LAST CASE ON THE COURT'S CALENDAR IS STATE OF FLORIDA VERSUS NORRIS WILLIAMSON. MS. HOWE, YOU MAY PROCEED.

MAY IT PLEASE THE COURT. I AM ANN PFEIFFER HOWE, APPEARING FOR THE ATTORNEY GENERAL'S OFFICE.

WOULD YOU PULL THE MICROPHONE DOWN JUST A BIT. THANK YOU.

I WOULD REQUEST THE COURT TO RESERVE FIVE MINUTES FOR REBUTTAL, PLEASE. THIS IS A CASE OF ACTUAL POSSESSION OF A CONTROLLED SUBSTANCE. ACTUAL EXCLUSIVE POSSESSION. IN THE CHICONE OPINION, THIS COURT HELD THAT, WHEN A DEFENDANT ASKS FOR IT, THE JURY MUST BE GIVEN THE INSTRUCTION THAT THE STATE BEARS THE BURDEN OF PROVING HIS KNOWLEDGE OF THE ELICIT NEIGHBOR OF THE SUBSTANCE POSSESSED. TODAY THE STATE IS ASKING THIS COURT TO MODIFY THE CHICC ON ONE INSTRUCTION, BY REQUIRING THE COURT TO MODIFY AND OBTAIN THAT INSTRUCTION TO THE JURY, SOME EVIDENCE AT TRIAL MUST RAISE THE ISSUE OF THE DEFENDANT'S LACK OF KNOWLEDGE OF THE ILLICIT NATURE OF THE SUBSTANCE.

DO WE HAVE SUCH EVIDENCE IN THIS PARTICULAR CASE?

WE DO. I WOULD LIKE TO REVIEW THE FACTS, IF I MAY, AND THAT WILL DEMONSTRATE WHAT WE HAVE. IN APRIL OF 1997, SHILLENE SMITH'S RENTAL HOUSE TAMPA HAD A FIRE OF SUSPICIOUS ORIGIN. THERE WERE TWO ELDERLY TENANTS THAT LIVED IN THE HOUSE, AND THEY EACH VACATED WITHIN ONE OR TWO DAYS OF THE FIRE. SHE BOARDED UP THE BACK DOOR OF THE HOUSE, AND IN THE COURSE OF TALKING TO THE ARSON INVESTIGATOR, TOLD HIM THAT ALL THE BELONGINGS IN THE HOUSE, INCLUDING A SMALL REFRIGERATE OR, BELONGED TO HER. THERE WERE A FEW PERSONAL BELONGINGS THAT WERE LEFT BEHIND BY HER TENANTS. THE ARSON INVESTIGATOR SAID I WILL KEEP AN EYE ON THE HOUSE, AND ABOUT FIVE DAYS LATER, HE SAW THE DEFENDANT, NORRIS WILLIAMSON, LEAVING THE BACK DOOR OF THE HOUSE, NOT THROUGH IT BUT THE BACK DOOR HAD BEEN BROKEN INTO AND THE BOARDS HAD BEEN REMOVED, AND HE WAS ABOUT TEN FEET FROM THE HOUSE, CARRYING THE REFRIGERATOR AS HE WENT ACROSS THE BACKYARD. THE ARSON INVESTIGATOR STOPPED HIM AND SAID TO HIM WHAT ARE YOU DOING? HE SAID I AM MOVING A MICROWAVE. HE, THEN, ASKED THE DEFENDANT DO YOU LIVE HERE, AND THE DEFENDANT REPLIED SOMETIMES I DO. THE INVESTIGATOR WAS SUSPICIOUS AND CALLED FOR TAMPA PD OFFICER TO RESPOND. THE OFFICER READ MIRANDA, PATTED DOWN THE DEFENDANT, AND FOUND, IN HIS POCKET, A PRESCRIPTION BOTTLE, WITH A LABEL ON IT, IN THE NAME OF SOMEONE OTHER THAN NORRIS WILLIAMSON. THE CONSTRUCTIVE KNOWLEDGE, THE GUILTY KNOWLEDGE IN THIS CASE IS ESTABLISHED BY THREE DIFFERENT THINGS. THE FIRST IS MR. WILLIAMSON IMMEDIATELY GAVE A SERIES OF CONFLICTING STORIES. FIRST HE DENIED HE HAD EVER BEEN IN THE HOUSE. OR TAKEN ANYTHING FROM IT. THEN HE CHANGED HIS STORY, AGAIN, AND HE SAID, YES, I WENT IN. THE REFRIGERATOR WAS THERE. ANALOGY SIDE IT WAS THE PRESCRIPTION BOTTLE OF PILLS.

