEING TRIED TWICE.
THE QUESTION--
>> WE WERE WRONG IN REQUIRING
THAT PROCEDURE?
MAYBE THAT'S THE PROBLEM.
MAYBE WE SHOULD GO BACK TO WHAT
KENTUCKY HAS AND REQUIRE THAT IF
IT IS CHALLENGED, THAT THE STATE
PRESENTS ITS CASE OF PROBABLE
CAUSE TO THE JUDGE WHO DECIDES
WHETHER THERE WAS PROBABLE CAUSE
AND IN THAT TO BELIEVE THAT THE
USE OF FORCE WAS NOT JUSTIFIED.
>> YOUR HONOR, I DON'T THINK
THAT WOULD ACCOMPLISH THE
LEGISLATIVE INTENT.
>> BUT THERE IS AN EASY WAY TO
FIND THAT OUT WHICH IS, GO TO
THE LEGISLATURE AND HAVE THEM
SPECIFY THAT'S WHAT THEY WANT OF
THE JUDICIARY IN A PRETRIAL
EVIDENTIARY HEARING.
WE DON'T, YOU KNOW, THIS IDEA
THAT WE'RE EFFECTUATING
LEGISLATIVE INTENT WHEN THE
LEGISLATURE WAS SILENT ON BOTH
THE PROCEDURE AND THE ANY
PRETRIAL EVIDENTIARY BURDEN IS
SOMETHING THAT, THAT IS, AGAIN,
IN MY VIEW WE WOULD BE LOOKING
AT IT AND TRYING TO GUESS WHAT
THE LEGISLATURE ACTUALLY WANTED.
>> YOUR HONOR, I THINK THE
LEGISLATURE ALREADY HAD, WHILE
THE LEGISLATURE DIDN'T DISCUSS
IT BECAUSE AGAIN THE
LEGISLATURE'S PRESUMED TO KNOW
THE LAW, THERE IS ONLY ONE OTHER
CIRCUMSTANCE THAT EXISTED PRIOR
TO THE STAND YOUR GROUND
IMMUNITY STATUTE PACKED THERE IS
ONLY ONE OTHER CIRCUMSTANCE IN

THE LAW WHERE A PERSON WHO HAS
HAD FORCE USED AGAINST THEM OR
PERSON, EXCUSE ME, WHERE A
PERSON WHO HAD TO ACT IN
SELF-DEFENSE, IN THIS CASE A
POLICE OFFICER, HAS A RIGHT TO
AN IMMUNITY OF SOME TYPE PRIOR
TO BEING PUT BEFORE A JURY.
AND THAT IS IN QUALIFIED
IMMUNITY CASES 42 USC 1983.
IN THAT CASE, QUALIFIED IMMUNITY
IS JUST THAT QUALIFIED.
IT IS JUDICIARY CREATED.
WHAT WE HAVE IS A SITUATION
WHERE JUDICIARY CREATED
JUDICIALLY CREATED QUALIFIED
IMMUNITY THAT A POLICE OFFICER
USED EXCESSIVE FORCE.
IF THE POLICE OFFICER CAN SHOW
PRIMA FACIA CASE THEY WERE
ACTING WITHIN THE SCOPE AND
COURSE OF THEIR AUTHORITY AND
THAT THEY ARGUABLE PROBABLE
CAUSE, A VERY LOW STANDARD, ONCE
THAT POLICE OFFICER SHOWS THAT
BY PRIMA FACIA CASE WE NOW
REQUIRE THE PARTY WHO WANTS TO
BREACH THAT IMMUNITY, THE
CITIZEN, TO CHALLENGE THAT
IMMUNITY AND PROVE BY A
PREPONDERANCE OF THE EVIDENCE TO
A FEDERAL JUDGE OR STATE JUDGE
IF IT IS NOT REMOVED, THAT THE
FORCE USED, THAT OFFICER DID NOT
HAVE ARGUABLE PROBABLE CAUSE.
YOUR HONORS, WE DON'T HAVE A
SEPARATE SET OF RULES FOR POLICE
OFFICERS VERSUS CITIZENS IN THIS
STATE WHEN IT COMES TO THE USE
OF FORCE.
THE RULES ARE THE SAME FOR
JUSTIFIABLE HOMICIDE, FOR USE OF
DEFENSIVE FORCE, THE RULES ARE
THE SAME FOR POLICE OFFICERS AND
CITIZENS.
SO WHY THEN HAS THIS COURT
CREATED A BURDEN THAT THE
LEGISLATURE NEVER AUTHORIZED AND
PUT THE BURDEN ON THE CITIZEN?
THE BURDEN THAT THIS COURT USED,

