

WE'LL NOW MOVE TO THE NEXT CASE.  
THE NEXT CASE ON THE DOCKET  
TODAY IS CONAGE V. THE UNITED  
STATES OF AMERICA.

>> COUNSEL, YOU MAY PROCEED.

>> GOOD MORNING, MR. CHIEF  
JUSTICE, AND MAY IT PLEASE THE  
COURT.

MY NAME IS CONRAD KAHN,  
ASSISTANT--

THE PLAIN TEXT SHOWS THAT THE  
TERM PURCHASE, WHICH WAS ADDED  
TO A STATUTE THAT ALREADY ARE  
INCLUDED THE TERM ACTUAL  
CONSTRUCTIVE POSSESSION,  
REQUIRES THAT THE STATE PROVE AN  
INDIVIDUAL PAID FOR DRUGS BUT  
NOT THAT HE NECESSARILY  
POSSESSED THE DRUGS.

THREE POINTS SUPPORT THAT  
UNDERSTANDING.

FIRST, THE ORDINARY MEANING OF  
THE WORD PURCHASE AS IT IS USED  
IN EVERYDAY DISCOURSE SHOWS THAT  
THE WORD DOES NOT HAVE A  
POSSESSION REQUIREMENT.

SECOND, WE THINK THE STATUTE AS  
A WHOLE, INCLUDING USING  
ORDINARY RULES OF GRAMMAR, SHOWS  
THAT THE TERM PURCHASE AND  
ACTUAL CONSTRUCTIVE POSSESSION  
MUST CARRY INDEPENDENT AND  
DIFFERENT MEANING.

AND THIRD, THE GOVERNMENT'S  
COUNTERARGUMENTS, WHICH RELY ON  
SPECULATION ABOUT ALTERNATIVE  
THEORIES OF PROSECUTION AND  
LEGISLATIVE INTENT, IS BELIE BY  
THE STATUTE'S PLAIN TEXTS.

TURNING TO THE FIRST POINT, THE  
ORDINARY MEANING OF THE WORD  
PURCHASE INCLUDES SITUATIONS IN  
WHICH AN INDIVIDUAL PAYS FOR AN  
ITEM BUT DOES NOT NECESSARILY  
POSSESS OR RECEIVE.

FOR EXAMPLE, IN THE DRUG  
TRAFFICKING CONTEXT, A PURCHASER  
PAYS A MIDDLEMAN TO HAND OFF  
MONEY FOR DRUGS, BUT THE MIDDLE  
MAN DOES NOT RECEIVE THE DRUGS.

SECOND, READING THE STATUTE AS A  
WHOLE--

>> YOU'D AGREE WITH ME THAT IN

THAT HYPOTHETICAL, THE KINGPIN WOULD BE VERY, VERY UPSET AND WOULD PROBABLY UNDERSTAND HIMSELF TO BE POSSESSED IN A CONSTRUCTIVE WAY THE DRUGS THAT WERE MISDIRECTED BY THE MIDDLEMAN, RIGHT?

>> THE KINGPIN MAY--

>> IT WOULD BE A SURPRISE TO HIM IF YOU TOLD HIM HE DIDN'T POSSESS THOSE NARCOTIC, RIGHT?

>> HE MAY BE SURPRISED, BUT IT'S NOT ENTIRELY CLEAR HE WILL ALWAYS POSSESS THE DRUGS.

THE QUESTION HERE IS DOES THAT MIDDLEMAN POSSESS THE DRUGS, AND HE DOESN'T NECESSARILY POSSESS THE DRUGS NOT THE WAY PURCHASE IS USED IN EVERYDAY DISCOURSE, AND THAT ALSO TURNS TO MY SECOND POINT WHICH IS READING THE STATUTE AS A WHOLE IN THIS CONTEXT ALSO SUPPORTS THERE IS NO POSSESSION REQUIREMENT.

THE TERM PURCHASE APPEARS IN THE STATUTE THAT ALSO INCLUDES THE TERMS ACTUAL AND CONSTRUCTIVE POSSESSION.

IF THE TERM PURCHASE HAD A POSSESSION REQUIREMENT, IT WOULD BE TERMED PLUSSAGE.

THAT FOR ONE VIOLATES THE PRINCIPLE THAT EVERY STATUTE SHOULD BE--

>> JUST BECAUSE IT'S, IT OVERLAPS WITH ANOTHER TERM DOESN'T MEAN IT SUPPLANTS THE OTHER TERM, RIGHT?

THEY'RE NOT IDENTICAL.

>> THAT'S CORRECT, YOUR HONOR.

>> ONE IS SLIGHTLY DIFFERENT FROM THE OTHER AND, INDEED, ONE MIGHT CONTAIN THE OTHER UNDER CERTAIN CONTEXTS, BUT THAT DOESN'T MAKE THE TWO-- HELP ME UNDERSTAND HOW THAT WOULD MAKE THE SECOND TERM USELESS IN THE STATUTE.

>> SO IF THE TERM PURCHASE HAD A POSSESSION REQUIREMENT, IT WOULD BE SURPLUSAGE.

IT WOULD ESSENTIALLY MEAN THAT THE STATE CAN ALWAYS JUST CHARGE POSSESSION INSTEAD OF PURCHASE.

IT WOULD BE A SUBSET OF  
PURCHASE, ESSENTIALLY,  
POSSESSION PLUS ANOTHER ELEMENT  
ARE.

THE STATE WOULD NEVER HAVE TO  
CHARGE PURCHASE.

AND IN THAT SENSE, IT WOULD BE  
SURPLUSAGE.

>> I'M NOT SURE I UNDERSTAND  
THAT AS A MATTER OF LOGIC.  
I THINK THAT THEY-- YOU'RE  
RIGHT THAT THERE IS SOME CONDUCT  
THAT WOULD BE CRIMINALIZED BY  
BOTH TERMS, BUT THAT DOESN'T  
MEAN WE HAVE A SURPLUSAGE  
SITUATION.

OFTEN TIMES THAT IS THE CASE,  
AND IT DOES NOT RENDER ANY  
PORTION OF THE STATUTE  
SURPLUSAGE.

IT JUST MEANS THAT A CERTAIN  
AMOUNT, A CERTAIN TYPE OF  
CONDUCT MAY UNDER SOME  
CIRCUMSTANCES, DEPENDING ON HOW  
IT'S CHARGED, VIOLATE TWO  
ACTIONS THAT ARE CRIMINALIZED.

>> YOUR HONOR--

>> DOESN'T MEAN THAT THEY'RE  
IDENTICAL SUCH THAT THE  
LATTER--

>> THEY'RE NOT IDENTICAL.  
BUT, YOUR HONOR, IF THE TERM  
PURCHASE HAD A POSSESSION  
REQUIREMENT, IT WOULD BE  
COMPLETELY COVERED BY THE  
TERM--

>> I GUESS THAT'S MY POINT, IS  
THAT IT DOESN'T RESULT IN A  
COMPLETE ECLIPSE.

>> I THINK IF THERE IS A  
POSSESSION REQUIREMENT, I THINK  
OUR POSITION IS THAT IT WOULD  
RESULT IN A COMPLETE ECLIPSE,  
YOUR HONOR.

