>> NEXT CASE ON THE DOCKET IS
RODRIGUEZ V. STATE.
[BACKGROUND SOUNDS]
>> GOOD MORNING, YOUR HONORS.
MAY IT PLEASE THE COURT, SHANNON
HEMMENDINGER, I'M HERE ON BEHALF
OF MR. RODRIGUEZ.
THE ISSUE BEFORE YOUR HONORS IS
WHETHER THE STATE CAN RELY ON
THE INEVITABLE DISCOVERY
DOCTRINE TO ADMIT EVIDENCE
ILLEGALLY SEIZED FROM INSIDE OF
MR. RODRIGUEZ'S HOME WHERE
THERE'S NO PROOF THAT THE
OFFICERS TOOK ANY STEPS TO
LAWFULLY OBTAIN THE EVIDENCE
PRIOR TO THE PROCEDURE.
SPECIFICALLY IN THIS CASE, NO
PROOF OFFICERS TOOK ANY STEPS TO
OBTAIN A WARRANT PRIOR TO THE
ILLEGAL SEIZURE.
THE INEVITABLE DISCOVERY
DOCTRINE REQUIRES PROOF OF AN
INDEPENDENT INVESTIGATION THAT
WOULD INEVITABLY LED TO THE

LAWFUL SEIZURE OF EVIDENCE
NOTWITHSTANDING ANY POLICE
MISCONDUCT.
WHEN YOU HAVE THE POLICE
MISCONDUCT AS IN THIS CASE BEING
THE ILLEGAL SEIZURE OF EVIDENCE
FROM INSIDE OF A HOME, THE STATE
CAN SATISFY THIS INDEPENDENT
INVESTIGATION REQUIREMENT--
>> LET ME ASK THIS QUESTION.
LET'S ASSUME HYPOTHETICALLY THAT
THE OFFICER GOT TO THE SCENE
AFTER THE BOMBS MEN CALLS THEM
OVER, AND THE OFFICER HAD AN
OPPORTUNITY TO OBSERVE THE
PLANTS GROWING OR WHATEVER.
AND HE HAD CALLED IN, BASICALLY,
ASKING THE ASSISTANT STATE
ATTORNEY OR WHOEVER TO GO AHEAD
AND SEEK-- TO START PREPARING
AFFIDAVITS UNTIL HE CAN GO IN
AND SEEK A SEARCH WARRANT.
SO IF A SEARCH WARRANT IS ON THE
WAY, WOULD THE INEVITABLE
DISCOVERY RULE BE MORE

APPLICABLE?

>> IT WOULD, YES, YOUR HONOR.

IT WOULD BE APPLICABLE.

WE WOULDN'T BE HERE TODAY IF THE

OFFICER HAD MADE A CALL TO

ANOTHER OFFICER TO SAY, PLEASE,

PREPARE A SEARCH WARRANT--

>> THE PROBLEM, AND I GUESS THE

FIRST DISTRICT DESCENT IN

McDONALD, JUDGE HAWKS AND THEN

THE FOURTH DISTRICT AND THEN THE

11TH CIRCUIT IN THE CASE THAT'S

CITED, THE PROBLEM IS, OF

COURSE,YOU SAY THAT AS LONG AS

THERE IS PROBABLE CAUSE THEY

WERE GOING TO GET A WARRANT,

THEY WOULD SORT OF WRITE OFF THE

WARRANT REQUIREMENT.

BUT NOW-- BUT WE'VE GOT A

SLIGHTLY DIFFERENT SCENARIO, AND

THIS IS WHAT I WANT YOU TO

ADDRESS WHICH IS THAT DID

THEY-- THEY THOUGHT THEY HAD

HIS CONSENT.

ALTHOUGH E WHAT WAS HE-- WAS HE

ALREADY HANDCUFFED?

>> HE HAD BEEN HANDCUFFED.

>> SO, BUT IF THERE WAS A

LEGITIMATE GOOD FAITH THAT, YOU

KNOW, WE'RE NOT TRYING TO

OBVIATE THE WARRANT, BUT THE

PERSON CONSENTED, AND THERE

SOMEHOW AFTERWARDS YOU FIND OUT

THAT THE CONSENT, THE PERSON

ACTUALLY DIDN'T, YOU KNOW, THEY

DIDN'T OWN THE HOUSE OR

SOMETHING, IS THERE-- IS THAT A

DIFFERENT CAN, ANOTHER DIFFERENT

SITUATION OF?

AND I GUESS THAT WOULDN'T REALLY

BE INEVITABLE DISCOVERY THEN.

BUT WHAT ABOUT THE CONSENT ISSUE

HERE?

BECAUSE THE OFFICER SAYS I WOULD

HAVE GOTTEN A WARRANT, BUT HE

GAVE ME CONSENT.

>> CORRECT, YOUR HONOR.

THE CONSENT REALLY IN THIS CASE,

YES, THE OFFICERS ARE ALLOWED TO

OBTAIN CONSENT IN A SEARCH

PURSUANT TO THAT CONSENT, BUT
THEY RUN THE RISK A REVIEWING
COURT WILL FIND CONSENT WAS
INVOLUNTARILY OBTAINED, AND WHEN
THAT HAPPENS THE STATE AND THE
OFFICERS CANNOT AVOID
SUPPRESSION OF THE EVIDENCE BY
SAYING IF I DIDN'T INVOLUNTARILY
OBTAIN CONSENT, I WOULD HAVE
GOTTEN A WARRANT.
>> WHY NOT?
YOU STEP BACK FROM THERE, AND IN
SOME WAYS THE FACTS ARE
DIFFERENT FROM THE SUPREME COURT
CASE THAT LIES BEHIND WHAT WE'VE
GOT TO DECIDE.
BUT IT SEEMS TO ME THAT HERE
BASED ON WHAT WE KNOW ABOUT THE
INFORMATION THAT THE OFFICERS
HAD PRIOR TO THE CONSENT BEING
GIVEN, WE CAN QUITE READILY
CONCLUDE THAT IF THE CONSENT
THAT EITHER-- IF THEY HAD NOT
ASKED FOR THE CONSENT OR THE
CONSENT HAD BEEN REFUSED, THEY

WOULD HAVE BEEN OFF TO COURT TO
GET A WARRANT BASED ON THE
PROBABLE CAUSE THAT THEY HAD.
I THINK THAT YOU WOULD HAVE TO,
YOU WOULD HAVE TO CONCLUDE THAT
THEY WERE GOING TO BEHAVE IN A
TOTALLY IRRATIONAL WAY TO
CONCLUDE THAT THAT WOULD NOT
HAVE HAPPENED.
AND SO I DON'T-- AND IT SEEMS
IN SOME WAYS VERY SIMILAR TO
WHAT HAPPENED IN THE NICKS CASE
WHERE THE SEARCH WAS CALLED OFF
BECAUSE OF THE DEFENDANT THERE
OR THE SUSPECT AGREED TO
COOPERATE X THAT LED THEM TO
THE-- AND THAT LED THEM TO THE
BODY.
BUT IF HE HAD NOT AGREED TO
COOPERATE, THE SUPREME COURT
CONCLUDED THE SEARCH WOULD HAVE
CARRIED ON, AND BODY WOULD HAVE
BEEN FOUND.
IT SEEMS TO ME TO BE CLOSELY
ANALOGOUS.