THIS STATUTE, REALLY, YOUR HONORS CALLS FOR A NEW RULE OF PROCEDURE.
WE'RE USING THIS DENNIS AND PETERSON FORMULATION THAT IS TAKEN FROM THE RULES OF CRIMINAL PROCEDURE AND WE'RE APPLYING IT IN CIVIL CASES EVEN.
SO WE'RE NOW BECAUSE OF THIS PROCEDURE WE'RE USING RULES OF CRIMINAL PROCEDURE IN CIVIL PROCEEDINGS.
YOUR HONOR, THIS STATUTE CALLED FOR A NEW RULE OF PROCEDURE.
CALLED FOR A NEW RULE FOR THE COURTS TO SAY, A WAY, IF YOU GIVE AWAY TO HANDLE THESE CASES IN A WAY THAT COMPORTS WITH THE LEGISLATIVE INTENT WHICH WAS TO GRANT ADDITIONAL PROTECTIONS TO CITIZENS WHO WERE ATTACKED WHERE THEY HAVE A RIGHT TO BE.
>> WHY COULDN'T THE STATUTE JUST SIMPLY SAY, YOU KNOW, IT IS THE BURDEN, THE BURDEN IS ON THE STATE TO PROVE THAT SELF-DEFENSE WAS NOT A QUESTION HERE?
WE WOULD NOT BE HERE TODAY.
>> YOUR HONOR, IF LAWS WERE WRITTEN PERFECTLY I THINK THIS COURT WOULD HAVE A LOT LESS TO DO.
>> I DON'T WANT IT TO BE PERFECT.
SEEMS LIKE MY QUESTION IS A NO-BRAINER.
>> IT WOULD BE WONDERFUL HAD THE LEGISLATURE SPOKEN TO A BURDEN BUT I THINK THE REASON THEY DIDN'T THE LEGISLATURE ALREADY SAW THERE WERE PROCEDURES AND METHODS IN PLACE FOR HANDLING THESE SITUATIONS.
>> BUT AGAIN, AND I APPRECIATE YOUR ADVOCACY IS, FOR YOUR CLIENT IS CERTAINLY COMMENDABLE.
THE, IDENTICAL DEFENDANT, NOT IDENTICAL, THE DEFENDANT IN THE SAME SITUATION IN DENNIS SPECIFICALLY GOT UP HERE AND

ARGUED FOR A PRETRIAL
EVIDENTIARY HEARING WHERE THE
BURDEN, THE DEFENDANT WOULD HAVE
THE BURDEN TO PROVE BY A
PREPONDERANCE OF THE EVIDENCE IF
THEY FELT THAT WAS AN ADDITIONAL
PROTECTION TO THE PROBABLE CAUSE
DETERMINATION.
AND ALTHOUGH I AGREE THAT THE
HOLDING CAN BE DEBATABLE IN
DENNIS, CLEARLY THE DEFENDANT IN
THAT CASE WAS ARGUING FOR THAT
JUST LIKE THE DEFENDANT WAS IN
THE KENTUCKY CASE.
SO NOW YOU'RE SAYING, GOD, WE
PUT THIS BURDEN ON THE DEFENDANT
AND THAT'S NOT FAIR.
WELL, THAT'S WHAT WAS ASKED FOR.
>> YOUR HONOR, ACTUALLY THE
DENNIS BRIEF PRESUMED WITHOUT
ARGUING THAT THE PETERSON COURT
WAS RIGHT.
IT NEVER ACTUALLY ADDRESSED OR
ARGUED FOR ANY PARTICULAR BURDEN
OTHER THAN WE BELIEVE THAT
PETERSON WAS RIGHT.
YOUR HONORS, I WANT TO LEAVE YOU
WITH THE WORDS OF THE
LEGISLATURE THEMSELVES AND THEIR
INTENT IN PASSES THIS LAW.
THAT WAS WHERE AS THE
LEGISLATURE FINDS IT IS PROPER
FOR LAW-ABIDING PEOPLE TO
PROTECT THEMSELVES, THEIR
FAMILIES AND OTHERS FROM
INTRUDERS AND ATTACKERS WITHOUT
FEAR OF PROSECUTION OR CIVIL
ACTION AND WHEREAS THE PERSONS
RESIDING IN OR VISITING THIS
STATE HAVE A RIGHT TO EXPECT TO
REMAIN UNMOLESTED WITHIN THEIR
HOMES OR VEHICLES.
AND YOUR HONOR, HAD DEREK
DUNNING PUT HIS HAND, TRIAL
JUDGE FOUND, DEREK DUNNING
APPROACHED FAMILY FIRST AFTER
STOPPING IN MIDDLE OF THREE
LANES OF TRAFFIC.
UNDER PRESUMPTIONS OF 776.013,
HAD DEREK DUNNING PUT HIS HAND