BUT WE'RE NOT ONLY RELYING ON  
THE SURPLUSAGE POINT, WE'RE ALSO  
RELYING ON THE FACT THERE ARE  
TWO SEPARATE TERMS THAT HAVE HAD  
INDEPENDENT MEANING, AND THAT  
PRINCIPLE IS ALL THE MORE  
APPROPRIATE GIVEN THAT PURCHASE  
AND ACTUAL CONSTRUCTIVE  
POSSESSION APPEAR DIFFERENT  
PHRASES, EACH SEPARATELY

MODIFIED BY THE WORD KNOWINGLY.  
MOREOVER, IF THE TERM PURCHASE  
HAD A POSSESSION REQUIREMENT, IT  
WOULD BE CONTRARY TO LEGISLATIVE  
INTENT.

IN 1987 THE LEGISLATURE INCLUDED  
THE WORD PURCHASE IN THE STATUTE  
TO COMBAT THE THEN-INCREASING  
CRIME RATE TO MAKE IT EASIER FOR  
THE STATE TO CAPTURE ALL PEOPLE  
IN THE DRUG TRAFFICKING TRADE.  
IN OTHER WORDS, THE LEGISLATURE  
WAS TRYING TO EXPAND THE STATUTE  
AND MAKE IT EASIER FOR  
PROSECUTORS TO CAPTURE EVERY  
PERSON IN THE DRUG TRAFFICKING  
CHAIN INCLUDING THE MIDDLEMEN  
WHO PAY FOR DRUGS BUT DON'T  
NECESSARILY COME INTO POSSESSION  
OF THE DRUGS.

>> LET ME ASK YOU, I THINK  
THAT'S A VERY INTERESTING  
ARGUMENT.

BUT LET ME ASK YOU ABOUT HOW ALL  
THIS PLAYS INTO-- HOW THE RULE  
OF LENITY PLAYS INTO THE  
ANALYSIS HERE.

IF I UNDERSTAND, YOUR POSITION  
IS THE RULE OF LENITY SHOULDN'T  
BE USED TO HELP THE FEDERAL  
GOVERNMENT.

THAT'S NOT FOR THE BENEFIT OF  
THE FEDERAL GOVERNMENT, IS THAT  
CORRECT?

>> THAT'S CORRECT, YOUR HONOR.

>> WELL, I DON'T-- I'M NOT SURE  
I CAN BUY THAT BECAUSE WHAT WE  
DECIDE IN THIS CASE IS GOING TO,  
IF WE DECIDE IT IN THE FAVOR OF  
THE PARTICULAR DEFENDANT IN THIS  
CASE, GOING TO JAM OTHER  
DEFENDANTS ALL ACROSS THE STATE.  
I MEAN, THAT'S GOING TO BECOME  
THE LAW OF FLORIDA AND THE WAY  
THE STATUTE HAS TO BE  
INTERPRETED, AND IT WILL BE  
CONTRARY TO THE INTEREST OF  
FUTURE DEFENDANTS IN OUR STATE  
COURT SYSTEM.

AND WE'VE GOT TO INTERPRET IT  
CONSISTENTLY.

WE ACTUALLY HAVE CASES THAT SAY  
EVEN WHEN THERE'S A STATUTORY  
PROVISION THAT HAS CIVIL

APPLICATIONS AS WELL AS  
APPLICATIONS IN THE CRIMINAL LAW  
AND THE RULE OF LENITY APPLIES  
TO THE INTERPRETATION OF THE  
CRIMINAL LAW, IT'S GOT TO BE  
INTERPRETED CONSISTENTLY.  
SO I DON'T, I MEAN, I'M NOT  
PERSUADED THAT WE WOULD NOT, TO  
THE EXTENT THAT THERE IS AN  
AMBIGUITY THAT WOULD TRIGGER THE  
RULE OF LENITY, I DON'T  
UNDERSTAND WHY WE WOULD NOT HAVE  
TO APPLY THAT IN THIS CASE.

NOW, I'M NOT SAYING THAT THAT'S  
THE CASE.

MAYBE IT'S NOT AMBIGUOUS.  
MAYBE THE RULE OF LENITY WOULD  
NOT MEAN BOTH, BUT I DON'T KNOW  
HOW YOU GET OUT OF THE  
POSSIBILITY OF HAVING THE RULE  
OF LENITY COME INTO PLAY JUST  
BECAUSE OF THIS VERY ODD-- I  
MEAN, THIS IS LIKE THE WORLD  
TURNED UPSIDE DOWN ORDINARILY.  
AND WE ALL UNDERSTAND THAT.  
BUT I DON'T SEE HOW YOU GET  
THAT.

>> I HAVE FOUR RESPONSES TO  
THAT.

[LAUGHTER]

>> YOU'RE PREPARED.

[LAUGHTER]

>> I AM PREPARED, YOUR HONOR.

>> THAT'S PRETTY GOOD.

>> SO, FIRST OF ALL, I DON'T  
THINK YOU NEED TO GET THE RECALL  
OF LENITY HERE.

I THINK THE STATUTE'S LOOKING AT  
THE ORDINARY MEANING AND READING  
THE STATUTE AS A WHOLE.

IT'S PLAIN.

YOU DON'T HAVE TO GET TO THE  
RULE OF LENITY.

YOU DON'T HAVE TO DEAL WITH THAT  
WEIRD QUESTION.

BUT JUST FOR THE SAKE OF  
ARGUMENT--

>> WELL, LET ME ASK YOU ON THAT,  
THIS IS WHAT ACTUALLY GOT ME  
STARTED OFF ON THIS.

CAN WE LOOK AT MATTERS OF  
LEGISLATIVE OR STATUTORY, I  
GUESS IS THE WORD, STATUTORY  
HISTORY?

BECAUSE THAT'S YOUR ARGUMENT.  
THE STATUTORY HISTORY HERE, THE  
EVOLUTION OF THE STATUTE SHOWS  
THAT A PARTICULAR MEANING IS  
NOT, NOT REASONABLE.

DO WE TAKE THAT INTO ACCOUNT  
BEFORE WE CONSIDER THE RULE OF  
LENITY?

I MEAN, IS THAT THE SORT OF  
THING THAT WE CAN RESOLVE WHAT  
ON THE FACE WOULD BE AN  
AMBIGUITY?

CAN WE RESOLVE IT IN THAT MANNER  
WITHOUT FIRST RESORTING TO THE  
RULE OF LENITY?

>> SO I DON'T THINK THERE IS AN  
AMBIGUITY HERE.

I THINK READING THE STATUTE AS A  
WHOLE, TEXT IS VERY PLAIN.

I DON'T THINK YOU NEED TO RESORT  
TO THAT HISTORY.

I THINK IT'S, OF COURSE, OUR  
INTERPRETATION AND WHAT THE  
LEGISLATIVE INTENT IS WHICH IS,  
ULTIMATELY, WHAT WE'RE TRYING TO  
FIGURE OUT WHEN WE'RE  
INTERPRETING THE STATUTE.

BUT BACK TO YOUR QUESTION ABOUT  
LENITY, FIRST, I DON'T THINK YOU  
NEED THE GET THERE.

BUT, SECOND, THE STATUTE-- THE  
FLORIDA STATUTE ON LENITY, WHICH  
I'VE COME TO UNDERSTAND IS  
DIFFERENT THAN FEDERAL RULE OF  
LENITY THE, THE REFERS TO THE  
ACCUSED.

HERE THE ACCUSED, I WOULD ARGUE,  
IS MR. CONAGE AND, THEREFORE,  
LENITY MUST WORK IN THE  
ACCUSED'S FAVOR.