LET'S GO BACK TO THE PRESCRIPTION BOTTLE OF PILLS. WHAT COULD YOU SEE WITH THE NAKED EYE ON THAT PRESCRIPTION? MOST -- AS TO THE LABEL, YOUR HONOR, IS THIS WHAT YOU ARE ASKING ME?

ON THE LABEL.

THERE WAS SOMEONE'S NAME, AND IT WAS THE NAME OF SOMEONE OTHER THAN WILLIAMSON.

WHAT ELSE?

THE RECORD IS SILENT AS TO WHETHER IT IDENTIFIED THE CON DENTS -- CONTENTS. HOWEVER, IN A GENERAL SENSE, PRESCRIPTION BOTTLES ARE CONTROLLED, IN THAT YOU NEED A VALID PRESCRIPTION TO GET THEM.

COULD YOU SEE ANYTHING WITH THE NAKED EYE THAT WOULD GIVE AN INDICATION THAT THERE WAS A CONTROLLED SUBSTANCE IN THE BOTTLE?

NO. I DON'T BELIEVE SO.

DON'T WE HAVE EVIDENCE TO THE CONTRARY? THAT YOU COULD NOT, IN FACT, FROM THE NAKED EYE, LOOKING AT THESE TABLETS, INDICATE THAT THEY WERE -- THERE WAS A CONTROLLED SUBSTANCE?

THE LAB EXPERT INDICATED THAT SHE DETERMINED THERE WAS CODEINE IN THE PILLS.

BUT HOW?

AND THAT THE PHARMACEUTICAL HOUSE NAME WAS ON THE FRONT. WHEN YOU TURNED IT OVER, THERE WAS A VERY SMALL LITTLE INDICATION THAT THEY CONTAINED CODEINE, AND SHE SAID THAT SHE HAD TO LOOK AT THAT UNDER A MICROSCOPE, IN ORDER TO READ IT, BUT THE --

BUT DOESN'T THAT, THEN, BRING UP THE QUESTION, I MEAN, ISN'T THAT AT LEAST SOME EVIDENCE THAT THERE IS A QUESTION AS TO WHETHER OR NOT THE DEFENDANT WAS AWARE OF THE ILLICIT NATURE OF IT? AS I UNDERSTAND IT, TYLENOL WAS EASILY AND READILY READABLE ON THE TABLET. THE WORD "TIE NOLLE" -- TYLENOL.

YES.

BUT THE WORD CODEINE DOES NOT.

YES. IS.

DOESN'T THAT PRESENT A DEFENSE AS TO WHETHER OR NOT THE DEFENDANT WAS AWARE OF THE ILLICIT NATURE?

I DON'T BELIEVE IT DOES FOR THAT NATURE. THE STATE BEARS A BURDEN OF PROVING, QUOTE, THE "ILLICIT NATURE" OF THE SUBSTANCE, IN THE CHICCONE DECISION. IT DOES NOT SAY THAT THE STATE BEARS -- IN IN OTHER WORDS IT DOES NOT GO HIS GUILTY KNOWLEDGE OF THE ILLICIT NATURE OF THE SUBSTANCE. IT GOES TO ELEMENT TWO, WHICH IS THE STATE HAS GOT TO PROVE THAT THE SUBSTANCE HE POSSESSED WAS, IN FACT, WHATEVER KIND OF CHARGED CONTROLLED SUBSTANCE EXIST.

WHAT IS THE GUILTY KNOWLEDGE, THEN, THAT THE STATE MUST SHOW?

I BELIEVE IT GOES TO A MORE GENERALIZED ILLICIT NATURE OF THE CONTENTS, AND HE -- I THINK THAT HE HAD THIS PRESCRIPTION BOTTLE. HE KNEW IT WASN'T FOR HIM. HE DIDN'T HAVE --

EXPLAIN, FURTHER, THIS MORE GENERALIZED -- I DON'T QUITE UNDERSTAND WHAT YOU ARE SAYING TO THAT.

WELL, CERTAINLY THE BURDEN TO PROVE WHAT HE POSSESSED WAS CODEINE IS FAR MORE SPECIFIC INNATE THAN REQUIRING THAT THE STATE PROVE THAT THE DEFENDANT HAD

KNOWLEDGE OF THE ILLICIT NATURE, GENERALIZED. IN OTHER WORDS IT COULD BE --

WITHOUT USING A MICROSCOPE, ALL HE COULD SEE WAS TYLENOL. IS THAT -- IS THAT A CORRECT STATEMENT?

YES. THIS IS CORRECT. HOWEVER, WE HAVE TO LOOK AT THE FACT THAT HE HAD THE PRESCRIPTION BOTTLE IN HIS HAND. IT IS ILLICIT. BECAUSE IT HASN'T COME TO HIM BY VALID PRESCRIPTION. HE KNOWS HE IS TAKING SOMETHING --

DOES HE HAVE THE PRESCRIPTION BOTTLE, ITSELF?