ON CAR DOOR ATTEMPTED AN ENTRY,
THIS CASE WOULDN'T BE HERE.
BECAUSE THE PRESUMPTION IS
THERE.
>> THAT'S FAIR.
NOT AT ISSUE WHAT THE DRIVER OF
THE CAR DID, UPON HIS APPROACH.
WHICH WAS TO DISPLAY THE WEAPON.
>> YES, SIR.
>> THAT IS NOT AT ISSUE HERE.
THAT IS A VERY DIFFERENT FACTUAL
QUESTION THAN THIS QUESTION THAT
WE'VE GOT.
BUT AGAIN THESE FACTUAL
QUESTIONS REALLY ARE KIND OF
JUST SEPARATE FROM THE LEGAL
ISSUE THAT IS REALLY THE HEART
OF YOUR ARGUMENT.
RIGHT?
>> WE MADE TWO ARGUMENTS, YOUR
HONOR.
THE NUMBER ONE THAT THE BURDEN
IS WRONG.
EVEN WITH THE BURDEN IN PLACE,
THE LEGAL CONCLUSION OF THE
COURTS BELOW, THE LEGAL
CONCLUSION BASED ON FACTS THEY
FOUND THAT JARED BRETHERICK WAS
NOT ENTITLED TO DEFENSIVELY
DISPLAY A FIREARM.
LEGISLATURE SINCE AMENDED
STATUTE IN PART BASED ON THIS
CASE BEING ARGUED BEFORE THE
LEGISLATURE.
THE LEGISLATURE HAS AMENDED 776
TO SPECIFICALLY PROVIDE FOR
DEFENSIVE DISPLAY OF A FIREARM
IN PART BASED ON THIS CASE AND
SEVERAL OTHERS.
YOUR HONORS, JARED BRETHERICK
WAS IN THE RIGHT PASSENGER SEAT,
EXCUSE ME, RIGHT BACK SEAT OF
THIS VEHICLE.
HE COULDN'T SEE MR. DUNNING'S
DOOR.
HE HAD TWO DISABLED ADULTS UP
FRONT AND A 14-YEAR-OLD CHILD IN
THAT CAR.
THE ONLY WAY FOR HIM TO BE ABLE
TO TAKE A BETTER POSITION TO BE

ABLE TO CONTROL WHATEVER CAME
NEXT FROM THE PERSON WHO ALREADY
THREATENED HIS FAMILY ONCE WAS
TO GET OUT OF THAT VEHICLE AND
MOVE TO THE OTHER SIDE WHERE HE
COULD SEE.
THANK YOU.
>> MAY IT PLEASE THE COURT.
MY NAME IS KRIS DAVENPORT AND I
REPRESENT THE STATE OF FLORIDA.
I AGREE WITH THE COURT THAT THIS
IS A VERY PERSUASIVE JURY
ARGUMENT.
THE DEFENDANT IS CERTAINLY
ENTITLED TO MAKE THIS ARGUMENT
TO THE JURY.
HE LOST AT HIS PRETRIAL IMMUNITY
HEARING.
THAT DOESN'T MEAN HE GOES TO
JAIL.
THIS COURT DIDN'T CHANGE THE
BURDEN OF PROOF.
THE STATE IS GOING TO HAVE TO
PROVE BEYOND A REASONABLE DOUBT
AT TRIAL THAT HE DIDN'T ACT IN
SELF-DEFENSE, ASSUMING HE RAISES
THIS DEFENSE WHICH I'M SURE HE
WILL.
HE CAN MAKE THAT ARGUMENT AND
THE JURY WILL EVALUATE IT AND
MAYBE THEY WILL BELIEVE HIS
VERSION OF THE EVENTS.
THE TRIAL JUDGE DIDN'T.
THIS COURT HAS ALREADY SAID HOW
YOU DO THESE PRETRIAL HEARINGS.
IT WAS DIRECTLY PRESENTED IN THE
DENNIS CASE.
THERE WERE QUESTIONS, IF YOU GO
BACK AND WATCH THE ORAL ARGUMENT
THERE WERE A LOT OF QUESTIONS
WHAT THE BURDEN OF PROOF SHOULD
BE AND THIS COURT SAID HERE'S
THE PROCEDURE.
>> WHAT WE ACTUALLY SAID IN OUR
OPINION.
IN OUR ANALYSIS IN THE DENNIS
OPINION IS THERE ANY REFERENCE
TO THE PHRASE, BURDEN OF PROOF?
>> THE COURT IN DENNIS APPROVED
THE PROCEDURE WITH PETERSON AND