>> TO THE CONTRARY, YOUR HONOR,
AND RESPECTFULLY NICKS IS QUITE
DIFFERENT FROM THIS CASE.
THE WHOLE POINT IN NICKS AND THE
WHOLE REASON THE UNITED STATES
SUPREME COURT SAID THE DOCTRINE
WAS APPLICABLE WAS AT THE MOMENT
THE OFFICER OBTAINED THE
DEFENDANT'S STATEMENTS ABOUT
WHERE THE BODY WAS, THE SEARCH
TEAM HAD BEEN ACTIVELY LOOKING
FOR THE BODY.
IF WE WERE TO APPLY THE NICKS
FACTS TO THIS CASE, THAT WOULD
HAVE REQUIRED THE OFFICER TO
HAVE BEEN IN ACTIVE PURSUIT OF
THE SEARCH WARRANT AT THE MOMENT
OF ILLEGALITY.
>> THIS BUSINESS ABOUT THE
ACTIVE PURSUIT, YOU TALK OUT OF
BOTH SIDES OF YOUR MOUTH IN THE
BRIEFS AT THAT.
BECAUSE AT ONE POINT IT SEEMS TO
MEOW SAY THAT IT'S GOT TO BE
ACTIVE PURSUIT OF THE SEARCH

WARRANT.
THAT'S WHAT YOU'RE SAYING NOW,
BUT THEN YOU'RE REPLY BRIEF
WE'RE SAYING, OH, NO, THAT'S NOT
NECESSARILY ACTIVE PURSUIT OF
THE SEARCH WARRANT.
IS THAT TRUE?
>> YOUR HONOR, THAT IS
SOMEWHAT TRUE.
[LAUGHTER]
UNDER THE FACTS OF THIS
PARTICULAR CASE, THE ACTIVE
PURSUIT OF THE SEARCH WARRANT
WAS NECESSARY TO SATISFY LIMITED
DISCOVERY.
THERE ARE A FEW LIMITED
INSTANCES WHERE THE STATE MAY BE
ABLE TO ESTABLISH A SEPARATE
LAWFUL INVESTIGATION THAT WOULD
HAVE INEVITABLY LED--
>> BUT HERE ISN'T THE
SEPARATE-- THE INVESTIGATION IS
GOING ON BECAUSE OF THE TIP THAT
HAS BEEN PROVIDED TO LAW
ENFORCEMENT BY THE BAIL

BONDSMAN, OKAY?

THEY HAVE INFORMATION THAT

PROVIDES THE BASIS FOR PROBABLE

CAUSE.

THEY'VE GIVEN THAT TO THE

OFFICER.

THEY'RE ON THE CASE.

OKAY?

THAT'S WHY THEY'VE COME DOWN

THERE.

THAT'S WHY THEY GOT THE CONSENT.

BUT IF THEY HAD NOT GOTTEN THE

CONCEPT, IT'S NOT LIKE THIS

IS-- CONSENT, IT'S NOT LIKE

THIS WAS SOMETHING THEY WEREN'T

ALREADY ON.

IT'S NOT LIKE THE ONLY THING

THAT THEY HAVE TO GO ON IS THE

CONSENT.

THEY'VE GOT ALL THIS OTHER

STUFF.

>> AND ALL OF THAT OTHER STUFF,

YOUR HONOR, UNDOUBTEDLY GAVE

THEM PROBABLE CAUSE TO OBTAIN A

WARRANTED.

BUT PROBABLE CAUSE ALONE DOES
NOT JUSTIFY--

>> DON'T YOU THINK IT'S A LITTLE
MORE THAN PROBABLE CAUSE?

ISN'T THERE CERTAINTY THAT THESE
AGENTS ACTUALLY SAW IT, AND THEY
RECEIVED PERMISSION TO GO IN,
AND THEY LOOKED AT AND ACTUALLY
SAW IT?

SO IT WASN'T JUST SPECULATION.

>> THAT'S CORRECT, YOUR HONOR.

>> THIS IS MORE A CERTAINTY, IS
IT NOT?

>> A CERTAINTY THAT THE EVIDENCE
WAS IN THE HOME, BUT NOT A
CERTAINTY THAT A WARRANT,
PROPERLY BASED ON PROBABLE
CAUSE, WOULD HAVE ISSUED.

THE OFFICERS NEEDED TO BE TAKING
THAT EXTRA STEP, AND HAD THOSE
OFFICERS BEGAN THE PROCESS OF
OBTAINING A WARRANT--

>> SO YOU'RE TELLING ME THAT
WITH THE TESTIMONY OF THE BAIL
BONDSMAN THAT THEY ACTUALLY SAW

IT AND THEY EYEBALLED IT, THAT

THEY PROBABLY WOULD NOT HAVE

GOTTEN A SEARCH WARRANT

FROM A--

>> YOUR HONOR, ALL--

>>-- JUDICIAL MAGISTRATE?

>> YES, YOUR HONOR.

ALL WE HAVE-- NOT THAT A

MAGISTRATE WOULD NOT HAVE ISSUED

THE WARRANT HAD THEY BEEN

PRESENTED WITH THIS LEVEL OF

PROBABLE CAUSE, BUT ALL WE HAVE

IS THE TESTIMONY OF ONE

NARCOTICS OFFICER SAYING "I

WOULD HAVE GOTTEN A WARRANT."

SAYING THAT IS NOT ENOUGH.

THERE NEEDS TO BE SOME TO

ACCELERATE ACT ON THE PART OF

THE POLICE OFFICER TO ACTUALLY

OBTAIN A WARM.

>> WELL, YOU KNOW, HERE'S-- LET

ME GO BACK.

LET'S STEP ASIDE FROM THE

WARRANT ISSUE.

INEVITABLE DISCOVERY UNDER NICKS

HAD NOTHING-- THE ISSUE IS
WHETHER THEY WERE AND THE WAY
WE'VE USED IT IN CASES SOMETHING
ELSE IS GOING ON WHERE THEY WERE
ABOUT TO DISCOVER THAT EXACT
SAME INFORMATION.
IS THEY, THE SEARCH WARRANT HAD
NOTHING TO DO WITH I. THERE'S--
WITH IT.
THERE'S CASES THAT TALK ABOUT
ACTIVELY PURSUING A SEARCH
WARRANT.
I'M NOT SURE THAT THAT'S A
SUBSET OF INEVITABLE DISCOVERY
BECAUSE THIS-- WHETHER YOU--
AND, AGAIN, THIS IS SORT OF JUST
TRYING TO FIGURE OUT WHERE THE
SEARCH, ACTIVELY GETTING THE
SEARCH WARRANT DEVELOPED, IT
SEEMS LIKE THAT'S A SUBSET MORE
OF WHETHER YOU WERE ACTING IN
GOOD FAITH TO PURSUE A WARRANT.
SO IS THERE, IS THERE A
DIFFERENCE ANYWAY?
I MEAN, AGAIN, WHERE DID THE,

WHERE DID THE-- WE WERE GOING
TO OBTAIN A WARRANT OR WE WOULD
HAVE GOTTEN A WARRANT COME AS A
SUBSET OF INEVITABLE DISCOVERY
AS OPPOSED TO THE EXCLUSIONARY,
YOU KNOW, A BROADER BELIEF THAT
THE EXCLUSIONARY REEL REALLY
DOESN'T SERVE A USEFUL PURPOSE
IF YOU COULD HAVE GOTTEN A
WARRANT ANYWAY WHICH WOULD, I
MEAN, WHICH WOULD EVISCERATE THE
WARRANT REQUIREMENT IN THE
FOURTH AMENDMENT.
SO HOW-- WHERE IS THIS I'M
GOING TO GET A WARRANT, I WOULD
HAVE GOTTEN A WARRANT, WHERE DID
THAT DEVELOP ANYWAY?
>> I BELIEVE, YOUR HONOR, IT
DEVELOPED IN THE CIRCUIT COURTS,
THE FEDERAL CIRCUIT COURTS
FOLLOWING NICKS WHEN FEDERAL
CIRCUIT COURTS WERE CONFRONTED
WITH ISSUES INVOLVING THE SEARCH
WARRANT.
NICKS IS ADMITTEDLY NOT A

WARRANT CASE, BUT WHEN THEY
TRIED TO APPLY THEM TO THE
FACTUAL SCENARIO, THEY SAID THAT
TO COMPORT WITH THE FACTS OF
NICKS--
>> WELL, SEE AND, AGAIN, I
REALIZE YOU'RE DEALING WITH THE
CIRCUIT COURTS, BUT IT SEEMS TO
ME THAT IT'S A WHOLE DIFFERENT
ISSUE IF SOMEBODY IS LAWFULLY
GOING TO GET THAT EVIDENCE
THROUGH THEIR OWN INVESTIGATION.
NOT TO WHETHER THEY GET A
WARRANT AND THEN THERE'S
SOMETHING ILLEGAL.
THERE'S NO DETERRENT, YOU KNOW,
WHY SUPPRESS THE EVIDENCE IF IT
WAS INEVITABLY GOING TO BE
DISCOVERED.
NOT WHETHER YOU WERE INEVITABLY
GOING TO GET A WARRANT.
SO THE QUESTION REALLY GOES TO
ISN'T IT-- I'M THINKING THAT
THESE CASES REALLY ARE LOOKING
AT IT MORE, WELL, THERE WAS GOOD