WITH SOME CONTENTS.

NOW WE ARE GOING BACK TO WHETHER CHICCONE, WHETHER WE ARE SPLITTING HAIRS. THE STATE HAS AGREED IN CHICCONE AND STILL HAS TO PROVE THE KNOWLEDGE OF THE ILLICIT NATURE OF THE SUBSTANCE.

RIGHT.

NOW WE ARE DISCUSSING WHETHER THE ILLICIT NATURE, IN THIS CASE, WOULD BE THE PRESCRIPTION BOTTLE OR KNOWING IT HAD CODEINE. IS THAT CORRECT? THAT SOUNDS, TO ME, LIKE A JURY ARGUMENT. WHY SHOULDN'T THIS DEFENDANT RECEIVED THE INSTRUCTION THAT THE STATE HAS AGREED THAT IT HAS TO PROVE, WHICH IS THAT THEY HAVE TO PROVE THAT THE DEFENDANT KNEW OF THE NATURE OF THE ILLICIT NATURE OF THE SUBSTANCE HE OR SHE POSSESSED?

BUT HE DOES NOT. THEY DO NOT HAVE TO PROVE HE KNEW IT WAS CODEINE.

BUT THAT IS -- I THOUGHT WE ARE REALLY HERE, BECAUSE WE ARE TRYING TO SEE WHETHER, IN THIS CASE THERE WAS A VIOLATION, BUT MY CONCERN, ACTUALLY, IS SORT OF A BROADER ONE. WOULDN'T IT BE BETTER TO MODIFY CHICONE AND REALLY SAY, LISTEN, SINCE THIS IS PART OF THE STATE'S BURDEN, RATHER THAN WORRYING ABOUT WHICH CASE IS WAITING FOR THE DEFENDANT TO REQUEST IT, THAT WE SHOULD REALLY HAVE THIS BE PART OF THE STANDARD JURY INSTRUCTIONS, WHICH, NOW, TALK ABOUT THERE HAS TO BE KNOWLEDGE IN THE PRESENT, BUT DOESN'T IT REFER TO THE KNOWLEDGE OF THE ILLICIT NATURE, AND, REALLY, RATHER THAN TRYING TO DO THIS ON A CASE BY CASE BASIS, WOULDN'T IT BE BETTER TO HAVE THE JURY INSTRUCTIONS MODIFIED TO REFLECT WHAT THE STATE AGREES TO, WHICH, AND THEN WORRY ABOUT WHETHER, IN THIS CASE, IT WAS HARMLESS OR NOT?

THAT WOULD BE AN ALTERNATE WAY OF DOING IT TO THE ONE THE STATE SUGGESTS, WHICH IS, AND OF COURSE WE SUGGEST, THAT DO IT ON A CASE TO CASE BASIS. THE REBUTTABLE PRESUMPTION THAT EXISTS BETWEEN POSSESSION OF A SUBSTANCE AND KNOWLEDGE OF WHAT IT IS SO CLOSELY TIED AND HAS SUCH GREAT VITALITY, BECAUSE IT COMES OUT OF THE EXPERIENCE AND THE REASON AND THE COMMON UNDERSTANDING OVER MANY YEARS.

BUT HASN'T THAT PRESUMPTION BEEN REBUTTED BY THE FACT THAT ON THE LABEL, YOU HAVE TYLENOL?

NO. I BEG YOUR PARDON.

DO YOU REBUT THAT PRESUMPTION?

I BEG YOUR PARDON, YOUR HONOR. THERE IS NOTHING ON THE BOTTLE. THAT INDICATES THE CONTENTS.

WHERE WAS TYLENOL? WASN'T THERE SOME --

TYLENOL WAS ON THE TABLET, ONCE YOU TOOK IT OUT, AND THAT WAS READABLE, BUT THE STATE WOULD LIKE TO --

WOULDN'T THAT REBUT THE PRESUMPTION?

I DON'T THINK RNKS. IT DOESN'T DISTURB THAT REBUTTABLE PRESUMPTION, BECAUSE IT DOESN'T GO TO THE ELEMENT OF HIS GUILTY KNOWLEDGE OF THE ILLICIT NATURE OF THE SUBSTANCE. IT GOES TO THE STATE'S BURDEN OF SHOWING THAT, IN FACT, HE POSSESSED THE CHARGED SUBSTANCE, IN THIS CASE CODEINE. THEY DON'T HAVE TO PROVE HE KNEW IT WAS CODEINE.

ARE YOU RELYING ON THE MEDELLIN CASE THAT SITS BEFORE THIS REBUTTABLE PRESUMPTION THAT YOU ARE TALKING ABOUT?

YES. THAT'S CORRECT.