THAT WAS PART OF THE HOLDING IN
PETERSON.
>> COULD YOU ANSWER MY QUESTION?
>> I WOULD SAY THE FOCUS OF THE
ANALYSIS WAS THE CONTESTED ISSUE
OF C-4 VERSUS EVIDENTIARY
HEARING.
THAT WAS THE FOCUS OF THE
ANALYSIS.
>> DO YOU KNOW WHETHER IN THE
ANALYSIS IN THE CASE WHETHER
THERE WAS ANY REFERENCE TO THE
PHRASE BURDEN OF PROOF?
I KNOW THE ANSWER TO THIS
QUESTION.
>> I WILL DEFER TO YOUR ANSWER.
>> WELL, I WOULD SAY--
>> I WOULD IMAGINE YOUR ANSWER
IS NO.
>> NO.
SO, I'M HAVING A LITTLE TROUBLE
UNDERSTANDING THE STATE'S
POSITION THAT IT IS A HOLDING OF
THIS CASE THAT THE BURDEN OF
PROOF IS WHAT YOU SAY IT IS.
WHEN WE DON'T, WHEN THE WAY WE
DESCRIBED THE ISSUE WE'RE
CONSIDERING DOES NOT REFER TO
THE BURDEN OF PROOF.
OUR ANALYSIS OF THE ISSUES WE
DON'T TALK ABOUT ANY ARGUMENTS
ABOUT THE BURDEN OF PROOF.
AND WE DON'T ACTUALLY USE THE
PHRASE, BURDEN OF PROOF.
IN OUR ANALYSIS.
>> THE REASON I SAY IT WAS PART
OF THE HOLDING BECAUSE YOU
ADOPTED THE HOLDING OF THE COURT
IN PETERSON.
>> WELL--
>> THE COURT IN PETERSON SAID WE
HOLD THIS IS THE-- IT WASN'T
LIKE, THE COURT COULD HAVE SAID
WAS, WE'RE GOING TO RESOLVE THIS
AND YOU GET A PRETRIAL HEARING.
HOW YOU DO ABOUT DOING THAT IS
UP TO THE LOWER COURTS BECAUSE
THAT IS NOT DIRECTLY AT ISSUE
HERE AND HE DIDN'T SAY THAT.
>> ISN'T IT THE CASE WHAT WE

ACTUALLY SAID WITH RESPECT TO
PETERSON WE APPROVED THE
REASONING OF PETERSON ON THE
CONFLICT ISSUE?
THERE IS REFERENCE TO PROCEDURE
IN APPROVING THE PETERSON
PROCEDURE.
>> RIGHT.
>> BUT THE PROCEDURE AT ISSUE
HERE WAS WHETHER YOU'RE GOING TO
HAVE A PRETRIAL EVIDENTIARY
DETERMINATION AS OPPOSED TO THIS
OTHER, C-4 OR C-3, I CAN'T
REMEMBER.
>> C-4.
>> C-4 PROCEDURE WHERE IF THERE
ARE DISPUTED ISSUES OF MATERIAL
FACT THEN THE STATE GETS TO GO
FORWARD.
>> RIGHT.
>> THAT WAS WHAT WAS AT ISSUE,
NOT WHAT THE BURDEN OF PROOF IS.
NOW THE CASE COULD HAVE BEEN
DEVELOPED IN A WAY WHERE THE
BURDEN OF PROOF WOULD HAVE,
WOULD HAVE BEEN AT ISSUE BUT
THAT'S NOT THE WAY THE CASE WAS
ACTUALLY DECIDED, IS IT?
>> WELL I WOULD SUBMIT THAT IT
WAS ALL PART OF A WHOLE BECAUSE
YOU'RE DECIDING HOW YOU'RE GOING
TO DO THIS.
THE DEFENSE COUNSEL IN AN
ATTEMPT TO LOOK REASONABLE I
WOULD SUBMIT, LOOK, WE'RE ADDING
IN THIS PRETRIAL HEARING AND
THIS IS KIND OF A BIG DEAL
BECAUSE NOW THERE ARE
ESSENTIALLY TWO TRIALS.
THEY MADE THAT POSITION MORE
REASONABLE SAYING BUT LOOK, WE
UNDERSTAND, WE'RE THE MOVING
PARTY.
WE'LL CARRY THE BURDEN.
WE'LL NOT MAKE THE STATE PROVE
IT BEYOND A REASONABLE DOUBT AND
ACTUALLY HAVE TWO COMPLETE
TRIALS HERE.
WE'RE TAKING A REASONABLE
POSITION AND THIS COURT AGREED.