FAITH INVOLVED, AND THEY WERE
ABOUT TO GET THE WARRANT, BUT
THEN SOMEBODY DID SOMETHING, SO
WE'RE GOING TO EXCUSE IT.
SO HOW DO YOU SEE THOSE CASES
THAT-- AND THIS IS HOW THE
QUESTION CAME TO US AS A
CERTIFIED QUESTION ABOUT-- OR
IS IT CONFLICT?
>> IT IS CONFLICT, YOUR HONOR.
>> CONFLICT WHETHER YOU NEED TO
BE IN ACTIVE PURSUIT OF THE
WARRANT.
>> CORRECT.
>> AND THAT COMES FROM THE
FEDERAL APPELLATE COURTS, NOT
FROM THE U.S. SUPREME COURT.
>> RIGHT AGAIN, YOUR HONOR.
BUT AGAIN, THE CONFLICT BASIS,
YOU'RE RIGHT THAT THIS
INEVITABLE DISCOVERY IS A SUBSET
OF THE BROADER INEVITABLE
DISCOVERY RULE SET FORTH IN
NICKS.
>> BUT I DON'T THINK IT IS,

THAT'S WHAT I'M SAYING.
I THINK THAT'S WHY THIS HAS
GOTTEN CONFUSING, BECAUSE I
DON'T SEE THAT THE NICKS
RATIONALE REALLY APPLIES WHEN
YOU SHOULD BE GETTING A WARRANT
AND YOU DIDN'T GET ONE.
>> SURE, YOUR HONOR.
THE NICKS RATIONALE DOES APPLY
BECAUSE THE ARGUMENT GOES IF
OFFICERS WITH PROBABLE CAUSE ARE
ACTIVELY PURSUING A WARRANT AT
THE MOMENT OF THE ILLEGALITY AND
THE ONLY THING STOPPING THEM
FROM FINISHING DRIVING TO THE
COURTHOUSE, PUSHING SEND ON THE
E-MAIL TO SEND IT TO THE
MAGISTRATE IS THE ILLEGALITY
ITSELF, THE LOGIC AND THE
ARGUMENT GOES HAD THAT ILLEGALLY
NOT OCCURRED, THESE OFFICERS
WITH PROBABLE CAUSE WOULD HAVE
PUSHED SEND, WOULD HAVE FINISHED
THEIR DRIVE.
THE WARRANT AFFIDAVIT CLEARLY

SUPPORTED THE FINDING OF
PROBABLE CAUSE.
THE MAGISTRATE WOULD HAVE ISSUED
IT, AND THE SEARCH WOULD HAVE
HAPPENED PURSUANT TO THAT
WARRANT.
COMPARING THAT TO NICKS, WE HAVE
HAD THE ILLEGAL SEARCH PURSUANT
TO THE CHRISTIAN BURIAL SPEECH
NEVER OCCURRED, THE SEARCH TEAM
WOULD HAVE FINISHED LOOKING FOR
THE BODY.
THEY WERE TWO AND A HALF MILES
AWAY, AN ADDITIONAL 3-5 HOURS IS
ALL IT TOOK.
IF THE ANSWER TO THAT QUESTION
IS, YES, THE INEVITABLE
DISCOVERY DOCTRINE CAN APPLY.
BUT WHEN YOU HAVE A SITUATION IN
THIS CASE, WOULD THE EVIDENCE
HAVE LAWFULLY BEEN SEIZED?
THE ANSWER IS, NO, THE
INEVITABLE DISCOVERY DOCTRINE
CANNOT APPLY.
>> WHY WOULD IT HAVE NOT BEEN

LAWFULLY-- IF THEY HAD NOT
GOTTEN LAWFUL CONSENT, WHAT
THEN?
>> NOTHING, YOUR HONOR.
HE SAID HE WOULD HAVE GOTTEN A
WARRANT, BUT THAT MERE STATEMENT
THAT HE--
>> WELL, THEY WERE THERE
INVESTIGATING THE TIP THAT THE
BAIL BONDSMAN GAVE THEM,
CORRECT?
>> CORRECT.
>> SO WE HAVE THE ONGOING
INVESTIGATION.
AND WHAT BECAUSE-- I MEAN, IT
SEEMS TO ME THAT IT DO DEFIES
LOGIC NOT TO THINK THAT THE
POLICE IN AN ONGOING
INVESTIGATION WOULDN'T HAVE
TAKEN THE NEXT STEP IF THEY HAD
NOT GOTTEN CONSENT TO SEARCH
WHAT WOULD HAVE BEEN THE LOGICAL
NEXT STEP TO GET A WARRANT TO
SEARCH.
>> AND THAT WOULD-- THAT MAY

VERY WELL HAVE BEEN THE NEXT
LOGICAL STEP, BUT ABSENT
EVIDENCE THEY HAD BEGUN TO TAKE
THAT STEP, THE INEVITABLE
DISCOVERY DOCTRINE HAS NO PLACE.
>> SO AT THE SAME TIME THAT A
POLICE OFFICER IS ASKING FOR
CONSENT, A POLICE OFFICER SHOULD
ALSO BE SENDING BACK TO
HEADQUARTERS OR WHEREVER TO SAY
START GETTING THE WARRANT?
>> IF THE STATEMENTS--
>> THAT'S WHAT YOUR--
>> YES.
>> THAT'S WHAT YOU'RE ACTUALLY
ASKING US TO SAY.
>> PRECISELY, YOUR HONOR.
AND THAT'S BASED ON THE CONFLICT
CASES THAT--
>> BUT ISN'T THAT NONSENSICAL?
ISN'T THAT NONSENSICAL?
IF THE POLICE ARE TRYING TO
OBTAIN CONSENT AND THEY GET
CONSENT, IN THESE CIRCUMSTANCES
IT'S DETERMINED THAT WAS A

MISTAKE.

BECAUSE OF THE COERCIVE NATURE

OF THE ENVIRONMENT THAT THE

DEFENDANT WAS IN.

OKAY.

SO THERE'S A MISTAKE.

BUT YOU'RE SAYING IN EVERY CASE

WHEN THEY'RE GETTING CONSENT,

THEY'VE ALSO GOT TO BE

CONTEMPORANEOUSLY PUTTING THE

WHEELS IN MOTION TO GET A

WARRANT ON THE CHANCE THAT IT

MIGHT LATER BE DETERMINED THAT

THE CONSENT THEY OBTAINED WAS

NOT PROPERLY OBTAINED.

>> YES, YOUR HONOR.

>> WHAT PURPOSE IN TERMS OF

VINDICATING THE INTERESTS OF THE

FOURTH AMENDMENT IS SERVED BY

THAT?

>> IT'S THAT WAY IF THERE IS A

CHANCE THAT A LATER REVIEWING

COURT SAYS THIS CONSENT WAS

INVOLUNTARILY OBTAINED, NO HARM

WAS DONE TO THE FOURTH AMENDMENT

BECAUSE IN THAT CASE THE

OFFICERS WERE LAWFULLY PURSUING

A LAWFUL MEANS OF OBTAINING

EVIDENCE.

>> THE CONSENT HERE, THEY SAY HE

WAS HANDCUFFED.

>> YES, YOUR HONOR.

>> HE DIDN'T HAVE TO ARREST HIM.

>> THEY DIDN'T.

>> SO WHEN WAS THE, WHEN WAS THE

TESTIMONY ABOUT WHEN HE SIGNED A

FORM CONSENTING TO THE SEARCH?

WAS HE ALREADY HANDCUFFED IN THE

BACK?

>> HE HAD BEEN HANDCUFFED FOR AT

LEAST 40 MINUTES PRIOR TO BEING

ASKED TO VERBALLY CONSENT.

THE HANDCUFFS WERE REMOVED AFTER

HE WAS ASKED TO VERBALLY

CONSENT, AND THEN HE SIGNED THE

FORM.