NOW, IF FOR WHATEVER REASON  
GIVEN THE POSTURE OF THIS CASE  
THE COURT SAID, WELL, MR. CONAGE  
IS NOT-- IS THE ACCUSED,  
THEN--

>> WELL, THIS CERTAINLY WORKS  
AGAINST HIM BECAUSE OF THE  
FEDERAL LAW.

WE'RE NOT INTERPRETING THE  
FEDERAL LAW.

THIS IS A MATTER OF-- REALLY  
IT'S JUST KIND OF ALMOST AN  
ADVISORY OPINION ABOUT, THAT HAS  
REAL IMPLICATIONS FOR THIS CASE.

BUT I'M JUST--

>> WELL, LENITY, LIKE I SAID,  
YOU KNOW, LENITY STATUTE DOES  
REFER TO THE ACCUSED.

AND I KNOW THE FEDERAL STANDARD  
FOR LENITY'S DIFFERENT, BUT I  
ALSO CITED THE SUPREME COURT  
CASE IN MY REPLY BRIEF WHICH  
ALSO SHOWS LENITY HAS BEEN AI  
PLIED EVEN IN THE FEDERAL  
CONTEXT ON A CASE BY CASE BASIS.  
BUT AGAIN, IF YOU DON'T THINK  
MR. CONAGE--

>> I DON'T THINK WE DO IT THAT  
WAY.

[LAUGHTER]

WE TRY TO INTERPRET OUR CASES  
CONSISTENTLY.

WE MAY NOT ALWAYS SUCCEED, BUT  
WE TRY.

>> THE FLORIDA STATUTE ON LENITY  
REFERS TO THE ACCUSED.  
BUT MORE IMPORTANTLY, BACK TO MY  
FIRST POINT, YOU DON'T EVEN HAVE  
TO GET THIS.

THE STATUTE IS PLAIN WHEN YOU  
READ THE TERM PURCHASE THAT IS  
ORDINARILY ARE USED, YOU READ  
THE STATUTE AS A WHOLE AS THIS  
COURT HAS SAID TIME AND TIME  
AGAIN, IT IS CLEAR THAT THE WORD  
PURCHASE-- WHICH WAS ADDED TO  
THE STATUTE AFTER THE PHRASE  
ACTUAL CONSTRUCTIVE POSSESSION  
WAS THERE ARE IN THERE-- SHOWS  
THAT--

>> ON THE PLAIN MEANING, WHEN  
YOU BUY SOMETHING, ORDINARILY  
YOU EXPECT TO EITHER GET IT OR  
BE ABLE TO CONTROL WHERE IT GOES  
AND HAVE IT DELIVERED SOMEWHERE  
ELSE.

SO IF YOU DON'T GET IT, ISN'T  
THAT MORE OF AN ATTEMPTED  
PURCHASE, NOT A REAL PURCHASE?

>> SO TWO RESPONSES, YOUR HONOR.  
YOU DON'T ALWAYS BUY SOMETHING  
FOR YOURSELF.

CLASSIC EXAMPLE THAT I WAS  
REFERRING TO, WHEN A KINGPIN  
PURCHASER BUYS FROM A  
DISTRIBUTER AND SENDS A  
MIDDLEMAN TO DROP OFF THE MONEY.  
THE MIDDLEMAN GETS A FEE FOR

DOING THAT, HE KNOWS HE'S  
DROPPING OFF MONEY FOR DRUGS,  
BUT HE MAY HAVE NO INTENT  
REGARDING WHAT HAPPENS TO THE  
DRUGS NEXT.

HE IS A PURCHASER.

>> OR MAYBE HE HAS A BAILMENT,  
RIGHT?

>> I WOULD SUBMIT HE'S A  
PURCHASER, YOUR HONOR.

HE IS PAYING MONEY, THAT IS  
EXACTLY WHAT THE LEGISLATURE WAS  
TRYING TO CAPTURE WHEN THEY  
ADDED THE TERM PURCHASE TO A  
STATUTE THAT ALREADY--

>> WELL, LET'S BUILD ON JUSTICE  
POLSTON'S HYPOTHETICAL.

SAY WE PUT IT ON FedEx TRUCK  
AND THE FedEx TRUCK IS HELD  
UP IN A HOBBS ACT ROBBERY.  
WHO HAS AN ACTION FOR CONVERSION  
OF THE CHATTEL THAT'S BEEN TAKEN  
IN THE HOBBS ACT ROBBERY?

>> LET ME TRY TO UNDERSTAND THE  
HYPOTHETICAL HERE, YOUR HONOR.  
SO THE PERSON SELLING THE ITEM  
PUTS IT ON A FedEx TRUCK?

>> I BUY IT FROM YOU--

>> OKAY.

>> AND YOU SAY I'M GOING TO PUT  
IT ON A FedEx TRUCK AND  
DELIVER IT TO YOUR HOME.

ON THE WAY THE FedEx TRUCK  
IS HELD UP AND THE PACKAGE IS  
GONE.

WHO GOT ROBBED, THE SELLER?

>> NO.

I WOULD SAY IN THAT HYPOTHETICAL  
YOU DID, BUT THAT DOESN'T MEAN  
EVERYONE TIME SOMEONE PAYS FOR  
AN ITEM, THEY CAN TAKE  
CONSTRUCTIVE POSSESSION.

>> WELL, WHAT DO I HAVE THEN?  
DO I NOT HAVE AN ACTION FOR  
CONVERSION BECAUSE IT WASN'T  
ACTUALLY MINE?

>> IN YOUR HYPOTHETICAL YOU DO  
HAVE AN ACT, BUT THERE ARE  
INSTANCES WHEN PEOPLE PAY MONEY  
NOT FOR THEMSELVES TO PAY AN  
ITEM, BECAUSE THEY'RE AN AGENT  
OF SOME KINGPIN PURCHASER.  
THAT MIDDLEMAN DOES NOT HAVE AN  
ACT OF CONVERSION.

MAYBE THE ULTIMATE PURCHASER WHO'S NOT GIVING OVER THE MONEY BUT HAS HIS AGENT DOES HAS AN ACT OF CONVERSION, BUT THAT MIDDLEMAN DOES NOT.

>> WELL, WOULDN'T AN ACTION OF CONVERSION OR OF ILLEGAL SUBSTANCES BE AGAINST PUBLIC POLICY?

>> YES, IT WOULD, YOUR HONOR. I WAS ASSUMING YOU WERE NOT TALKING ABOUT DRUGS--

[LAUGHTER]

>> OKAY.

I JUST WANTED TO BE CLEAR.

>> IT SEEMS LIKE THE MIDDLEMAN IN YOUR SCENARIO, EVEN THOUGH THEY HAVE GOTTEN MONEY THAT THEY WERE PROVIDED BY SOMEBODY ELSE WHO'S CONTROLLING WHERE THE DRUGS ARE SUPPOSED TO GO, RIGHT? IT SEEMS LIKE THE MIDDLEMAN DOESN'T REALLY HAVE POSSESSION IN THE SENSE OF THEIR ULTIMATE CONTROL OF WHAT THOSE THINGS ARE.

AND IF IT'S NOT THEIR MONEY PROVIDED, THEY'RE JUST ACTING, AS YOU SAID, A MIDDLEMAN WITHOUT THE ABILITY TO HAVE ACTUAL CONTROL OVER THE DRUGS. IN ESSENCE, THEY'RE A DRUG, FEDEX TRUCK.