THIS COURT SAID COLORADO MAKES
SENSE, PETERSON MAKES SENSE.
WE'LL GOING TO ADOPT THE
PROCEDURE AND THAT THE PROCEDURE
IS COURTS HAVE BEEN USING WHAT
THE COURT SAID IN PETERSON.
>> ALTHOUGH I THINK, THE REASON,
BECAUSE I WAS LOOKING BACK AT
THIS, IN THAT CASE THE TRIAL HAD
ALREADY TAKEN, IN DENNIS THE
TRIAL HAD ALREADY TAKEN PLACE.
SO THE ISSUE WHAT EXACTLY WOULD
BE THE PROCEDURE PRETRIAL IT
WAS, I NOT THAT, IT WAS AN
ISSUE.
>> RIGHT.
>> BUT WE WERE LOOKING AT, WELL
NOW THE TRIAL HAS TAKEN PLACE,
NOW WHAT?
SO IT WAS, THE QUESTION OF WHAT
WE WERE FOCUSING ON.
BUT HERE'S MY QUESTION TO YOU IS
IN TERMS OF THE PROCEDURE, IF
WHAT WE WERE INTENDING WOULD BE
A MOTION TO DISMISS, UNDER, IS
IT RULE 3.-- WHAT IS THE OTHER
ONE THAT JUDGE GROSS REFERS TO
IN CHIVANI.
>> B-3.
>> B-3 WHERE THE DEFENDANT
RAISES OTHER TYPES OF MOTIONS TO
DISMISS.
>> RIGHT.
>> UNIFORMLY THOSE HAVE ALL BEEN
ISSUES WHERE THE DEFENDANT WHO
IS RAISING IS TRYING TO GET THE
BENEFIT OF THE DISMISSAL.
>> RIGHT.
>> THEIRS IS THE BURDEN BECAUSE
THEY'RE BRINGING THE MOTION.
>> RIGHT.
>> NOT LIKE IT WOULD BE OUT OF
THIN AIR, LET'S GO BACK TO,
LET'S ASSUME WE DIDN'T DECIDE
IT.
>> LET'S ASSUME WE'RE WORKING ON
A CLEAN SLATE HERE.
>> LET'S GO TO THE REASON WHY IF
WE'RE GOING TO REQUIRE PRETRIAL
EVIDENTIARY HEARING NOT REQUIRED

UNDER THE STATUTE--
>> IF WE'RE GOING BACK TO SQUARE ONE I THINK THE COURT SHOULD FOLLOW KENTUCKY.
IT MAKES THE MOST SENSE.
>> BUT WE'RE PROBABLY NOT GOING THERE.
LET'S--
>> THAT IS THE POINT YOU HAVE TO CONSIDER ISSUES AS A WELL.
IF YOU GO BACK TO SQUARE ONE I WE SAY YOU DO IT WITH A C-4 MOTION.
THAT IS WHAT KENTUCKY DID.
THEY DIDN'T WANT TO DO TWO TRIALS.
IT IS WITHIN THE DEFENDANT'S KNOWLEDGE.
IN THIS CASE THE VICTIM IS ALIVE.
HE CAN TESTIFY.
A LOT OF THESE THE SHOT IS FIRED, VICTIM IS NOT THERE TO TESTIFY.
WHO HAS THE BEST ABILITY TO ESTABLISH THIS DEFENSE.
IT IS THE DEFENDANT.
IF HE WANTS TO TAKE ADVANTAGE AND GET RID OF THIS THING EARLY, WHICH IS SOMETHING NOBODY ELSE CAN DO, IT IS AN ADVANTAGE UNDER THE STATUTE.
IT IS NOT LIKE THIS COURT DECIDED DENNIS AND SAID, NO, WE'LL JUST LEAVE IT THE WAY IT IS AND WE'LL NOT GIVE EFFECT TO THE LEGISLATIVE INTENT.
OBVIOUSLY THESE CASES GIVE MORE PROTECTION TO THE DEFENDANT BECAUSE HE CAN CLAIM IMMUNITY.
IN MOST CRIMES YOU HAVE TO GO TO TRIAL.
THAT IS WHERE IT ALL COMES OUT.
IN THIS CASE HE GETS BENEFIT OF PRETRIAL--
>> THE IMMUNITY IS WHAT MAKES THIS DISTINGUISHABLE FROM THE POWER OF THE STATE TO CHARGE AND ESSENTIALLY GET TO GO TO TRIAL ONCE IT DETERMINES THERE IS