>> SO IT SEEMS TO ME THE FACTS

OF THAT THE OFFICERS-- AND,

AGAIN, THIS GOES BACK TO WHAT'S

SERVED BY ENOUGH-- SERVES BY

ANY OF THIS, THIS ISN'T LIKE A
POLICE OFFICER SAYING TO
SOMEBODY, YOU KNOW, YOU GAVE
ME-- I GAVE YOU THE ANALOGY OF
THEY JUST DIDN'T KNOW THAT
PERSON ACTUALLY HAD THE ABILITY
TO CONSENT OR NOT.
SO IT WAS SORT OF THIS INNOCENT
MISTAKE.
HERE THEY HANDCUFF THE GUY, THEY
ARRESTED HIM, AND THEY HAVE TO
KNOW THAT BEFORE YOU CAN SEARCH
THE HOUSE, YOU'VE GOT TO GET A
WARRANT.
YOU DON'T ASK FOR A CONSENT.
I MEAN, THIS IS SORT OF JUST
WHAT'S SERVED HERE BY ARRESTING
SOMEBODY AND THEN SAYING, YOU
KNOW, I'M HANDCUFFING YOU, CAN I
HAVE CONSENT?
I MEAN, THAT'S A DIFFERENT
SITUATION THAN IF IT WAS, THE
CONSENT WAS MAYBE LEGITIMATELY
BELIEVED TO HAVE BEEN VALID.
I MEAN, I DON'T SEE HOW ANYONE

COULD THINK THIS COULD HAVE BEEN
PROPER CONSENT.
>> THAT'S CORRECT, YOUR HONOR.
IT WAS IMPROPER CONSENT.
THAT WAS A PROPER DETERMINATION
MADE BY THE TRIAL COURT, AND THE
STATE CANNOT NOW AVOID THE
CONSEQUENCES OF THAT AND
PROPERLY OBTAIN CONSENT BY
SAYING THAT THE OFFICERS COULD
HAVE AND WOULD HAVE DONE
SOMETHING DIFFERENTLY HAD THEY
FIRST NOT VIOLATED THE
CONSTITUTION.
THE DOCTRINE REQUIRES THAT IT
MIGHT SEEM NONSENSICAL--
>> THE PROBLEM HERE IS BUT FOR
THE BAIL BONDSMAN'S INDEPENDENT
OBSERVATION AND REPORTING-- AND
THEY REMAINED ON THE SCENE--
>> YES.
>>-- ALL THAT WOULD HAVE BEEN
TRUE.
BUT, BUT FOR THE POLICE
MISCONDUCT IN TERMS OF NOT

AVAILING THEMSELVES TO THE

WARRANT, TAKE THAT AWAY, THEY

STILL WOULD-- THAT'S WHERE THE

INEVITABLE DISCOVERY DOCTRINE

KICKS IN.

THE PROCESS LOOKING FOR A SEARCH

WARRANT IS NOT NECESSARILY

INDISPENSABLE ELEMENT.

IT'S A FACTOR TO SHOW THAT AN

INVESTIGATION WAS ONGOING.

>> BUT THE INVESTIGATION

CONDUCTED BY THE BONDSMAN WAS

OVER.

THOSE BONDSMEN, THAT FIRST

OFFICER, GARFINKEL, WERE NOT

DOING ANYTHING AT THE MOMENT OF

THE ILLEGAL SEIZURE THAT WOULD

HAVE INEVITABLY LED TO THE

LAWFUL SEIZURE OF THE EVIDENCE.

AND THAT'S WHAT'S MISSING HERE.

THERE NEEDED TO BE SOMETHING

GOING ON.

THAT IS HOW THIS CASE COMPORTED

WITH--

>> SOMETHING GOING ON LIKE WHAT?

>> LIKE THE ACTIVE PURSUIT OF A
SEARCH WARRANT, YOUR HONOR.
>> YOU'RE SAYING THAT'S AN
INDISPENSABLE ELEMENT, IS THAT
WHAT YOU'RE SAYING?
IS.
>> UNDER THE FACTS OF THIS
PARTICULAR CASE, YES, YOUR
HONOR.
THE INDISPENSABLE ELEMENT IS AN
ACTIVE, INDEPENDENT
INVESTIGATION.
THAT WE GET FROM NICKS, WE GET
THAT FULLY CONSISTENT WITH THIS
COURT'S DECISIONS ON INEVITABLE
DISCOVERY, AND IN THE CONFLICT
CASES FROM THE FIRST AND FOURTH,
McDONALD, KING, THOMAS, ROW
WELL AND CONNOR IN THE CASES
WHERE THERE WAS AN ACTIVE
PURSUIT OF A SEARCH WARRANT,
THOSE COURTS WERE SATISFIED THAT
THE INEVITABLE DISCOVERY
WAS PROPERLY APPLIED.
IN KING AND THOMAS THOSE COURTS

SAID NO INEVITABLE DISCOVERY.

>> AND IN NICKS WHAT WAS GOING

ON AT THE TIME THE POLICE

UNCONSTITUTIONALLY EXTRACTED

THESE STATEMENTS FROM MR. NICKS?

>> A SEARCH TEAM HAD BEEN

ASSEMBLED AND WAS ACTIVELY

LOOKING FOR THE MISSING GIRL'S

BODY.

>> I THOUGHT THEY SUSPENDED THE

SEARCH ONCE HE AGREED TO

COOPERATE.

>> AFTER THE ILLEGALITY.

THE OFFICER GAVE THE CHRISTIAN

BURIAL SPEECH AT THAT TIME.

THE SEARCH PARTY WAS STILL

UNDERWAY.

ONCE THE DEFENDANT AGREED TO

COOPERATE AFTER HEARING THE

SPEECH, THE SEARCH WAS CALLED

OFF, AND THE UNITED STATES

SUPREME COURT WAS SATISFIED THAT

HAD THE ILLEGALITY NEVER

OCCURRED AND THE SEARCH HAD BEEN

CALLED OFF, IT'S TRUE, YOUR

HONOR, AT THE MOMENT THE BODY
WAS DISCOVERED THERE WAS NOTHING
GOING ON.
BUT AT THE MOMENT OF THE
ILLEGALITY, SOMETHING LAWFUL WAS
GOING ON THAT WOULD HAVE
INEVITABLY LED TO THE LAWFUL
DISCOVERY--
>> WELL, BUT ISN'T IT EXACTLY
THE SAME THING, THE CASE HERE?
SOMETHING LAWFUL WAS GOING ON.
THEY WERE INVESTIGATING BASED ON
THE PROBABLE CAUSE INFORMATION
THEY HAD FROM THE BAIL BONDSMAN.
THAT WAS GOING ON.
THAT WOULD HAVE INEVITABLY LED
TO THEIR OBTAINING A SEARCH
WARRANT BUT FOR THE ACTION OF
DEFENDANT HERE IN GIVING HIS
CONSENT.
>> RESPECTFULLY NOT, YOUR HONOR.
THERE WAS NOT ANYTHING GOING ON.
THE INVESTIGATION THAT YIELDED
THE PROBABLE CAUSE WAS OVER.
THOSE BONDSMEN, THAT FIRST

OFFICER-- SOME OF THE NARCOTICS
OFFICERS HAD TO BE DOING
SOMETHING.
YES, THERE WAS AN INVESTIGATION
THAT HAD HAPPENED PRIOR TO THE
ILLEGAL SEIZURE.
THAT INVESTIGATION WAS OVER AND,
THEREFORE, WAS NOT AN
INVESTIGATION THAT WOULD HAVE
INEVITABLY LED TO THE LAWFUL
SEIZURE OF THE EVIDENCE.
THOUGH IT MAY SEEM NONSENSICAL
TO REQUIRE OFFICERS TO OBTAIN A
WARRANT AND CONSENT AT THE SAME
TIME, THE UNITED STATES SUPREME
COURT'S LAST YEAR'S DECISION IN
REILLY DEMONSTRATES IT'S NOT AN
IMPRACTICALITY.
THE WARRANT REQUIREMENT IS JUST
THAT, NOT A CLAIM-- NOT A
TECHNICALITY TO BE WEIGHED
AGAINST CLAIMS OF POLICE
EFFICIENCY.
>> WELL, I WOULD AGREE, BUT YOU
DO HAVE THESE THREE EXCEPTIONS.

AND THIS IS ONE OF THEM.

>> CORRECT.

>> GRANTED, THE POLICE SHOULD

NOT AVAIL THEMSELVES TO THE

EXCEPTION AND TO EXCLUDE THE

RULE, BUT IN THIS CASE IT DOES

ALLOW FOR AN EXCEPTION TO ON

TAPING THE WARRANT, DOES IT NOT?

>> AND HAD THE WARRANT ACTUALLY

BEEN LAWFULLY OBTAINED, HAD

THERE HAVE BEEN STEPS TO

LAWFULLY OBTAIN THE WARRANT, THE

DOCTRINE WOULD BE PROPERLY

APPLIED.

I SEE MY TIME IS UP.