BUT DOESN'T MEDELLIN, REALLY, TALK ABOUT REBUTTABLE PRESUMPTION OF THE PRESENCE OF THE SUBSTANCE, AS OPPOSED TO THE ILLICIT NATURE OF THE SUBSTANCE? I AM HAVING A HARD TIME READING MEDELLIN TO -- YOU KNOW, THERE ARE TWO, TWO KNOWLEDGE REQUIREMENTS HERE, AS IT WERE.

YES.

KNOWLEDGE OF THE PRESENCE OF THE SUBSTANCE AND THEN YOU GET TO KNOWLEDGE OF THE ILLICIT NATURE OF THE SUBSTANCE. CORRECT?

CORRECT.

AND DOESN'T MEDELLIN, ISN'T MEDELLIN, REALLY, TALKING ABOUT A REBUTTABLE PRESUMPTION OF THE KNOWLEDGE OF THE PRESENT OF -- PRESENCE OF THE SUBSTANCE, AS OPPOSED TO THE ILLICIT NATURE? BECAUSE IF I REMEMBER THE FACTS CORRECTLY, IN MEDELLIN, THERE REALLY WASN'T A -- WELL, IF THERE WAS A QUESTION, THERE WAS EVIDENCE ABOUT THE ILLICIT NATURE OF IT, BECAUSE HE TOLD THE WOMAN THAT HE GAVE THE SUBSTANCE TO THAT ONE OF THESE THINGS WILL TAKE YOU UP AND ONE OF THEM WILL TAKE YOU DOWN, AND THAT WAS THE EVIDENCE WE USED TO SAY THAT, WHAT HE KNEW OF THE ILLICIT NATURE OF IT. SO THE REBUTTABLE PRESUMPTION IN MEDELLIN SEEMS TO BE, REALLY, MORE OF WE WERE TALKING ABOUT THE KNOWLEDGE OF THE PRESENCE OF THE SUBSTANCE.

WELL, WITH RESPECT, YOUR HONOR, I DISAGREE. I THINK IT GOES TO THE KNOWLEDGE OF THE ILLICIT NATURE.

WHY ISN'T IT, THEN, THAT IN THE JURY INSTRUCTIONS, IT SAID IF A PERSON HAS EXCLUSIVE POSSESSION OF KNOWLEDGE OF PRESENCE MAY BE INFERRED OR ASSUMED AND SAYS NOTHING ABOUT ILLICIT NATURE?

WELL, FIRST OF ALL --

ISN'T THAT LINE FROM MEDELLIN?

YES. THERE ARE TWO INFERENCES HERE. THE INFERENCE THAT HE IS AWARE THAT SOMETHING IS ON HIM PHYSICALLY, AND THEN THE OTHER INFERENCE IS THAT HE KNOWS THE ILLICIT NATURE OF THE THING IS ON HIM.

I THINK THAT IS WHAT JUSTICE QUINCE WAS SAYING. MEDELLIN, REALLY, WAS DEALING WITH

THE FIRST, WHICH IS KNOWLEDGE OF THE PRESENCE, WHEN IT IS IN YOUR -- ON YOUR PERSON, NO ONE -- YOU HAVE GOT THE BOTTLE OF PILLS ON YOU. YOU SAY I DIDN'T KNOW I HAD THE BOTTLE OF PILLS ON YOU, WOULD BE KIND OF AN ILLOGICAL THING, ANYWAY, BUT AS TO THE ILLICIT NATURE OF WHAT THOSE PILLS ARE, THAT IS AN ENTIRELY SEPARATE MATTER, IN THE STATE HAVING TO BE ABLE TO PROVE IT.

I THINK, IN MEDELLIN, IT WAS THE ILLICIT NATURE OF THE DRUG. BECAUSE IT WAS A DELIVERY OF A BARBITURATE OR CENTRAL NERVOUS SYSTEM STIMULANT TO A PERSON WITHOUT A VALID PRESCRIPTION. AND OUR DEFENDANT IN THAT CASE, MR. MEDELLIN, SAID THAT HE HAD LACK OF KNOWLEDGE AS TO THE NATURE OF THE SUBSTANCE, AND THAT WAS REBUTTED BY THE FACT THAT THE PERSON TO WHOM IT WAS GIVEN TESTIFIED THAT HE GAVE HER A PILL AND TOLD HER IT WOULD MAKE HER GO --