PROBABLE CAUSE.
>> YES.
>> SO THERE HAS TO BE THE PROTECTION.
>> THERE IS AN ADDITIONAL PROTECTION.
>> IS THERE A REASON WHY IT IS NOT TO GIVE TRUE EFFECT TO THE LEGISLATIVE INTENT, WHY THE STATE SHOULDN'T HAVE TO ESTABLISH PRETRIAL BEYOND A REASONABLE DOUBT THAT THE USE OF FORCE WAS NOT JUSTIFIABLE?
>> WELL, FIRST OF ALL THERE IS NOTHING IN THE STATUTE THAT SAYS THAT.
THE STATUTE HAS NO PROCEDURE AT ALL.
THIS COURT SET UP A PROCEDURE AND IN 2010.
IT HAS BEEN FOLLOWED IN THE LOWER COURTS.
NOBODY'S QUESTIONED IT.
THE DEFENDANTS ARE NOT COMPLAINING ABOUT IT.
THE TRIAL JUDGES ARE NOT COMPLAINING ABOUT IT.
THE DISTRICT COURTS UNIFORMLY FOLLOWED IT AND UNTIL THIS PARTICULAR CONCURRENCE, NOBODY BROUGHT THIS UP AS A PROBLEM.
NOT LIKE CLASSIC CASE OF SAME EVILS TEST IN DOUBLE JEOPARDY, CONSTANTLY WE CAN'T DO THIS, IT IS TOO CONFUSING IT IS NOT MAKING ANY SENSE.
THIS PROCEDURE HAS BEEN IN PLACE FOR FOUR YEARS AND GOING AS SMOOTHLY AS CAN BE EXPECTED, NUMBER ONE.
NUMBER TWO, THE LEGISLATURE IS PRESUMED TO UNDERSTAND AND KNOW WHAT THIS COURT DID.
THE COURT SET THE PROCEDURE IN DENNIS WHETHER SET IN DICTA AS PART OF IT OR FULLY IN THE HOLDING, THE LEGISLATURE KNOWS WHAT THIS COURT DOES.
THEY HAVE HAD FOUR SHOTS AT AMENDING THE STATUTE.

THEY HAVE NEVER DONE ANYTHING.
IF THEY DON'T LIKE THE PROCEDURE
COURT CAME UP WITH, THEY ARE
CERTAINLY FREE TO CHANGE THAT.
>> THE PROCEDURE, I'VE ALWAYS
WONDERED, THE ISSUE OF BURDEN OF
PROOF AND WHO, WHO BEARS THE
BURDEN MAY BE PROCEDURAL, WHAT
THE BURDEN IS, IS PROBABLY
SUBSTANTIVE.
WE'VE STRUGGLED WITH THAT IN
OTHER CASES.
>> RIGHT.
BUT THE LEGISLATURE HAS SET OUT
IN STATUTE BURDENS OF PROOF AND
MADE THE DEFENDANT, YOU KNOW,
PREPONDERANCE OF THE EVIDENCE
WAS NOT PULL OUT OF AIR.
THAT WAS COMMON LAW.
HISTORICALLY THE DEFENDANT AT
TRIAL HAD TO PROVE AFFIRMATIVE
DEFENSES BY PREPONDERANCE OF THE
EVIDENCE.
NOT LIKE COLORADO AND THIS COURT
CAME UP WITH IT FROM NOWHERE.
THIS IS HISTORICAL PRECEDENT.
>> THAT IS NOT THE LAW NOW, IS
IT?
>> IT IS NOT THE LAW NOW BECAUSE
STATUTORILY HAS CHANGED WHERE
THIS COURT DECIDED UNDER THE
CONSTITUTION THE STATE IS NOT
REQUIRED TO DISPROVE AFFIRMATIVE
DEFENSES.
WE MAKE THE DEFENDANT PROVE
HIS AFFIRMATIVE DEFENSE UNLESS
IT CONFLICTS WITH AN ELEMENT.
THE STATE ALWAYS HAS TO PROVE
ALL THE ELEMENTS.
SO THE U.S. SUPREME COURT HAS
SAID THAT WE CAN, IT IS
PERFECTLY CONSTITUTIONAL TO--
>> I'M ASKING WHAT THE LAW OF
FLORIDA IS WITH RESPECT TO A
CLAIM OF SELF-DEFENSE AND THE
STATE'S BURDEN WITH RESPECT TO
THAT?
>> THE LAW OF FLORIDA IS, THE
STATE BEARS THE BURDEN ONCE
THERE IS PRIMA FACIA CASE BY THE