BUT ABSENT THAT ACTIVE PURSUIT

OF A WARRANT IN THIS CASE,

ABSENT THE ACT OF AN INCOMPETENT

INVESTIGATION, THE STATE CANNOT

RELY ON THE DOCTRINE, AND THE

LOWER COURTS RESPECTFULLY

MISAPPLIED THE DOCTRINE IN THIS

CASE, AND WE WOULD ASK FOR A

REVERSAL.

>> YOU'VE USED UP ALL YOUR TIME.

WHAT I WILL DO IS ALLOW YOU TWO
MINUTES IN REBUTTAL SINCE WE
HELPED YOU USE UP YOUR TIME.
>> THANK YOU, YOUR HONOR, I
APPRECIATE IT.
>> THANK YOU.
>> GOOD MORNING, MAY IT PLEASE
THE COURT, I'M JILL KRAMER FOR
THE STATE OF FLORIDA.
THE ISSUE BEFORE THIS COURT IS
DOES THE INEVITABLE DISCOVERY
DOCTRINE REQUIRE THE STATE TO
PROVE THAT THE POLICE WERE IN
ACTIVE PURSUIT OF A WARRANT AT
THE TIME OF THE CONSTITUTIONAL
ERROR, AND THE ANSWER TO THAT IS
CLEARLY, NO.
THIS COURT HAS NEVER REQUIRED
THAT.
THAT IS AN EXTRA REQUIREMENT
THAT THE PETITIONER IS TRYING TO
HAVE YOU PUT INTO THE INEVITABLE
DISCOVERY RULE.
>> WELL, IT LOOKS LIKE THE--
COULD YOU ADDRESS THE 11TH

CIRCUIT COURSE OF UNITED
STATES V. VEER DEN, A 2007 CASE?
WHICH HERE'S MY PROBLEM.
YOU HELP ME HOW WE SOLVE IT.
THE FOURTH AMENDMENT-- YOU
KNOW, WE MAY THINK THAT
PROBABLE, IF PROBABLE CAUSE
EXISTS, YOU KNOW, AND THIS COURT
LATER LOOKS AT IT AND IT WAS
PROBABLE CAUSE, THAT IT DOESN'T
MATTER WHETHER THEY GOT A
WARRANT OR NOT.
THE POLICE.
BUT THE FOURTH AMENDMENT SAYS
PROBABLE, YOU KNOW, UPON
WARRANT.
AND THEN THERE'S EXIGENT
CIRCUMSTANCES AND THE LIKE.
OR IF YOU'VE GOTTEN CONSENT.
IF THERE'S EXIGENT CIRCUMSTANCES
OR THEY THINK THERE IS BUT LATER
THE COURT FINDS THAT THERE
BUDGET EXIGENT CIRCUMSTANCES, IF
WE SAY, WELL, THEY WOULD HAVE
GOTTEN A WARRANT BECAUSE WE HAD

ENOUGH FOR PROBABLE CAUSE,
WHAT'S THE INCENTIVE REALLY TO
GET THE WARRANT?
AND THAT'S WHY AT LEAST THE 11TH
CIRCUIT HAS SAID THAT THE LAWFUL
MEANS HAS TO BE ACTIVELY PURSUED
PRIOR TO CAR INSURANCE OF THE
THE ILLEGAL CONDUCT, AND THEY
SAY THE SECOND REQUIREMENT IS
ESPECIALLY IMPORTANT.
ANY OTHER RULE WOULD ESSENTIALLY
EVISCERATE THE EXCLUSIONARY RULE
BECAUSE IN MOST ILLEGAL SEARCH
SITUATIONS THE GOVERNMENT COULD
HAVE OBTAINED A VALID WARRANT.
SO WHAT'S-- HOW DO WE WITHOUT
IT SWALLOWING THE FOURTH
AMENDMENT, HOW DO YOU ARTICULATE
A RULE THAT SAYS IT'S UNDER
INEVITABLE DISCOVERY IF THEY
WOULD HAVE EVENTUALLY GOT A
WARRANT?
>> WELL, THE VERY DEAN RULE, THE
11TH CIRCUIT NEVER SAID, NEVER
SAID THAT THE STATE HAD TO PROVE

THAT THE POLICE WERE IN ACTIVE
PURSUIT OF A WARRANT, ALTHOUGH
IT HAS BEEN INCORRECTLY STATED
IN OTHER CASES THAT THAT IS WHAT
IT SAID.
BUT YOU ARE CORRECT, YOUR HONOR,
WHAT IT SAYS IS THAT THE
OFFICERS MUST PURSUE ANY LAWFUL
MEANS, ANY LAWFUL MEANS THAT IS
NOT THE SAME AS THAT THE
OFFICERS MUST BE PURSUING A
SEARCH WARRANT.
>> WHAT WAS THE LAWFUL MEANS
HERE?
>> THE LAWFUL MEANS HERE IS THAT
THE OFFICER GARFUNKLE, THE BAIL
BONDSMAN HAD EXPLAINED TO THE
FIRST OFFICER ON THE SCENE,
OFFICER GARFUNKEL, THAT THERE
WAS GROWHOUSE IN THE
DEFENDANT'S HOUSE.
OFFICER GARFUNKEL WAS INVITED IN
BY THE DEFENDANT, AND HE SAW THE
GROWHOUSE.
AND AT THAT POINT HE TOOK THE

DEFENDANT AND HANDCUFFED HIM AND

PUT HIM IN THE POLICE CAR--

>> BUT I THOUGHT IT WAS FOUND

THAT HE WAS NOT INVITED IN?

>> NO, YOUR HONOR.

OFFICER GARFUNKEL WAS INVITED

IN, AND THAT IS EXPLAINED IN

THE--

>> WAIT A MINUTE.

THIS IS THE POLICE OFFICER--

ARE WE TALKING ABOUT THE POLICE

OFFICER--

>> THE FIRST POLICE OFFICER.

>>-- OR THE BAIL BONDSMAN?

>> THERE IS MORE THAN ONE POLICE

OFFICER.

FIRST WE HAD THE BAIL BONDS

PERSON WHO SAW THE GROWHOUSE.

>> OKAY.

>> THEN HE CALLED IN THE POLICE,

AND A SINGLE POLICE OFFICER

ARRIVED.

HIS NAME WAS OFFICER GARFUNKEL.

THAT OFFICER WAS INVITED IN BY

THE DEFENDANT TO THE HOME, AND

OFFICER GARFUNKEL SAW THE

GROWHOUSE--

>> WELL, HOW MANY-- AT THE

MOTION TO SUPPRESS, DID HE NOT

DENY THAT HE INVITED HIM IN?

>> HE DID.

>> DID THE JUDGE FIND THAT HE

ENTERED ILLEGALLY?

>> YOUR HONOR, THE JUDGE FOUND

THAT THE CONFESSION, THAT THE

CONSENT FOR THE LEAD DETECTIVE

TO GO INTO THE HOME WAS

INVOLUNTARY BECAUSE THE POLICE

HAD A MASK ON, AND SHE FELT THIS

WAS--

>> THE SECOND POLICE OFFICER--

>> THE SECOND POLICE OFFICER,

EXACTLY.

WE HAVE OFFICER GARFUNKEL--

>> OKAY, GO ON.

>>-- AND THEN WE HAD OFFICER

GARFUNKEL THEN CALLED IN THE

NARCOTICS SQUAD WHO WAS HEADED

UP BY LEAD DETECTIVE PEREZ IN

TWO OR THREE OTHER-- AND TWO OR

THREE OTHER DETECTIVES.

AT ANY RATE, I WOULD LIKE TO

ADDRESS THE FACT THAT THE

PETITIONER--

>> I THINK YOU WERE TALKING--

>> YES.

>> SO HE'S HANDCUFFED--

>> YES.

>> AND AT THAT POINT IS WHEN HE

GIVES HIS CONSENT?

>> HE IS HANDCUFFED.

THE LEAD DETECTIVE COMES AND

ASKS FOR CONSENT TO ENTER THE

HOME--

>> BUT THAT BUDGET, IT HAS TO

BE-- THAT'S NOT LAWFUL MEANS.