THAT IS ACTUAL EVIDENCE, JUST LIKE IF SOMEONE HAD TOLD THE DEFENDANT, HEY, YOU ARE GOING TO REALLY ENJOY THIS SEDATIVE, AND THAT WOULD BE AWAY TO PROVE IT, BUT NOT JUST BECAUSE YOU HAVE IT IN YOUR POSSESSION, DOES THE INFERENCE ARISE THAT IT IS -- THAT YOU KNEW WHAT IT WAS, AND THERE ARE SOME THINGS, LIKE IF YOU HAVE MARIJUANA IN YOUR PRESENCE, IN YOUR ACTUAL POSSESSION, I THINK IT WOULD BE PRETTY HARD TO SAY I DIDN'T KNOW WHAT THAT WAS, SO YOU ARE GOING TO HAVE SOME COMMON SENSE, EITHER WAY, BUT HERE, REALLY, THERE IS A GOOD ARGUMENT THAT THE DEFENDANT COULD HAVE MADE THAT HE DIDN'T KNOW OF THE ILLICIT NATURE OF THIS, AND THEREFORE THAT IS WHERE WE GO BACK TO WHY SHOULDN'T THERE HAVE BEEN A JURY INSTRUCTION AS REQUESTED? WHY ISN'T THAT HARMFUL ERROR, AND WHY, FOR THE FUTURE, SHOULDN'T WE HAVE THIS CONCEPT THAT IS NOW MISSING FROM THE JURY INSTRUCTIONS, TO PUT IN, SO WE DON'T HAVE TO WORRY ABOUT THE CASE BY CASE BASIS CONFUSING APPROACH?

WELL, IT SEEMS THAT WE HAVE TWO THINGS OPERATING IN WILLIAMSON. THE CONFLICTING STORIES TOLD SERIALLY, WHICH ARE AN INDICATION OF GUILTY KNOWLEDGE. THEN THE FACT THAT HE HAS GOT SOMETHING HE IS NOT SUPPOSED TO HAVE. AND HE KNOWS IT. BECAUSE HE KNOWS IT, BECAUSE IT A PRESCRIPTION VIAL. THE THIRD THING IS HE NEVER RAISED ANY LACK OF KNOWLEDGE.

DOES THE STATE, THEN, CONCEDE THAT, HAD HE RAISED THE ISSUE OF KNOWLEDGE OF THE ILLICIT NATURE OF THE SUBSTANCE, THAT A CHICONE INSTRUCTION WOULD HAVE BEEN REQUIRED?

WELL, IN ANSWER TO YOUR QUESTION, THE RESPONSE I WOULD REFER YOU TO SCOTT, WHERE IT SAYS THERE HAS GOT TO BE A FACTUAL BASIS BEFORE THE JURY THAT RESPONDS TO THAT PERMISSIBLE INFERENCE. AND IT WILL BE THE STATE'S POSITION THAT WE WOULD LIKE TO SEE THAT, AND, OF COURSE, IT IS NOT THERE IN THIS CASE. AS A MATTER OF FACT, HE MOVED FOR JUDGMENT OF ACQUITTAL, AND HE JUST MADE A BARE BONES ARGUMENT. HE NEVER SAID THIS IS -- DEFENSE COUNSEL NEVER SAID, WELL, HE NEVER SAID, HIMSELF --

THE ONLY REASON -- THE REASON THAT THE STATE IS SAYING THAT HE WAS NOT ENTITLED TO THAT INSTRUCTION HERE WAS THAT HE NEVER RAISED THE ISSUE. IS THAT THE STATE'S POSITION?

WELL, IT IS ONE OF THE THREE CONTRIBUTING FACTORS THAT WOULD SHOW GUILTY KNOWLEDGE. THAT HE DID NOT RAISE IT.

HOW DID WE GET THE EVIDENCE THAT IS IN THE RECORD THAT THIS WAS TYLENOL, AND THAT YOU HAD TO LOOK AT IT UNDER A MICROSCOPE TO SEE THE WORD CODEINE? WHO PUT ON THAT TESTIMONY?

THE STATE PUT ON THAT TESTIMONY.

IN RESPONSE TO WHAT?

IN RESPONSE TO THE NEED TO -- IN RESPONSE TO THE NEED TO IDENTIFY THE SUBSTANCE, TO SEE IF THERE WAS A CONTROLLED SUBSTANCE IN THE TYLENOL, AND IT WAS SORT OF A GRATUITOUS, BY THE WAY, IT WAS -- THE ONLY WAY I COULD READ THE CODEINE MARK ON IT WAS WAS TO BUT IT UNDER THE -- WAS TO PUT IT UNDER THE MICROSCOPE, BUT IT WAS THE STATE'S CASE. I WOULD ASK THIS COURT TO MODIFY THE CHICONE INSTRUCTION, WITH THE AMENDMENT WE HAVE SUGGESTED, THAT THE DEFENDANT, BEFORE HE GETS THE INSTRUCTION, SHOULD HAVE TO MAKE SOME SHOWING OR OTHER OR SOME -- THERE SHOULD BE SOME FACTUAL BASIS IN THE TRIAL RECORD.