>> THAT'S CORRECT, YOUR HONOR. BUT THAT UNDERSTANDING IS CONFIRMED BY THE STATUTORY TEXT. AGAIN, WE'RE LOOKING AT THE TERM PURCHASE THAT WAS ADDED TO THE STATUTE THAT ALREADY INCLUDED THE TERMS ACTUAL AND CONSTRUCTIVE POSSESSION.

AND IT'S A FUNDAMENTAL RULE, AND WE READ STATUTES, WE HAVE TO GIVE EACH TERM AN INDEPENDENT MEANING, AND THAT'S ALL THE MORE APPROPRIATE HERE.

THE LEGISLATIVE TEXT CONFIRMS THAT, YOU DON'T HAVE TO RESORT TO THAT.

WE WOULD ALSO RELY ON LENITY, WE DON'T HAVE TO RESORT TO THAT.

>> SO IN YOUR MIDDLEMAN EXAMPLE, MANY THAT CASE BOTH THE PERSON WHO GAVE THEM THE MONEY AND HAS

THE CONTROL WOULD HAVE, THEY'RE DEEMED TO BE THE PURCHASER BUT ALSO THE MIDDLEMAN?

AND SO IN YOUR EXAMPLE, WE'D HAVE TWO PURCHASERS, THE MIDDLEMAN AND THE PERSON WHO PROVIDED THE MONEY.

>> YES, YOUR HONOR.

I WOULD SAY THAT'S TRUE.

THEY COULD BOTH BE PROSECUTED UNDER A THEORY OF PURCHASING.

>> SO, BUT YOUR ARGUMENT IS A PURCHASE DOES NOT HAVE TO INCLUDE POSSESSION, RIGHT? ISN'T THAT YOUR ARGUMENT?

>> PURCHASE DOES NOT HAVE TO INCLUDE POSSESSION.

PERHAPS THE KINGPIN--

>> SO I'M CONFUSED HOW THAT ARGUMENT HELPS YOU HERE.

>> HOW-- IF IT DOESN'T-- SO THE KINGPIN PURCHASER MAY OR MAY NOT POSSESS, BUT THE PERSON, THE MIDDLEMAN DOES NOT NECESSARILY POSSESS.

>> COUNSEL, IN THAT CASE, COULD THE KINGPIN BE CHARGED WITH BOTH?

>> YES, YOUR HONOR.

>> HE WOULD BE CHARGED WITH PURCHASING, AND HE WOULD ACTUALLY BE CHARGED WITH ACTUAL CONSTRUCTIVE POSSESSION AND, I'M ASSUMING, OTHER THINGS, AND HE COULD BE PROSECUTED ON EACH SEPARATE THEORY.

>> HE COULD.

THE STATE COULD--

>> WHEREAS THE MIDDLEMAN WOULD JUST BE CHARGED SIMPLY WITH PURCHASING.

>> RIGHT, YOUR HONOR.

THAT'S CORRECT, YOUR HONOR.

I SEE MY TIME IS EXPIRING.

I'D LIKE TO SAVE THE REST OF MY TIME FOR REBUTTAL IF THE COURT HAS NO FURTHER QUESTIONS.

>> THANK YOU.

>> GOOD MORNING, YOUR HONORS, AND MAY IT PLEASE THE COURT, HOLLY GERSHOW ON BEHALF OF THE UNITED STATES.

THE TERM PURCHASE MEANS TO PAY.

PURCHASE AND PAY ARE NOT--

>> COUNSEL, COULD YOU SPEAK UP  
JUST A LITTLE BIT?

>> OH, I'M SORRY.

PURCHASE AND PAY ARE NOT  
SYNONYMOUS.

THEY DON'T MEAN THE SAME THING.

PAY MEANS TO GIVE MONEY FOR  
CONSIDERATION, PURCHASE MEANS  
BOTH TO GIVE CONSIDERATION AND  
TO RECEIVE THAT ITEM IN A  
RETURN.

HOW DO WE KNOW THAT?

WE LOOK AT THE PLAIN AND  
ORDINARY MEANING OF THAT TERM  
WHICH CAN BE ASCERTAINED BY  
ACCESS TO A DICTIONARY--

>> WELL, YOU KNOW, I UNDERSTAND  
YOUR POSITION.

YOU'RE SAYING WE'VE GOT TO LOOK  
AT THE DICTIONARY DEFINITION.  
WE CANNOT CONSIDER THE WAY THE  
LANGUAGE IS ORDINARILY USED.  
IS THAT CORRECT?

IS THAT THE POSITION OF THE  
UNITED STATES?

>> THE POSITION OF THE UNITED  
STATES IS THAT THE DICTIONARY  
DEFINITION IS HOW THAT TERM IS  
ORDINARILY USED.

AND THAT WE DON'T INTERPRET A  
STATUTE BROADLY BASED ON EVERY  
WAY IN WHICH A TERM COULD  
POSSIBLY BE USED WHEN  
THE COMMON AND ORDINARY MEANING  
IS WHAT THE DICTIONARY SAYS.

IF PURCHASE MEANT TO PAY IN  
1987, THEN SURELY THE DICTIONARY  
DEFINITION OF PURCHASE IF TODAY  
WOULD HAVE INCLUDED THAT  
DEFINITION IF BECAUSE THE TERM  
WOULD HAVE EVOLVED INTO THE  
COMMON MEANING, BUT IT HASN'T.  
THE COMMON MEANING OF PURCHASE,  
MOST PEOPLE UNDERSTAND THAT A  
WHEN THEY PURCHASE SOMETHING,  
THEY GET THAT THING IN RETURN.  
AND IF THEY HAVEN'T, THAT IS AN  
ATTEMPTED PURCHASE.

>> WELL, I MEAN, I'M SKEPTICAL  
ABOUT THAT IN TERMS OF THE WAY  
WE USE THE LANGUAGE.  
BECAUSE, YOU KNOW, PEOPLE ARE  
MAKING ONLINE PURCHASES ALL THE  
TIME.

AND JUST THAT VERY TERM, ONLINE PURCHASE, SUGGESTS THAT WHEN YOU GIVE WITH YOUR CREDIT CARD INFORMATION, YOU PUT THE ORDER IN, YOU GIVE THEM YOUR CREDIT CARD INFORMATION, CREDIT CARD IS CHARGED, AND IT'S ON ITS WAY TO YOU.

IT'S NOT THAT, WELL, I'M, I WILL HAVE PURCHASED IT.

I HAVE PURCHASED IT.

SO I'M STRUGGLING WITH-- AND THAT'S A VERY COMMON THING.

I MEAN, THAT'S, AND THERE ARE OTHER THINGS.

I MEAN, I WOULDN'T-- IF I, MY OBJECT WAS TO ACQUIRE A CAR AND I SAID, WELL, I SAID TO JUSTICE POLSTON, JUSTICE POLSTON, I PURCHASED THAT CAR THIS AFTERNOON AND I'M GOING TO TAKE DELIVERY OF IT TOMORROW, I DON'T THINK JUSTICE POLSTON WOULD THINK THAT I HAD MISUSED THE WORD PURCHASE.

DO YOU?

>> I DON'T, YOUR HONOR, BUT I DO THINK THERE'S A DIFFERENCE BETWEEN PURCHASING ILLEGAL ITEMS AND PURCHASING LEGAL ITEMS.