I MEAN, THE PROBLEM WITH--

BECAUSE YOU SAID THAT VERDEN

REALLY DIDN'T SAY WHAT I SAID IT

SAID WHICH IS THE CONCERN IS

THERE'S GOT TO BE LAWFUL MEANS

GOING ON BEFORE THE ILLEGAL --

OR ELSE YOU'RE EVISCERATING THE

FOURTH AMENDMENT AND THE

EXCLUSIONARY RULE PAUSE BECAUSE

IN MOST BECAUSE IN MOST CASES
WHERE YOU ARREST SOMEBODY IN
THEIR HOUSE, YOU ARE GOING TO
HAVE ENOUGH EVIDENCE TO GO TO A
MAGISTRATE AND, OR A JUDGE AND
GET THE WARRANT.
AND SO WHAT, IF WE TAKE THIS TO
ITS LOGICAL CONCLUSION WHY WOULD
THE POLICE EVER NEED TO WORRY
ABOUT THE INCONVENIENCE OF GOING
AND GETTING A WARRANT ONCE THEY
HAVE, ON THE SCENE, SORT OF SEE
ENOUGH, THAT THEY KNOW THERE IS
PROBABLE CAUSE?
I MEAN IT SEEMS THAT IT SWALLOW
THAT REQUIREMENT AND THAT'S WHY
I'M CONCERNED.
I'M NOT, NOT THIS CASE, RIGHT?
IT IS ABOUT REALLY WHAT POLICE,
WHAT THE MESSAGE IS FOR THE
FUTURE ABOUT THE IMPORTANCE OF
GETTING A WARRANT WHEN YOU HAVE
PROBABLE CAUSE.
>> I UNDERSTAND, YOUR HONOR.
THE LAWFUL MEANS IN THIS CASE

WAS THAT THE ORIGINAL OFFICER
GARFINKEL HAD-- GARFINKLE SEEN
THE GROW HOUSE AND CALLED IN THE
NARCOTICS SQUAD.
THEY SAW, IT WAS ONGOING
INVESTIGATION WHICH THIS COURT
HAS ALWAYS--
>> LAWFUL MEANS WAS ENOUGH TO
ARREST THE GUY, THE DEFENDANT,
RIGHT?
>> YES, YOUR HONOR.
>> BUT IT WASN'T ENOUGH TO
SEARCH THE HOUSE UNLESS THEY GOT
EITHER UNCOERCED CONSENT OR THEY
GOT A WARRANT.
>> THIS COURT HAS ALWAYS HELD
WHAT IS NECESSARY FOR THE
INEVITABLE DISCOVERY DOCTRINE TO
APPLY THAT THERE MUST BE AN
ONGOING INVESTIGATION, NOT, AND
IT NEVER HAS SAID THAT THE
POLICE MUST BE IN ACTIVE PURSUIT
OF A SEARCH WARRANT.
NOW THE EARLY CASES, WHEN WE'RE
TALKING ABOUT CONFLICT HERE,

THAT THE PETITIONER HAS RAISED,
EARLY CASES, IN THE FIRST
DISTRICT COURT OF APPEAL AND THE
FOURTH DISTRICT COURT OF APPEAL
HAVE HAD THE FACT THAT THE
POLICE WERE, IN THOSE CASES,
GOING TO GET A SEARCH WARRANT
BUT IT WAS A MERE FACT, BUT
LATER, FIRST, FIRST DISTRICT
COURT OF APPEAL CASES AND FOURTH
CASES RAISED THAT MERE FACT TO A
REQUIREMENT AND THAT IS HOW IT
EVOLVED INTO A CONFLICT WITH
THIS COURT WHO HAS NEVER
REQUIRED THE STATE TO PROVE THAT
THERE WAS AN ACTIVE PURSUIT OF A
SEARCH WARRANT.
YOU NEVER REQUIRED THAT.
>> LET'S GO OVER CASES THOUGH.
I DIDN'T KNOW THE CONFLICT WAS
BETWEEN OUR COURT.
I THOUGHT THE CONFLICT WE WERE
HERE ON BETWEEN APPELLATE
COURTS.
>> YES.

BETWEEN THE OTHER DISTRIBUTE
COURTS OF APPEAL AND THE FIRST
AND THE FOURTH.
>> GIVE ME EXAMPLE OF WHERE THE,
OUR COURT HAS APPLIED THE
INEVITABLE DISCOVERY RULE.
BECAUSE I KNOW WE'VE APPLIED IT
IN SOME NARROW SITUATION WHERE I
THOUGHT THERE WAS A
SEPARATE INDEPENDENT
INVESTIGATION GOING ON.
>> EXACTLY.
>> BUT NOT, SO, TELL, GIVE ME AN
EXAMPLE OF A CASE.
>> FIRST CASE I WOULD LIKE TO
DISCUSS IS FITZGERALD, WHICH
THIS COURT DECIDED IN 2005.
THAT WAS A SITUATION, JUST TO
REFRESH YOUR MEMORY, A PIZZA
DELIVERYMAN RAPED AND KNIFED A
YOUNG WOMAN AND LEFT HER TO DIE
ON THE SIDE OF THE ROAD.
THIS COURT HELD THE STATE MUST
SHOW AN INVESTIGATION WAS
UNDERWAY IN ORDER FOR THE

INEVITABLE DISCOVERY DOCTRINE

TO APPLY.

IN THAT CASE THE POLICE OBTAINED

CONSENT FOR THE PIZZA

DELIVERYMAN TO GIVE A

BLOOD SAMPLE.

THERE WAS A QUESTION OF WHETHER

IT WAS INVOLUNTARY OR NOT.

AND THIS COURT SAID, THAT IT WAS

VOLUNTARY BUT EVEN IF IT HAD

BEEN INVOLUNTARY, THE INEVITABLE

DISCOVERY DOCTRINE APPLIED

BECAUSE THE POLICE HAD PROBABLE

CAUSE FOR A WARRANT AND

REQUESTING A BLOOD SAMPLE, OR,

OBTAINING IT THROUGH A WARRANT

WOULD HAVE BEEN, THE NORMAL

INVESTIGATIVE MEASURE THAT WOULD

HAVE NATURALLY OCCURRED

REGARDLESS OF THE POLICE,

IF THIS HAD BEEN POLICE

IMPROPRIETY.

LIKE RODRIGUEZ, THE CASE THAT WE

ARE ON TODAY, IF THE CONSENT WAS

INVOLUNTARY THE INEVITABLE

DISCOVERY DOCTRINAL THE
EVIDENCE TO BE ADMITTED BECAUSE
THE OFFICERS WOULD HAVE GOTTEN A
WARRANT BECAUSE THERE WAS
SUFFICIENT PROBABLE CAUSE.
THE FIRST AND FOURTH DISTRICT
COURTS OF APPEAL, IN LIGHT OF
FITZGERALD, ANY FOURTH OR FIRST
DISTRIBUTE COURT OF APPEAL CASES
THAT THE OFFICER MUST PURSUIT A
WARRANT IS CONTRARY TO THE COURT
IN FITZGERALD AND ALL OF YOUR
OTHER INEVITABLE DISCOVERY CASE.
>> WHAT THE CITE ON FITZGERALD.
>> YOUR HONOR, I HAVE TO TAKE A
MOMENT TO GET--
>> IT IS IN YOUR BRIEF?
>> YES IT IS IN YOUR MY BRIEF.
AND YOU DECIDED THAT IN 2005.
THE MOODY TALKED ABOUT THE
INEVITABLE DISCOVERY DOCTRINE
ALTHOUGH IN MOODY THIS COURT DID
NOT APPLY THE INEVITABLE
DISCOVERY DOCTRINE BECAUSE YOU
SAID THAT THERE WASN'T PROBABLE

CAUSE.
THE DEFENDANT IN THAT CASE WAS
JUST STOPPED IN HIS CAR ON A
HUNCH THERE HAD BEEN A LICENSE
SUSPENSION.
THERE WASN'T PROBABLE CAUSE AND
AN INVESTIGATION WAS NOT
UNDERWAY WHICH WAS THE MAIN WAY
TO APPLY THE INEVITABLE
DISCOVERY DOCTRINE AND SO YOU
DID NOT APPLY IT.
THIS COURT NEVER SAID ANYTHING
IN MOODY OR FITZGERALD OR ANY--
>> YEAH, THAT'S WHY--
>> I'M SORRY, FITZPATRICK.
I'M SORRY, YOUR HONOR,
FITZPATRICK.
THERE ARE SOME CASES.
THE NEXT CASE I WOULD LIKE TO
TALK ABOUT WAS CRAIG, WHICH THIS
COURT DECIDED IN 1984.
THE FACTS OF THAT CASE WERE THAT
A CATTLE RANCH OWNER WAS KILLED
BY A CATTLE RANCH MANAGER WHO
WAS STEALING CATTLE.