DEFENSE TO DISPROVE IT BEYOND A
REASONABLE DOUBT.
IT IS THE STATE'S BURDEN AT
TRIAL.
AND STILL THE STATE'S BURDEN AT
TRIAL AFTER DENNIS.
AGAIN MR. BRETHERICK IS FREE TO
RAISE HIS ARGUMENTS IN FRONT OF
A YOU ARE ASK I ARE.
JUST BECAUSE HE LOST WHEN HE HAD
THE BURDEN OF PROOF IN FRONT OF
A JUDGE, DOESN'T MEAN HE WILL
LOSE IN FRONT OF A JURY.
HE STILL HAS THAT RIGHT.
IT DIDN'T CHANGE ANYTHING.
>> ANY STATE THAT HAS A "STAND
YOUR GROUND" LAW THAT HAS PUT
INTO PLACE A PRETRIAL
EVIDENTIARY HEARING WHERE THE
STATE WOULD HAVE TO PROVE BEFORE
A JUDGE THE, THAT THE FORCE WAS
NOT JUSTIFIABLE BEYOND A
REASONABLE DOUBT.
>> THERE IS NONE.
IT IS UNPRECEDENTED IT IMPOSE
THAT KIND OF A BURDEN.
BUT LET ME GET BACK TO, IT IS UP
TO THE LEGISLATURE TO HOW TO
IMPLEMENT ITS STATUTE.
THE LEGISLATURE IS PRESUMED TO
UNDERSTAND WHAT THIS COURT DID
IN DENNIS AND IT HAS REVISITED
THE STATUTE.
IT HASN'T CHOSE TO SET OUT A
DIFFERENT PROCEDURE.
UNDER THIS COURT'S CASE LAW THAT
MEANS THE LEGISLATURE IS
AGREEING WITH THAT.
IT IS ACQUIESCING IN THIS
COURT'S DECISION.
IF IT HAS A PROBLEM WITH IT CAN
CHANGE IT.
WHEN THE BURGLARY STATUTE WAS
INTERPRETED A WAY THEY DIDN'T
LIKE, THEY CAME BACK IMMEDIATELY
AND CHANGED IT.
THEY HAVE THE POWER TO DO THAT.
THEY HAVE CHOSEN NOT TO DO.
THAT UNDER THIS COURT'S CASE LAW
THAT SAYS THAT MAKES IT PART OF

THE STATUTE AND WE HAVE TO KEEP
GOING.
THEY HAVE SHOWN ABSOLUTELY NO
REASON FOR THIS COURT TO CHANGE
ITS OPINION IN DENNIS.
IT IS NOT ESPECIALLY BURDENSOME.
IT IS NOT PULLED OUT OF THE AIR.
SOMETHING THAT THE DEFENSE
COUNSEL IN DENNIS ASKED FOR WHEN
THEY WERE TRYING TO BE
REASONABLE.
THEY HAVE HAVEN'T HAD ANY
PROBLEM WITH IT.
NOTHING HAS CHANGED.
NO STATUTE HAS CHANGED.
IT IS NOT LIKE THERE HAVE BEEN
40 OTHER CASES FROM OTHER STATES
SAYING, OH, WE'LL IMPOSE THIS
BURDEN ON THE STATE BEYOND A
REASONABLE DOUBT.
NOTHING HAS CHANGED THAT
REQUIRES THIS COURT TO REVISIT
WHAT IT SAID IN DENNIS.
THE LEGISLATION HASN'T CHANGED.
NONE OF THE CASE LAW AROUND THE
COUNTRY.
AS A MATTER OF FACT THEY'RE
POLLING FLORIDA.
-- FOLLOWING FLORIDA.
SOUTH CAROLINA AND GEORGIA SAID,
THAT MAKES SENSE TO US.
PROPONENT OF IMMUNITY SHOULD
BEAR BURDEN OF ESTABLISHING IT.
PREPONDERANCE IS MINIMAL BURDEN.
NOT LIKE THIS COURT IMPOSED
SOMETHING REAL DRACONIAN.
IT IS SOMETHING HISTORICAL.
IT IS WORKING IN THE LOWER
COURTS.
THERE IS NO REASON TO VISIT NOW.
GIVEN ALL THAT WE WOULD ASK YOU
TO ANSWER THE CERTIFIED QUESTION
IN THE NEGATIVE AND KEEP THE
PROCEDURE THE SAME AS THIS COURT
ALREADY ESTABLISHED IN DENNIS.
THANK YOU.
>> COUNSEL IF YOU WOULD JUST
ANSWER THE QUESTION THAT THE
ASSISTANT ATTORNEY GENERAL
RAISED.