AND THE REASON FOR THAT IS WHEN YOU PURCHASE A LEGAL ITEM, YOU GET OWNERSHIP OF IT.

AND SO THAT, YOU CAN ACQUIRE THE ITEM THROUGH ACQUIRING OWNERSHIP.

YOU CANNOT OWN AN ILLEGAL OBJECT TO.

THERE COULD BE NO--

>> THERE COULD BE THE CONVERSION--

>> THERE COULDN'T BE A CONVERSION ACTION.

YOU HAVE NO LEGAL RIGHT.

IF YOU PAY FOR DRUGS AND THE DRUG DEALER DOESN'T DELIVER THEM, YOU CAN'T GO TO COURT AND SUE THEM.

YOU CAN'T SAY I OWN THOSE TRUCKS RIGHT NOW.

I WAS IN FORFEITURE BEFORE I WENT TO THE APPELLATE DIVISION, WE RECOGNIZE THERE IS NO OWNERSHIP INTEREST.

SO THAT IS WHY--

>> BUT YOU DO FORFEIT PROCEEDS.

>> WE FORFEIT PROCEEDS.

>> AND I GUESS THAT'S THE POINT,  
RIGHT?

THE IDEA IS THAT PERHAPS-- I  
THINK THE RULE PROVES TOO MUCH,  
DOESN'T IT, TO SAY THAT IF IT IS  
A CRIME TO POSSESS SOMETHING  
UNDER TITLE 21 OF THE UNITED  
STATES CODE, IT'S IMPOSSIBLE TO  
OWN IT.

THAT CAN'T BE RIGHT BECAUSE YOU  
CHARGE PEOPLE WITH OWNING,  
HAVING POSSESSIVE, CONSTRUCTIVE  
POSSESSION OF AND BEING ABLE TO  
CONTROL THE FLOW OF FUNDS,  
NARCOTICS, ALL SORTS OF THINGS  
THAT ARE UNLAWFULLY POSSESSED.

>> YES.

CONSTRUCTIVE POSSESSION IS THE  
ABILITY TO KNOW OF SOMETHING AND  
TO BE ABLE TO EXERCISE DOMINION  
OR CONTROL.

SO OWNERSHIP IS SLIGHTLY  
DIFFERENT.

I THINK YOU'LL RECALL THE  
SUPREME COURT CASE ABOUT  
HANDGUNS AND HOW YOU CAN OWN A  
HANDGUN WITHOUT POSSESSING IT,  
AND THAT'S WHY THE GOVERNMENT IS  
REQUIRED TO ALLOW A DEFENDANT  
WHO'S BEEN, WHO PREVIOUSLY OWNED  
A FIREARM LEGALLY BUT NOW HAS  
THE ABILITY TO DIVEST ITSELF OF  
THAT BECAUSE RECOGNIZE OWNERSHIP  
IS BROADER THAN POSSESSION.

AND I WOULD ARGUE THAT WITH  
ILLEGAL DRUGS THERE IS NO  
OWNERSHIP.

THE ONLY WAY THAT YOU CAN  
ACQUIRE A DRUG IS ACTUAL OR  
CONSTRUCTIVE POSSESSION.

THAT'S WHY IN THE CONTEXT OF  
WHAT WE'RE TALKING ABOUT IS DRUG  
TRAFFICKING THE ONLY WAY TO  
COMPLETE A PURCHASE IS TO  
ACQUIRE POSSESSION.

AND THAT IS CONSISTENT TOO WITH  
HOW THIS COURT HAS HELD IN THE  
LAWS THAT SALE-- THAT DELIVERY  
IS AN ESSENTIAL ELEMENT OF A  
SALE.

AND SO THE CONVERSE SHOULD BE

TRUE FOR PURCHASE, THAT POSSESSION IS AN ESSENTIAL ELEMENT OF A PURCHASE.

>> SO, COUNSEL, I'M GOING TO INTERRUPT YOU JUST FOR A MOMENT. ON THE HYPOTHETICAL THAT OPPOSING COUNSEL WAS USING ABOUT THE MIDDLEMAN, IF INSTEAD OF PURCHASING THE MIDDLEMAN IS IN RESPONSIBILITY FOR WORKING OUT THE DEAL TO SELL BUT THEY DON'T-- THEY'RE NOT THE ONES IN CONTROL, THEY'RE NOT DOING THE DELIVERY AND THEY'RE JUST SELLING THE PRODUCT AS THE MIDDLEMAN, DO THEY ALSO HAVE TO HAVE CONSTRUCTION AND ACTUAL POSSESSION?

>> NO.

AIDS AND ABETS IN THE DELIVERY OF A SALE DOES NOT NECESSARILY AID AND ABET THE POSSESSION OF A DRUG.

ON THE OTHER HAND, PURCHASE IS AN ACT OF ACQUISITION SO ONE CANNOT AID AND ABET SOMEBODY'S PURCHASE WITHOUT ACTUALLY AIDING AND ABETTING THE ACTUAL POSSESSION OF THE DRUG BY SOMEONE.

WELL, YOU PURCHASED-- IT MIGHT REQUIRE POSSESSION, BUT IT DIDN'T SAY BY WHOM.

IT DOESN'T MATTER BECAUSE THE ONE WHO AIDS AND ABETS IS EXACTLY THE SAME WAY-- THE MIDDLEMAN PROVIDES THE MONEY, EVEN IF HE NEVER HAS ACTUAL POSSESSION, HE HAS AIDED AND ABETTED SOMEBODY'S ACTUAL AND CONSTRUCTIVE POSSESSION OF THE DRUGS, AND SO HE WOULD BE LIABLE FOR ACTUALLY CONSTRUCTIVELY POSSESSING THE DRUG THE EXACT SAME WAY AS THE KINGPIN WHO DID. SO IT REALLY DOESN'T MATTER. ONCE THERE IS AN EXCHANGE, IF YOU ACCEPT THE PRINCIPLE THAT A PURCHASE REQUIRES AN EXCHANGE, ONCE THAT EXCHANGE IS MADE, EVERYBODY ON THE PURCHASING SIDE OF THE TRANSACTION IS LIABLE FOR POSSESSION ACTUALLY.

>> COULD YOU ADDRESS FURTHER THE

MIDDLEMAN ARGUMENT?

FRANKLY, I'M BEING DENSE TODAY.  
I'M CONFUSED BY THAT ARGUMENT  
BECAUSE I DON'T WITH UNDERSTAND  
HOW THE FACT THAT YOU CAN HAVE  
TWO PROSECUTIONS FOR A PURCHASE  
WHICH ALSO INCLUDES POSSESSION  
OR CONSTRUCTIVE POSSESSION,  
AGAIN, A MIDDLEMAN AND SOMEBODY  
ELSE WHO'S ULTIMATELY MAKING THE  
DECISION HELPS TO SAY THAT  
POSSESSION NOT A REQUIREMENT.

>> YOUR HONOR, MY POSITION IS  
POSSESSION IS A REQUIREMENT, AND  
I THINK--

>> I KNOW.

>>-- THAT IT DOES HELP.

>> SO HOW DOES THAT ARGUMENT  
SOMEHOW, IF THAT HELPS YOUR  
OPPOSITION, COULD YOU  
DISTINGUISH IT IN SOME WAY?