BUT IF WE LOOK -- DOESN'T CHICONE ACTUALLY SAY THAT THE ILLICIT NATURE OF THE SUBSTANCE IS AN ELEMENT OF THE CRIME OF POSSESSION?

IT SAID -- IT SAYS POSSESSION IS IMPLICIT. EXCUSE ME. KNOWLEDGE OF THE ILLICIT NATURE OF THE SUBSTANCE IS IMPLICIT IN POSSESSION.

SO IT DOESN'T SAY THAT IT IS NOT AN ELEMENT. IT DOES NOT SAY IT IS AN ELEMENT.

IT DOES NOT SAY IT IS AN INDEPENDENT ELEMENT. I THINK IT SAYS THAT IT IS AN IMPLICIT ELEMENT.

SO IF IT IS AN ELEMENT, WHETHER IT BE IMPLICIT OR NOT, THE STATE HAS TO PROVE THAT.

THEY DO, AS TO THE -- HIS KNOWLEDGE OF THE ILLICIT NATURE OF THE SUBSTANCE.

IF YOU WISH TO RESERVE SOME TIME FOR REBUTTAL, YOU MAY.

YES. I WILL. THANK YOU VERY MUCH.

GOOD MORNING. NAMES THE -- MAY IT PLEASE THE COURT. MY NAME IS BRAD PERMAR. I AM AN ASSISTANT PUBLIC DEFENDER AND REPRESENT MR. WILLIAMSON WHO HAS SERVED HIS ENTIRE SENTENCE. HE WAS CONVICTED OF BURGLARY, WHICH -- SECOND-DEGREE BURGLARY, WHICH THE COURT HAS SAID SHOULD BE POSSESSED. AND THE SECOND COUNT IS PETTY THEFT. THE KEY HERE IS THE PILLS FOR WHICH THE POSSESSION OF CONTROLLED SUBSTANCE WAS BASED WAS CLEARLY MARKED TYLENOL, AND AS HAS BEEN NOTED, THE ONLY WORD YOU CAN SEE THE WORD CODEINE, WAS WITH THE USE OF A MICROSCOPE. WHETHER OR NOT THAT WAS AN ASIDE OR WHATEVER, IT IS A FACT AT ISSUE.

DID THE BOTTLE SAY ANYTHING ON IT?

APPARENTLY I WOULD AGREE WITH MY OPPONENT THAT THE RECORD WAS APPARENTLY SILENT ON THAT ISSUE.

THE ONLY THING ON THE BOTTLE WAS JUST THAT THERE WAS A LABEL WITH SOMEONE ELSE'S NAME?

CORRECT.

IT DID NOT GIVE THE NAME OF ANY TRANSCRIPTION?

APPARENTLY NOT. APPARENTLY NOT. THE STATE, THOUGH, SAID THAT THE DEFENSE DIDN'T RAISE THIS ISSUE, BUT ACCORDING TO THE SECOND DCA, THE DEFENSE PRESENTED NO EVIDENCE, BUT IN CLOSING, DEFENSE COUNSEL ARGUED THAT WILLIAMSON HAD NO IDEA WHAT WAS IN THE PILL BOTTLE HE HAD TAKEN, AND SO FOR WHATEVER THAT IS WORTH, I THINK THAT IT WAS

RAISED BEFORE THE JURY, AND FOR SOME REASON THE TRIAL JUDGE JUST DIDN'T GIVE THE CHICONE INSTRUCTION.

MR. PERMAR.

MA'AM.

THE JURY INSTRUCTIONS THAT ARE GIVEN IN THESE KINDS OF CASES, AND PART OF IT, ONE IS THAT YOU GIVE IT, IF APPLICABLE, IN CHICONE VERSUS STATE. IF THE THING IS IN A PLACE OVER WHICH THE PERSON DOES NOT HAVE CONTROL, IN ORDER TO ESTABLISH CONSTRUCTIVE POSSESSION, THE STATE MUST PROVE THE PERSON GOES THROUGH, AND THE THIRD ELEMENT IS KNOWLEDGE OF THE ILLICIT NATURE OF THE THING. DOES THAT INSTRUCTION IMPLY, AT LEAST IMPLY, THAT WHEN YOU ARE TALKING ABOUT ACTUAL POSSESSION, THAT THE STATE NEED NOT PUT ON EVIDENCE OF THE ILLICIT NATURE OF THE THING?

I DON'T THINK THAT FITS THE FACTS OF THIS CASE. HE WAS FOUND IN ACTUAL POSSESSION OF PILLS, CLEARLY MARKED TYLENOL. HE WAS NOT FOUND IN CONSTRUCTIVE POSSESSION. SO THIS IS KIND OF AN IN-BETWEEN CASE, I THINK.

SO YOU HAVE GOT AN ACTUAL --

POSSESSION.