THE LEGISLATURE HAS NOW HAD FOUR SESSIONS WITH THIS LAW IN PLACE.
>> I WOULD ACTUALLY ARGUE--
>> I'M SORRY.
>> I'M SORRY YOUR HONOR, I THOUGHT YOU WERE THROUGH WITH YOUR QUESTION.
>> I'M NOT DONE.
THEY HAVE HAD FOUR SESSIONS WITH THE "STAND YOUR GROUND" LAW IN PLACE.
THE PROCEDURE HAS BEEN FOLLOWED FOR THE LAST FOUR YEARS.
HAS BEEN THAT THE DEFENDANT CARRIES THE BURDEN AT BEGINNING DURING THIS TRIAL, THIS HEARING.
WHY HASN'T THE LEGISLATURE CHANGED IT?
>> YOUR HONOR--
>> YOU ARGUE THAT THEY'RE PRESUMING TO KNOW THE LAW.
WHY HAVEN'T THEY CHANGED IT?
>> YOUR HONOR, FROM THE DECISION IN DENNIS IN DECEMBER 2010, IN 2011, 2012, AND 2013 LEGISLATURES WERE, I BELIEVE WERE STILL WATCHING WHAT THE COURTS WERE DOING AND JUST TRYING TO DETERMINE WHETHER ANYTHING ELSE NEEDED TO BE DONE.
IN 2014, THIS MOST RECENT SESSION THEY ACTUALLY DID MAKE ONE MODIFICATION TO THE "STAND YOUR GROUND" LAW.
THEY MODIFIED TO MAKE CLEAR THAT THE DEFENSIVE DISPLAY OF A FIREARM IS A LEGITIMATE USE OF A FIREARM TO DEFEND ONE'S SELF.
THE ATTORNEY GENERAL ACTUALLY ARGUES IN THEIR BRIEF THIS ISSUE, THIS SHIFTING OF THE BURDEN OR MAKING CLEAR WHERE THE BURDEN IS DIED IN COMMITTEE AND THIS COURT SHOULD TAKE THE FACT THAT THAT ISSUE DIED IN COMMITTEE AS EVIDENCE THAT THE LEGISLATURE HAS NO INTENTION OF CHANGING IT.
BUT AS WE POINTED OUT IN OUR REPLY THERE WERE A LOT OF OTHER

ISSUES IN THAT PARTICULAR BILL.
IT WAS ACTUALLY ONE OF TWO
COMPETING BILLS.
THE OTHER BILL PASSED.
THIS BILL THAT THE AG'S OFFICE
POINTED OUT, IT DIED.
IT DIDN'T DIE AND WASN'T OPPOSED
BECAUSE OF THE SHIFT OF THE
BURDEN.
IT WAS OPPOSED BY THE SAME
GROUPS THAT PUSHED FOR STAND
YOUR GROUND IN THE FIRST PLACE.
THEY OPPOSED THAT PARTICULAR
BILL BECAUSE IT IMPOSED NEW
RESTRICTIONS ON WHO COULD USE
DEFENSIVE FORCE AND WIN.
SO, YOUR HONOR, WHEN THERE HAS
BEEN LONG LEGISLATIVE INACTION I
WOULD SAY ABSOLUTELY.
BUT WE'VE HAD REDISTRICTING
ISSUES.
WE HAVE HAD SIGNIFICANT
BUDGETARY ISSUES.
WE HAVE HAD OTHER ISSUES THAT
OCCUPIED THE LEGISLATURE'S TIME.
I DON'T THINK FOUR YEARS WITH
OTHER ISSUES GOING ON AND
ONGOING DISCUSSION ABOUT ROLE OF
STAND YOUR GRAND IN THIS STATE
THAT WE CAN SAY THE LEGISLATURE
ACQUIESCED IN THIS COURT'S
DECISION.
THE STATE ARGUES ESSENTIALLY THE
BURDEN SHOULD BE ON THE
DEFENDANT BECAUSE THEY'RE THE
MOVING PARTY.
THEY'RE ONLY THE MOVING PARTY
BECAUSE THIS COURT MADE THEM THE
MOVING PARTY.
THE LEGISLATURE DIDN'T.
THE LEGISLATURE SAID PERSON USES
FORCE IS PERMITTED IN ONE OF
THREE SELF-DEFENSE STATUTES IS
JUSTIFIED IN USING SUCH FORCE
AND IMMUNE FROM CRIMINAL
PROSECUTION AND CIVIL ACTION.
DIDN'T SAY CAN APPLY FOR
IMMUNITY.
THEY DIDN'T SAY SEEK IMMUNITY.
THEY SAID THIS PERSON IS IMMUNE.

YOUR HONORS I BELIEVE THAT IS
ABSOLUTE IMMUNITY THAT THE
LEGISLATURE GRANTED.
IF THE STATE WANTS TO PIERCE
THAT IMMUNITY GRANTED BY THE
LEGISLATURE TO A PERSON WHO
CLAIMS SELF-DEFENSE I THINK THE
BURDEN SHOULD BE ON THE STATE.
I THINK THAT'S WHY THE
LEGISLATURE DIDN'T FEEL THE NEED
TO PUT A BURDEN BECAUSE THEY
SAID THIS PERSON HAS IMMUNITY.
WE WOULD ASK THIS COURT TO
ANSWER THE CERTIFIED QUESTION
THAT THE BURDEN SHOULD BE PLACED
ON THE STATE AT ALL STAGES TO A
HEIGHTENED STANDARD.
WE ASK THAT THIS COURT FIND EVEN
UNDER THE EXISTING STANDARD,
MR. BRETHERICK ACTED REASONABLY
UNDER THE CIRCUMSTANCE.
>> THANK YOU, COUNSEL.
THANK YOU FOR YOUR ARGUMENTS.
THE COURT IS IN RECESS FOR TEN
MINUTES.