>> I DON'T THINK IT DOES HELP  
THE OPPOSITION BECAUSE I THINK  
THAT EVERYBODY ON THE PURCHASING  
SIDE OF THE TRANSACTION IS  
LIABLE EITHER AS A PRINCIPAL OR  
AS AN AIDER AND ABETTOR OF BOTH  
PURCHASING AND POSSESSING THOSE  
DRUGS.

AND TO THE POINT ABOUT, WELL,  
COULD THEY BE CHARGED WITH BOTH  
PURCHASE AND POSSESSION NOT  
UNDER SECTION 193.835, THE JURY  
DOESN'T EVEN HAVE TO AGREE  
ON WHICH WAY IT WAS TRAFFICKED.  
THEY JUST HAVE TO DETERMINE THAT  
IT WAS TRAFFICKED WITH BY ONE OF  
THESE WAYS.

>> WELL, OTHER THAN THE AIDING  
AND ABETTING, CAN YOU HAVE THE  
MIDDLEMAN AND ULTIMATELY THE  
PERSON THAT PROVIDES THE MOST  
MONEY BOTH BE CONVICTED AS A  
PURCHASE?

>> NOT WITHOUT THE AIDING AND  
ABETTING.

THE KINGPIN IS THE PURCHASER.  
HE GAVE THE MONEY AND OBTAINED  
ACTUAL POSSESSION OF THE DRUGS  
SINCE THE MIDDLEMAN COULD ONLY  
BE PROSECUTED AS A PURCHASER  
UNDER AN AIDING AND ABETTING.

>> WHY IS THAT?

>> BECAUSE HE DIDN'T OBTAIN--

HE IS NOT THE ONE WHO OBTAINED  
THE ACTUAL--

>> BECAUSE THEY DON'T HAVE  
POSSESSION?

>> CORRECT.

>> WAIT.

THE POSITION OF THE UNITED  
STATES IS THAT YOU WOULDN'T  
CHARGE THAT PERSON BOTH WITH  
18 USC SECTION 2 AND THE  
SUBSTANTIVE CRIME?

>> WELL, IN THE FEDERAL SYSTEM  
AIDING AND ABETTING AND  
ATTEMPT, I THINK, IS ALL  
COMBINED INTO ONE.

AND I GUESS-- LET ME STEP BACK  
AND SAY THIS COURT HAS  
RECOGNIZED THAT AIDING AND  
ABETTING DOESN'T HAVE TO BE  
CHARGED IN THE STATUTE.  
IT'S JUST PART OF THE OFFENSE.  
SO BOTH PEOPLE WOULD BE CHARGED  
UNDER AS FOR PURCHASING AND  
POSSESSION--

>> AND POSSIBLY FOR  
CONSPIRACY--

>> AND POSSIBLY FOR CONSPIRACY.  
AND SO, YES, THEY COULD ALL BE  
CHARGED WITH THAT STATUTE.

IT WOULD JUST BE THE THEORY OF  
PROSECUTION MIGHT BE DIFFERENT.  
BUT, I'M SORRY IF MISSPOKE.

>> AND THEY BOTH COULD BE FOUND  
GUILTY?

>> YES.

>> I MEAN, THAT'S NOT AN  
INCONSISTENT VERDICT OF FINDING  
BOTH GUILTY.

>> NO.

>> AND WHAT WOULD BE THE  
ADVANTAGE, COUNSEL, OF CHARGING  
PURCHASING?

>> THERE WOULD BE NO ADVANTAGE  
IS, YOUR HONOR, JUST AS THE SAME  
AS THIS COURT RECOGNIZED IN--  
THERE'S NO ADVANTAGE TO  
PROSECUTING A SALE BECAUSE  
DELIVERY IS AN ESSENTIAL ELEMENT  
OF SALE, AND IT REQUIRES MORE  
EVIDENTIARY PROOF TO PROVE A  
SALE THAN TO PROVE DELIVERY  
WHICH GOES TO THE POINT OF IF WE  
GET TO THE RULE OF LENITY, IT  
FAVORS A DEFENDANT WHO HAS BEEN

ACCUSED OF VIOLATING THIS  
STATUTE THIS COURT IS BEING  
ASKED TO CONSTRUE, TO HOLD THE  
PURCHASER REQUIRES BOTH  
POSSESSION AND CONSIDERATION.  
AND THE PROCEDURAL POSTURE BY  
WHICH THIS CASE GOT HERE, THE  
FACT THAT IT CAME AS A CERTIFIED  
QUESTION FROM THE 11TH CIRCUIT  
SHOULDN'T CHANGE THE FACT THAT  
THIS COURT'S RULING IS GOING TO  
HAVE AN EFFECT ON EVERY  
DEFENDANT WHO IS CHARGED BEING  
ACCUSED OF VIOLATING THIS  
STATUTE.

BUT I'D LIKE TO BACK UP AND TALK  
A LITTLE BIT ABOUT WHY THIS TERM  
WAS ADDED TO THE STATUTE.  
AND NOTHING IN THE TEXT TELLS  
US.

WE'RE ALL JUST A LITTLE BIT  
SPECULATING WHICH IS WHY THIS  
COURT SHOULDN'T DO THAT WHEN THE  
MEANING IS PLAIN, SHOULDN'T LOOK  
BEYOND THE PLAIN LANGUAGE AND  
TRY TO APPLY STATUTORY  
CONSTRUCTION.

BUT I THINK--

>> BUT COULD WE NOT CONSIDER THE  
STATUTORY HISTORY?

>> I DON'T THINK WE SHOULD, YOUR  
HONOR, AND THE REASON--

>> WELL, I KNOW YOU DON'T THINK  
WE SHOULD, BUT I'M ASKING YOU IS  
THAT JUST WHEN WE GET SOMETHING  
WHERE ALL THESE TERMS KIND OF  
MAY BE OVERLAPPING, MAYBE NOT,  
IS IT ILLEGITIMATE FOR US TO  
CONSIDER AND TRYING TO  
UNDERSTAND WHAT THE TERM MEANS?  
WHEN IT, OBVIOUSLY, CAN BE USED  
IN DIFFERENT WAYS, TO TRY TO  
UNDERSTAND WHAT THE TERM MEANS  
IN THAT CONTEXT BY LOOKING AT  
WHERE THE STATUTE EVOLVED?

>> I THINK THAT'S UNFAIR OF THE  
CRIMINAL DEFENDANT TO EXPECT  
THAT FOR THEM TO UNDERSTAND WHAT  
IS BEING CRIMINALIZED FOR THE  
STATUTE, THAT THEY WOULD HAVE TO  
GO BACK AND LOOK AT THE HISTORY  
OF THE STATUTE AND THAT IN 1987  
THIS TERM WAS ADDED AND,  
THEREFORE, THEY SHOULD

UNDERSTAND THAT PURCHASE IS BEING USED IN THIS BROADER SENSE.

BUT--

>> SO THE RULE OF LENITY.

SO, BASICALLY, YOU'RE SAYING WE HAVE TO-- IF THERE'S AMBIGUITY ON THE FACE OF IT, THEN WE JUST GO THE RULE OF LENITY EVEN THOUGH THE AMBIGUITY MIGHT BE RESOLVED BY LOOKING AT THE WAY THE STATUTE EVOLVED.

>> THE RULE OF LENITY AND ALSO THE IDEA OF FAIR NOTICE AND DUE PROCESS TO THE DEFENDANT.

AND, BUT GOING BACK TO WHY THE STATUTE, WHY THIS TERM WAS ADDED TO THE STATUTE IN 1987, THERE'S A THREE-TIERED SCHEME FOR DRUG CRIMES, SIMPLE POSSESSION, DISTRIBUTION OFFENSES AND TRAFFICKING OFFENSES.