-- POSSESSION CASE, SO MY QUESTION TO YOU IS, BASED ON THIS JURY INSTRUCTION, HOWEVER, WHICH SEEMS TO IMPLY YOU ONLY NEED AT LEAST IT COULD BE READ TO IMPLY THAT YOU ONLY NEED SHOW THE ILLICIT NATURE OF THE SUBSTANCE, IF YOU ARE TALKING ABOUT NONEXCLUSIVE CONSTRUCTIVE POSSESSION. THEN, IN THIS CASE, SINCE WE HAVE ACTUAL POSSESSION, WOULD THE STATE NEED TO GO INTO THE ILLICIT NATURE OF THE SUBSTANCE?

I THINK THE SIMPLEST ANSWER WOULD BE YES. I THINK THAT THAT IS KNOWLEDGE OF THE ILLICIT NATURE OF THE SUBSTANCE IS IMPLIED. IF YOU HAVE -- IF A DRIVER IS DRIVING DOWN THE ROAD WITH A U-HAUL AND HE HAS GOT 12 KILOS OF COCAINE, YOU DON'T GET INTO THE ISSUE OF WHETHER OR NOT HE REASONABLY KNEW OR WHATEVER. THE CHICONE INSTRUCTION DOESN'T APPLY THEN. IN THIS CASE, WHICH THIS IS A VERY LIMITED ISSUE, I WOULD SAY THAT PROBABLY RARELY HAPPENS THAT YOU HAVE A CASE LIKE THIS. IN THIS CASE, THE ONLY THICK HE COULD HAVE REASONABLY KNOWN -- THE ONLY THING HE COULD HAVE REASONABLY NORNKS YOU COULD ARGUE TO A JURY, IS THAT THESE WERE TYLENOL PILLS. SO THIS REASON -- I AM KIND OF EVADING YOUR QUESTION, BUT THIS IS NOT REALLY A CONSTRUCTIVE -- IS NOT EITHER ONE OF THEM, REALLY. IT IS NOT ACTUAL. IT IS NOT CONSTRUCTIVE.

WHY ISN'T IT ACTUAL? I MEAN THE PILL BOTTLE WAS ON HIS PERSON, CORRECT?

RIGHT. RIGHT.

SO WHY ISN'T THAT ACTUAL?

BUT IF YOU, AS JUSTICE PARIENTE, WAS SAYING, IF YOU HAVE A BAGGY OF COCAINE STUFFED DOWN IN YOUR PANTS, YOU CAN BE PRESUMED TO HAVE KNOWLEDGE OF THE ILLICIT NATURE OF THAT SUBSTANCE, AND SO IF YOU WANTED TO PRESENT EVIDENCE, IF YOU WANTED THE CHICONE INSTRUCTION, YOU MIGHT HAVE TO PRESENT SOME EVIDENCE. SAY, YOU KNOW, TO CONVINCE A JURY. I DIDN'T KNOW. YOU KNOW. SOMEBODY STUFFED IT DOWN THERE RIGHT BEFORE THE COPS THERE OR SOMETHING LIKE THAT. BUT THAT IS NOT THE CASE HERE. THE CASE HERE IS IN A RARE CASE, A NARROW CASE. I AM NOT ANSWERING YOUR QUESTION. BUT --

WOULD A CHICONE INSTRUCTION BE NECESSARY, IF THE ONLY DEFENSE WAS THAT, NO, I DIDN'T

STEAL IT? WOULD YOU HAVE TO GIVE A CHICONE INSTRUCTION?

ARE YOU TALKING ABOUT AN AFFIRMATIVE DEFENSE OR --

NO. HE JUST SAYS, NO, I DID NOT STEAL THE BOTTLE. THAT IS HIS ONLY DEFENSE. I DIDN'T GO IN THE HOUSE AND I DIDN'T STEAL IT. WOULD YOU, THEN, HAVE TO -- AND GIVE A CHICONE TYPE INSTRUCTION.

I WOULD SAY THE BETTER COURSE WOULD BE JUSTICE PARIENTE WAS SAYING, JUST MAKE THE CHICONE INSTRUCTION PART OF THE STANDARD JURY INSTRUCTION AND RELY ON THE COMMON SENSE OF THE JURY. I MEAN A DEFENDANT CAN MAKE THAT ARGUNIT. THERE IS NO STOPPING HIM WITH THAT. BUT WHETHER OR NOT IT IS RATIONALE OR NOT IS UP FOR A JURY.

I GUESS THAT PUTS THE ILLICIT NATURE OF THE SUBSTANCE AT ISSUE HAD, IN THE HYPOTHETICAL THAT I JUST GAVE.