AND HIS BODY WAS DUMPED IN
THE SINKHOLE.
THE STATE DECLARED THAT THE
DEFENDANT'S INTERROGATION WAS
ILLEGAL AND SO THE STATEMENT WAS
SUPPRESSED.
BUT THIS COURT HELD THE
INEVITABLE DISCOVERY DOCTRINE
APPLIED BECAUSE THE POLICE
ULTIMATELY WOULD HAVE LOCATED
THE BODY BY MEANS OF THE
ORDINARY AND ROUTINE
INVESTIGATIVE PROCEDURES.
THE WALL SINKHOLE WAS ONE OF THE
LARGEST, WAS THE LARGEST
SINKHOLE IN THE AREA AND
APPARENTLY THIS IS WHERE MANY
MURDERERS DUMPED BODIES.
THIS WAS OBVIOUSLY GOING TO BE A
PLACE WHERE THEY LOOKED.
THERE WAS PROBABLE CAUSE.
THE DRAG MARK, THE DEBRIS, THE
CLOTHING FIBERS, ETCETERA, WERE
PRESENT AT WALL SINK.
AND WOULD HAVE MEANT THAT THE

POLICE WOULD HAVE HAD THE
PROBABLE CAUSE AND WOULD HAVE
INEVITABLY DISCOVERED THE BODY
IN WALL SINK.
AND IN THAT CASE, THIS COURT
SAID THAT THE INEVITABLE
DOCTRINE, DISCOVERY DOCTRINE IS
PROPERLY APPLIED IN THE FOURTH,
FIFTH AND SIXTH AMENDMENT
VIOLATIONS.
IN MAULDIN, THAT WAS THIS COURT
IN 1993, THE FACTS WERE THAT THE
DEFENDANT SHOT HIS EX-WIFE AND
HER NEW BOYFRIEND AS THEY WERE
SLEEPING.
HE STOLE THE CAR AND DROVE THE
TO NEVADA.
HE WAS ARRESTED IN NEVADA.
THEY DIDN'T HAVE A WARRANT BUT,
THIS COURT HELD THAT THERE WAS A
FLORIDA ARREST WARRANT OUT FOR
THIS INDIVIDUAL AND THEREFORE
THE DEFENDANT'S CONFESSION WAS
ADMISSIBLE.
>> BUT I GUESS, SEE, AND I, I

KNOW SOME OF THOSE CASES,

FITZPATRICK.

THE, THAT LAST CASE THAT YOU

MENTIONED, THERE WAS A SEPARATE

BASIS THAT THEY WOULD HAVE

OBTAINED THIS AND THEY HAD

ALREADY DONE IT.

IS THAT, IS THAT THE LAST CASE?

>> TALKING ABOUT MAULDIN?

THAT CASE?

>> WHERE YOU SAID THERE WAS AN

ARREST WARRANT ALREADY OUT

THERE?

>> YES.

THE FLORIDA HAD ALREADY ISSUED

AN ARREST WARRANT.

>> BUT I'M NOT STILL SEEING THIS

PROBLEM AND YOU HAVEN'T REALLY,

IN ALL, YOU SAID, WELL OUR COURT

HAS SAID THIS.

MY QUESTION, OR PROBLEM IS, THE

POLICY THE REQUIREMENT THAT THE

FOURTH AMENDMENT REQUIRES

PROBABLE CAUSE UPON WITH A

WARRANT, THAT THE EXCEPTION TO

THE WARRANT RULE IS EITHER
EXIGENT CIRCUMSTANCES.
IF WE SAY THAT THE OTHER THAT
THE OTHER EXCEPTION IS THEY
WOULD HAVE GOTTEN A WARRANT
BECAUSE THEY HAD PROBABLE CAUSE,
DOESN'T THAT JUST EVISCERATE THE
WARRANT REQUIREMENT?
IT WOULD JUST BE AS BROAD AS
ANYTIME THAT YOU HAVE PROBABLE
CAUSE TO SEARCH YOU DON'T NEED
TO GET A WARRANT BECAUSE YOU
HAVE PROBABLE CAUSE TO SEARCH?
AND I'M STILL NOT SEEING WHETHER
IT'S ACT-- WHETHER THERE WAS AN
EXCEPTION BECAUSE THEY WERE IN
THE PROCESS, THEY WERE ALMOST
GOING TO GET IT, SO THEY WEREN'T
TRYING TO EVADE THE WARRANT
REQUIREMENT, I DON'T SEE WHERE
THE, WHERE THE LINE IS SO THAT
IT DOESN'T SWALLOW THAT
REQUIREMENT IN THE FOURTH
AMENDMENT.
THAT'S MY CONCERN.

>> I THINK THE LINE CAN BE
TRACED BACK TO THE U.S.
SUPREME COURT CASE OF HERRING IN
2009 AND THE COURT DISCUSSED THE
FACT THAT THE EXCLUSIONARY RULE,
WAS TO DETER THE POLICE OF
DELIBERATELY RECKLESS OR
NEGLIGENT BEHAVIOR.
DIRECT, RECKLESS OR NEGLIGENT
BEHAVIOR.
HOWEVER THE NIX COURT SAID THAT
THE INEVITABLE DISCOVERY
DOCTRINE GOES TO THE FACT THAT
THIS EVIDENCE, THERE WAS
SUFFICIENT PROBABLE CAUSE.
THE POLICE CERTAINLY WOULD HAVE
BEEN ABLE THROUGH THEIR
INVESTIGATIVE MEANS, CERTAINLY
WOULD HAVE BEEN ABLE TO DISCOVER
THIS EVIDENCE.
IN THIS PARTICULAR--
>> ISN'T THE, IN THE SAME ARENA
YOU'RE DISCUSSING ISN'T PART OF
WHAT WE LOOK AT, THE WHOLE
UNDERLYING PURPOSE FOR THE

EXCLUSIONARY RULE, YOU REFERRED
TO ONE OF THE WAYS THAT IS
CHARACTERIZED BUT ISN'T IT ALSO
ABOUT PROVIDING A SANCTION AND A
DISINCENTIVE FOR THE POLICE TO
BEHAVE ILLEGALLY TO, IN
OBTAINING EVIDENCE THAT THEY
COULD NOT OBTAIN LEGALLY?
NOW, AND THAT IS NOT WHAT WE'VE
GOT HERE.
>> EXACTLY.
>> WE'VE GOT A SITUATION WHERE
THEY DID SOMETHING ILLEGAL BUT
THEY COULD HAVE OBTAINED IT,
THERE IS NO REAL INCENTIVE
OPERATIVE HERE FOR THEM TO ACT
IN A WAY THAT'S ILLEGAL, TO
OBTAIN EVIDENCE THAT THEY COULD
OBTAIN LEGALLY.
>> EXACTLY.
>> AND, IT IS, IT SEEMS TO BE,
AND I UNDERSTAND THE CONCERN,
THAT THIS, THIS IS NOT A WAY TO,
KIND OF WEED OUT THE WARRANT
REQUIREMENT ANYTIME PROBABLE

CAUSE EXISTS BUT THERE ARE
ALREADY DISINCENTIVES FOR THE
POLICE TO VIOLATE THE LAW.
THEY CAN FACE OTHER SANCTIONS,
IF THEY DO THAT.
AND THERE IS REALLY NO, THERE IS
NO REAL SIGNIFICANT INCENTIVE
FOR THEM TO BEHAVE IN SUCH A
MANNER.
ORDINARILY THE INCENTIVE FOR THE
LAW ENFORCEMENT TO BEHAVE
ILLEGALLY IS THEY CAN GET
EVIDENCE AND, THAT THEY WANT TO
GET AND THEY THINK THEY NEED TO
GET AND THEY DO IT, AN ILLEGAL
SHORTCUT.
NO EXCUSE FOR THAT BUT THAT'S
WHAT DRIVES THAT.
HERE'S THERE A DIFFERENT DYNAMIC
ENTIRELY BECAUSE THEY HAVE GOT
THIS, CLEARLY OPEN AND AVAILABLE
TO THEM IS THIS AVENUE THAT, TO
OBTAIN THE SEARCH WARRANT, WHICH
IF THEY HAD NOT MADE A MISTAKE
WOULD HAVE BEEN DOWN THAT ROUTE.

>> EXACTLY, YOUR HONOR.

GETS BACK TO THE QUESTION OF

WHAT IS THE POINT OF DETERRENCE.

WHAT WOULD BE THE POINT OF

EXCLUDING THIS EVIDENCE TO DETER

THE POLICE FROM WHAT?