AND THE LEGISLATURE ADDED PURCHASE TO BOTH THE DISTRIBUTION AND THE TRAFFICKING STATUTE AT THE SAME TIME.

WELL, THAT EXPANDED THE SCOPE OF THE DISTRIBUTION STATUTE BECAUSE AT THE TIME IT WAS ADDED TO THE STATUTE, THAT STATUTE CRIMINALIZED ONLY MANUFACTURE, DELIVER, SALE, POSSESSION-- OR POSSESSION WITH THE INTENT TO MANUFACTURE, DELIVER OR SALE.

SO UNLESS SOMEBODY HAD PURCHASED A DISTRIBUTION QUANTITY OF DRUGS WHICH WOULD HAVE GOTTEN THEM INTO THE TRAFFICKING STATUTE, THE MOST THEY COULD HAVE BEEN CHARGED WITH WAS SIMPLE POSSESSION.

SO ADDING IT RECOGNIZED THAT SOMEBODY WHO ENGAGES IN, POSSESSES DRUGS THROUGH A COMMERCIAL TRANSACTION COMMITS A MORE SERIOUS OFFENSE THAN SIMPLE POSSESSION.

AND GIVEN THE PARALLELS BETWEEN SECTION 89--

>> I WONDER, SO IS IT A FAIR SUMMARY OF YOUR POSITION THAT TO PURCHASE IS MERELY TO POSSESS AS THE RESULT OF A--

>> YES.

THE SAME WAY THAT A SALE IS TO DELIVER IN EXCHANGE FOR RECEIVING.

AND SO I THINK GIVEN THE A PARALLELS BETWEEN 893.135 AND 893.13 IS IT'S POSSIBLE AND LIKELY THE ONLY REASON IT GOT ADDED TO 893.135 IS BECAUSE THEY WERE ADDING IT TO 893.13 AND TO MAKE THE STATUTES PARALLEL IT WAS ADDED IN THERE.

BUT WE SIMPLY-- NOTHING IN THE TEXT OF THE STATUTE OR THE ENACTING BILL SAYS WE WANTED TO CRIMINALIZE A STING OPERATION WHERE THE MONEY HAD BEEN EXCHANGED BUT THE DRUGS HADN'T. AND WHETHER OR NOT THAT WOULD EVEN BE CONSTRUCTIVE POSSESSION, ONE OF THAT IS REFLECTED.

WE'RE REALLY JUST SPECULATING. SO IF YOU GO BEYOND THE PLAIN MEANING OF THE STATUTE, YOU HAVE TO APPLY THE RULE OF LENITY.

AND THE RULE OF LENITY WOULD SUPPORT THE INTERPRETATION OF POSSESSION THAT REQUIRES BOTH CONSIDERATION AND POSSESSION. AND JUST LIKE THE NEW MEXICO SUPREME COURT HELD IN MONTOYA WHEN IT CONSIDERED, WHEN IT SAID THAT SOMEBODY WHO PURCHASES AN ILLEGAL DRUG, IN THAT CASE A HEROIN, THEY HAVE NECESSARILY ACTIVELY POSSESSED THAT DRUG. SO IF THERE ARE NO--

>> I'VE GOT SOME QUESTIONS, AND WE MAY HAVE SOME OTHERS THAT HAVE QUESTIONS.

LET ME ASK YOU TWO QUESTIONS. ISN'T IT ODD THAT WE'RE HEARING THIS CASE WITHOUT HEARING ANYTHING FROM THE STATE OF FLORIDA ABOUT THIS CRIMINAL STATUTE THAT'S GOING TO AFFECT CRIMINAL CASES THAT'LL BE PROSECUTE BY THE STATE OF FLORIDA IN THE FUTURE?

>> I WOULD NOT WANT TO STEP INTO THE SHOES OF FLORIDA TO SPECULATE ABOUT WHETHER IT'S ODD, BUT MAYBE IT'S JUST NOT THAT IMPORTANT TO THEM AS JUDGED BY THE FACT THAT THERE'S JUST SO

FEW CASES THAT BRING THIS UP,  
THEY DIDN'T FEEL THAT IT WAS  
NECESSARY TO WEIGH IN?  
IT IS A UNUSUAL SITUATION WHERE  
YOU HAVE THE GOVERNMENT, THE  
UNITED STATES GOVERNMENT ARGUING  
FOR A NARROW DEFINITION OF THE  
STATUTE AND THE FEDERAL DEFENDER  
ARGUING FOR A BROAD DEFINITION  
OF THE STATUTE.

BUT I DO THINK THAT THE POSITION  
THE UNITED STATES IS TAKING IS  
CONSISTENT WITH WHAT THIS TERM  
MEANS AND THE WAY--

>> LET ME, LET ME ASK YOU A  
SECOND QUESTION, AND THEN I'LL  
DEFER TO MY COLLEAGUES.

COULD YOU SUCCINCTLY DESCRIBE  
WHAT YOU WOULD LIKE FOR US TO  
HOLD SO THAT YOU WIN.

>> I WOULD LIKE THIS COURT TO  
UPHOLD THAT THE DEFINITION OF  
PURCHASE MEANS TO OBTAIN OR  
ACQUIRE DRUGS IN EXCHANGE FOR  
SOMETHING OF VALUE AND THAT THAT  
REQUIRES THE ACTUAL CONSTRUCTIVE  
POSSESSION OF THE DRUGS.

ARE THERE ANY FURTHER QUESTIONS?

>> [INAUDIBLE]

HERE'S THE THING THAT--

[INAUDIBLE]

IN ORDER TO QUALIFY--

[INAUDIBLE]

WE'RE TALKING ABOUT--

>> THAT'S CORRECT, YOUR HONOR.

IN UNITED STATES V. JAMES, THE  
11TH CIRCUIT HELD THAT THE  
INTENT TO DISTRIBUTE COULD BE  
INFERRED IN THE FLORIDA DRUG  
TRAFFICKING STATUTE FROM THE  
QUANTITY OF THE DRUGS POSSESSED.

IN OTHER WORDS, BECAUSE YOU ARE  
POSSESSING A DISTRIBUTION  
QUANTITY OF DRUGS, THERE IS A--

[INAUDIBLE]

BECAUSE THE TERM EVOLVING IS A  
BROAD TERM, THAT THAT BROAD  
POSSESSION UNDER FLORIDA'S DRUG  
TRAFFICKING STATUTE INTO THE  
AMBIT OF THE CRIMINAL ACT.

UH-HUH.

AND THAT'S WHY FOR THEM IT'S  
VERY IMPORTANT TO KNOW IF THE  
STATUTE CRIMINALIZES POSSESSION

IN THE CONTEXT OF PURCHASE.  
TO BRING IT WITHIN THE AM BIT OF  
JAMES.

IF THERE ARE NO FURTHER  
QUESTIONS?

THANK YOU, YOUR HONORS.

>> THANK YOU.

REBUTTAL.

>> I'D JUST LIKE TO MAKE A FEW  
POINTS.

TO START WITH, JUSTICE LAWSON,  
IT IS AN ODD FEATURE FOR A  
CRIMINAL ACT THAT THE 11TH  
CIRCUIT INFERS INTENT TO  
DISTRIBUTE FOR ALL TRAFFICKING  
OFFENSES.

ESSENTIALLY, WHAT THE GOVERNMENT  
WANTS HERE IS ANOTHER INFERENCE  
THAT ALL PURCHASING OFFENSES  
REQUIRE POSSESSION.

AND TO GET THERE, THEY'RE REALLY  
ASKING THE COURT TO LOOK ONLY AT  
THE DICTIONARY DEFINITION.

AND I THINK THE ONE THING WE  
AGREE ON IS THE LANGUAGE IS  
PLAIN.

BUT IT'S NOT PLAIN IN THE WAY  
THE GOVERNMENT SUGGESTS.

>> [INAUDIBLE]

ALL OF OUR CASES--

[INAUDIBLE]

>> I COULDN'T AGREE WITH YOU  
MORE, JUSTICE LAWSON.

AND, UNFORTUNATELY, I'M BOUND BY  
PRIOR PRECEDENT IN THE 11TH  
CIRCUIT, BUT I COULDN'T AGREE  
MORE ON THAT POINT THE  
GOVERNMENT IS RELYING OBTAIN OR  
ACQUIRE MEANS POSSESS.

THEREFORE, WHEN SOMEONE PAYS  
MONEY, THEY HAVEN'T OBTAINED IT  
YET.

OF COURSE YOU PURCHASED THAT  
WHEN YOU PAY PAID FOR IT EVEN IF  
YOU HAVE NOT COME INTO  
POSSESSION.

THE GOVERNMENT ALSO RELIES ON  
COURT'S 1979 DECISION TO SUGGEST  
THAT ONE CANNOT SELL DRUGS  
WITHOUT DELIVERY.

BUT IT'S DISCOUNTING THE COURT'S  
DECISION JUST THREE YEARS LATER  
WHERE THE COURT EXPRESS WILY  
LEFT OPEN THE QUESTION OF

WHETHER OR NOT EVERY SALE  
REQUIRES DELIVERY.

AND AS A MATTER OF FIRST  
PRINCIPLES, I WOULD SUGGEST NOT  
EVERY SALE REQUIRES DELIVERY.  
YOU COULD SELL AN ITEM AND BE  
CHARGED WITH SALE EVEN IF YOU  
DON'T DELIVER THAT ITEM.

I'M MERELY AGREEING TO SELL THE  
DRUGS.

I THINK AN ORDINARY PERSON WOULD  
AGREE YOU'VE SOLD THAT ITEM EVEN  
IF YOU'VE NOT DELIVERED IT YET.  
MORE IMPORTANTLY, EVEN IF SALE  
AND DELIVERY DID OVERLAP IN THE  
WAY THE GOVERNMENT SUGGESTS,  
THAT IS NOT AN EXCUSE TO INJECT  
MORE SURPLUSAGE INTO THE STATUTE  
ESPECIALLY GIVEN THE CONTEXT  
HERE WHERE THE TERM PURCHASE WAS  
ADDED TO THE STATUTE AFTER IT  
ALREADY INCLUDED ACTUAL AND  
CONSTRUCTIVE POSSESSION.

>> HERE I GUESS MY QUESTION  
WOULD BE DO YOU REJECT THE  
GOVERNMENT'S PROPOSED DEFINITION  
WHICH IS TO-- THAT IS, TO  
PURCHASE IS TO OBTAIN POSSESSION  
AS THE RESULT OF A COMMERCIAL  
TRANSACTION?

>> I DO REJECT THAT.

>> OKAY.

HELP ME UNDERSTAND WHY THAT'S  
WRONG, THE BASIS FOR REJECTING  
THAT DEFINITION.

>> SO I THINK SEVERAL BASES,  
YOUR HONOR.

THE DICTIONARY DOES NOT SAY  
OBTAIN OR ACQUIRE POSSESSION FOR  
ONE'S SELF.

>> I THINK ONE THING WE'VE BEEN  
DANCING AROUND ALL DAY IS THAT  
POSSESSION, YOU KNOW, PHYSICAL  
POSSESSION IS AT THIS POINT  
FROM, BUT IT'S STILL, IF I  
CONSTRUCTIVELY POSSESS  
SOMETHING, IF I HAVE TITLE TO  
IT, IF I HAVE THE ABILITY TO  
CONTROL ITS DESTINY, DOES THAT  
NOT CONTROL ITS POSSESSION?

>> IT DOES, YOUR HONOR.

GOING BACK TO MY MIDDLEMAN  
EXAMPLE WHERE AN INDIVIDUAL PAYS  
MONEY, AND HE GETS A FEE JUST TO

PAY THE MONEY FOR THE PURCHASER.  
HE MAY HAVE NO ABILITY TO  
CONTROL WHAT HAPPENS TO THE  
DRUGS NEXT.  
HE WOULD NOT CONSTRUCTIVELY  
POSSESS EVEN THOUGH HE IS A  
PURCHASER AND PAID MONEY.  
I SEE I HAVE ONLY A MINUTE LEFT,  
SO I WOULD JUST QUICKLY LIKE TO  
TALK ABOUT THE GOVERNMENT'S  
ARGUMENTS HOLISTICALLY WHICH IS  
THAT THEIR INTERPRETATION  
ESSENTIALLY FLOUTS THE STATUTORY  
TEXT AND LEGISLATIVE  
INTELLIGENT.  
AND THE GOVERNMENT'S VIEW, THE  
LEGISLATURE ENACTED A  
MEANINGLESS TERM THAT HAS NO  
SUBSTANCE.  
IT DOESN'T EXPAND THE SCOPE OF  
THE STATUTE, IT DOESN'T MAKE IT  
EASIER FOR PROSECUTORS.  
BUT THE GOVERNMENT'S IGNORING  
HOW THE TERM PURCHASE IS  
ORDINARILY USED, THEY'RE  
IGNORING THE STATUTE AS A WHOLE,  
AND THEY'RE IGNORING THE  
LEGISLATURE DOES NOT ENACT  
MEANINGLESS PROVISION.  
THE GOVERNMENT INSTEAD ARGUES  
THAT EVERY TIME SOMEONE  
PURCHASES, THEY COULD ALSO  
POTENTIALLY BE PROSECUTED UNDER  
AN ALTERNATIVE THEORY INVOLVING  
POSSESSION.  
THAT'S NOT TRUE, BUT MORE  
IMPORTANTLY, IT'S BESIDE THE  
POINT TO THE QUESTION PRESENTED  
HERE WHICH IS WHAT DOES TO  
OFFENSE OF PURCHASING REQUIRE.  
AND THE TEXT IS PLAIN.  
OFFENSE OF PURCHASING AREAS THAT  
AN INDIVIDUAL PAY FOR DRUGS, NOT  
THAT THEY POSSESS THE DRUGS.  
THEREFORE, WE WOULD RESPECTFULLY  
ASK THAT THIS COURT RULE THAT IT  
HAS NO POSSESSION REQUIREMENT.  
IF THE COURT HAS NO FURTHER  
QUESTIONS, I THANK YOU FOR YOUR  
TIME.  
>> WE THANK YOU FOR YOUR  
ARGUMENTS IN THIS CASE TODAY.  
THE COURT HAS OTHER MATTERS ON  
THE DOCKET TODAY WHICH WE WILL

CONSIDER REMOTELY AFTER WE TAKE  
A RECESS.  
THE COURT WILL RECONVENE IN THE  
REMOTE PROCEEDING AT 11:15.  
THANK YOU.