FROM WHAT BEHAVIOR?

>> THE WHAT IS, THIS WASN'T,

THIS IS WHY I ASKED ABOUT

INNOCENCE.

THIS WAS, THEY HAD HANDCUFFED

HIM, HE WAS UNDER ARREST AND

ASKING FOR HIS CONSENT.

>> NO, YOUR HONOR, HE WASN'T

ARRESTED UNTIL AFTER.

>> AFTER HE WAS HANDCUFFED?

>> AFTER HE GAVE THE CONSENT AND

DETECTIVE PEREZ WENT INTO THE

HOME AND SAW GROW HOUSE.

>> AFTER HE WAS HANDCUFFED.

>> HE THEN CAME BACK AND

ARRESTED HIM.

YES, YOUR HONOR.

>> JUST TO SIMPLIFY THIS WHOLE

THING, JUST GETTING ON WITH

THIS, ANYTIME SOMETHING LIKE
THIS HAPPENS AND THERE'S A
MOTION TO SUPPRESS ALL THE
PROSECUTOR HAS TO SAY TO THE
JUDGE, WE HAD BASIS TO GET A
WARRANT.
WE WOULD HAVE FOUND THIS ANYWAY.
THAT IS ALL A PROSECUTOR WOULD
HAVE TO SAY, ISN'T IT?
ISN'T THAT WHAT YOU'RE SAYING?
>> NO, YOUR HONOR, THERE HAS TO
BE SUBSTANTIAL PROBABLE CAUSE.
>> OKAY.
>> THERE WASN'T IN MOODY.
THE COURT FELT YOU COULDN'T
APPLY THE INEVITABLE DISCOVERY
CLAUSE.
>> YOU HAVE TWO BAIL BONDSMEN GO
TO THE HOUSE AND SEE ALL THESE
THINGS.
THEY CALL THE POLICE.
THE POLICE OFFICER GETS THERE.
THEY TELL HIM, HEY, THEY'RE
GROWING MARIJUANA IN THAT HOUSE.
THAT IS WHEN THE OFFICER WENT

AND DID WHAT HE DID.
SO BASED ON THE TWO BAIL
BONDSMEN, YOU CAN PUT THAT IN AN
AFFIDAVIT, I WOULD THINK YOU
COULD GET A SEARCH WARRANT BASED
ON THAT.
SO ALL YOU HAVE TO DO IN THIS
PARTICULAR CASE, TELL THE JUDGE,
AT MOTION TO SUPPRESS, ALL WE
HAD TO DO IS JUST PUT WHAT THE
BAIL BONDSMEN SAID IN AFFIDAVIT
AND WE COULD HAVE GOTTEN A
WARRANT.
THAT'S ALL YOU HAVE TO SAY IN
THESE TYPE OF CASES.
AND THAT BASICALLY THE BOTTOM
LINE HERE?
>> I THINK YOU HAVE TO, WHAT YOU
HAVE ALWAYS SAID YOU MUST LOOK
TO THE TOTALITY OF THE
CIRCUMSTANCES IN EACH ONE OF
YOUR INEVITABLE DISCOVERY CASES,
YOU'RE LOOKING TO THE TOTALITY
OF THE CIRCUMSTANCES.
IN THIS PARTICULAR CASE THE

TOTALITY OF THE CIRCUMSTANCES
LENDS ITSELF FOR THIS COURT TO
APPLY THE INEVITABLE DISCOVERY
LAW AND THAT IS BECAUSE, WHEN
YOU LOOK AT THE FACTS, IT WASN'T
JUST ONE OFFICER THERE.
IT WAS A BONDS PERSON.
IT WAS OFFICER GARFINKLE WHO WAS
INVITED IN AND SAW THE GROW
HOUSE.
THEN IT WAS THE NARCOTICS SQUAD
LEAD DETECTIVE PEREZ WHO GOT
CONSENT.
HE BELIEVED THAT HE COULD ASK
FOR THAT CONSENT BECAUSE OFFICER
GARFINKLE WAS INVITED IN.
>> SO IT WOULD BE, I WOULD THINK
IT WOULD BE LIKE TWO-STEP TEST.
ONE, IN A MOTION TO SUPPRESS,
THE JUDGE HEARING THE CASE WOULD
HAVE TO DETERMINE FIRST DID THE
POLICE HAVE PROBABLE CAUSE TO
GET A SEARCH WARRANT?
ONCE HE OR SHE DETERMINES THAT,
THEN, THE INEVITABLE DISCOVERY

APPLIES.

BECAUSE YOU CAN ALWAYS GET A

WARRANT.

>> UNDER THE TOTALITY OF THE

CIRCUMSTANCES, YOUR HONOR.

EACH CASE IS SO DIFFERENT.

FOR INSTANCE IN MOODY YOU DID

NOT APPLY IT.

HOWEVER IN FITZPATRICK,

FITZGERALD, YOU DID.

SO.

>> THANK YOU.

>> THE FACTS OF EACH CASE ARE SO

IMPORTANT.

>> THANK YOU.

YOUR TIME IS UP.

>> THANK YOU SO MUCH.

>> COUNSEL, TWO MINUTES, PLEASE.

>> THANK YOU, YOUR HONOR.

CHIEF JUSTICE LABARGA, YOU'RE

ABSOLUTELY CORRECT.

ALL THIS WOULD REQUIRE IS AN

OFFICER COMING TO COURT SAYING

YOUR HONOR, I BELIEVE I HAD

PROBABLE CAUSE I WOULD HAVE

GOTTEN A WARRANT.

THERE WOULD BE INEVITABLE

DISCOVERY AND NO WARRANT

REQUIREMENT ANYTIME AN OFFICER

BELIEVED HE HAD PROBABLE CAUSE.

THIS COURT--

>> UNDER THIS YOU WOULDN'T EVEN

HAVE TO BELIEVED IT.

WHAT I THINK THE TEST IS SAYING

THAT IF UNDER THE CIRCUMSTANCE,

IT WAS REALLY PROBABLE CAUSE,

NOT JUST, A QUESTION, BUT THERE

WAS DEFINITELY PROBABLE CAUSE,

SO THE, WARRANT WOULD HAVE BEEN

OBTAINED, THEN YOU DON'T HAVE TO

WORRY ABOUT GETTING A WARRANT.

>> RIGHT, YOUR HONOR.

BUT THERE IS NO SORT OF SLIDING

SCALE OF PROBABLE CAUSE.

IT DOESN'T MATTER HOW MUCH

PROBABLE CAUSE AN OFFICER THINKS

HE HAS.

THAT DETERMINATION IS TO BE MADE

BY THE MAGISTRATE.

THIS COURT HAS NEVER HELD THE

ACTIVE PURSUIT OF A SEARCH
WARRANT IS NECESSARY TO SATISFY
INEVITABLE DISCOVERY BECAUSE
THIS COURT HAS NEVER BEEN FACED
WITH A SITUATION WHERE THAT
WOULD BE THE ONLY WITH TO
SATISFY INEVITABLE DISCOVERY OF
I THINK CONTRARY TO THE STATE'S
ARGUMENT FITZPATRICK DIDN'T
APPLY THE INEVITABLE DISCOVERY
DOCTRINE BECAUSE THE OFFICERS
COULD HAVE GOTTEN A WARRANT.
FITZPATRICK NOTED,
BASED ON MOODY.
AT THE TIME OF THE ALLEGED
ILLEGALITY A SEPARATE
INVESTIGATION WAS ACTIVELY
UNDERWAY, ACTIVELY UNDERWAY.
IN MOODY, THE ONLY THING
HAPPENED IN MOODY WAS ILLEGAL
TRAFFIC STOP.
AT MOMENT OF THE ILLEGAL TRAFFIC
STOP THE DEFENDANT WAS NOT
ACTIVELY BEING INVESTIGATED FOR
THE MURDER INVESTIGATION.

BECAUSE THE OF THE LOWER COURT'S

APPLICATION OF DOCTRINE

ESSENTIALLY WRITES THE WARRANT

REQUIREMENT OUT THE FOURTH

AMENDMENT WE RESPECTFULLY ASK

THAT THIS COURT REVERSE

THAT DECISION.

THANK YOU VERY MUCH.

>> THANK YOU, COUNSEL.

THANK YOU FOR YOUR ARGUMENTS.

THE COURT IS IN RECESS FOR

TEN MINUTES.