I SEE WHAT YOU ARE SAYING. SO WHAT THE DEFENDANT IS SAYING IS I COULDN'T KNOW THE ILLICIT NATURE OF THE SUBTANS, BECAUSE I DIDN'T STEAL IT. IS THAT WHAT YOU ARE SAYING? I WOULD THINK POSSIBLY NOT. I MEAN, IF A JUDGE WANTED TO DENY THE INSTRUCTION ON THOSE GROUNDS, WHERE THE DEFENDANT IS SAYING I DIDN'T KNOW THE ILLICIT NATURE, I DIDN'T STEAL IT. YEAH. IT COULD BE DENIED IN THAT CASE. BUT THAT IS NOT THE CASE HERE.

BUT IF WE ACCEPT YOUR ARGUMENT, THEN WHAT WOULD WE DO ABOUT THE MEDELLIN PRULINGS? IF THERE IS SUCH A THING. -- MEDELLIN PRESUMPTION, IF THERE IS SUCH A THING?

AS THE STATE WAS TALKING ABOUT, IN MEDELLIN YOU HAVE A SITUATION WHERE THE DEFENDANT SOLD DRUGS TO A 16-YEAR-OLD GIRL AND TOLD HER THESE WILL MAKE YOU GO UP. THESE WILL MAKE YOU GO DOWN. YOU CAN PRESUME THAT THE GUY KNEW WHAT HE WAS SELLING.

SO WHAT IS THE MEDELLIN PRESUMPTION?

IN A SITUATION LIKE THAT --

YOU PRESUME WHAT?

THAT, IF A DEFENDANT REQUESTED THE CHICONE INSTRUCTION UNDER THOSE CIRCUMSTANCES, THE JUDGE COULD SAY NO. ON THE OTHER HAND, WHY NOT JUST GO AHEAD AND GIVE THE INSTRUCTION? I MEAN, THE JURY CAN SAY WE DON'T BUY T.

WOULD YOU ALLOW -- IF WE WENT TO A JURY INSTRUCTION THAT INSTRUCTED BOTH ON KNOWLEDGE OF THE PRESENT AND KNOWLEDGE OF THE ILLICIT NATURE, IS THE STATE, RIGHT NOW, UNDER THE JURY INSTRUCTIONS, THE STATE GETS WHAT SEEMS TO BE WHAT I HAD CONSTRUED THE MEDELLIN INFERENCE, THAT FROM ACTUAL POSSESSION, THERE IS AN INFERENCE OF KNOWLEDGE OF THE PRESENT. WOULD YOU -- WOULD THE JURY INSTRUCTIONS, ALSO, HAVE TO BE MODIFIED, TO SAY THAT FROM ACTUAL POSSESSION, THERE IS AN INFERENCE ARISES THAT KNOWLEDGE OF THE PRESENT AND KNOWLEDGE OF THE ILLICIT NATURE, WHICH MAY BE UNDER THE FACTS AND CIRCUMSTANCES, OTHER THAN THAT, OR SOMETHING? IN OTHER WORDS SHOULD THE STATE, ALSO, BE ENTITLED TO SOME ADDITIONAL INSTRUCTION IN ACTUAL POSSESSION CASES?

IN ACTUAL POSSESSION CASES OF THINGS THAT SHOULD -- THE DEFENDANT SHOULD KNOW OR ILLICIT. POSSIBLY. I MEAN, BUT THAT IS NOT THE SITUATION HERE. WHAT THE STATE IS ASKING FOR IS AN ACROSS THE BOARD RULE SAYING NO MATTER WHAT THE SITUATION, NO MATTER WHAT THE CIRCUMSTANCES, NO MATTER HOW WEAK THE STATE'S CASE IS, IN ORDER TO TO GET

THE CHICONE INSTRUCTION, A DEFENDANT HAS TO EITHER TESTIFY HIMSELF OR PRESENT EVIDENCE FROM OTHER WITNESSES. IF HE DOES THAT, HE GIVES UP EITHER HIS CONSTITUTIONAL RIGHT NOT TO TESTIFY AND NOT TO BE IMPEACHED WITH, POSSIBLY, PRIOR FELONIES, OR THE SUBSTANTIAL PROCEDURAL RIGHT OF GIVING UP HIS OPENING AND CLOSING ARGUMENTS.

BUT IT DOES SOUND LIKE, FROM THE INSTRUCTION THAT JUSTICE QUINCE READ, THAT WHEN THE JURY INSTRUCTION COMMITTEE TOOK CHICONE, THEY WERE ONLY APPLYING IT IN CONSTRUCTIVE POSSESSION CASES. OR IS THAT A PROBLEM, ALSO, IN HOW THE JURY INSTRUCTIONS CURRENTLY READ?

IT COULD BE, BUT LIKE I SAID, THIS IS AN ACTUAL POSSESSION CASE AND YET IT IS NOT. I MEAN --

I AM HAVING TROUBLE WITH THAT, YOUR STATEMENT THERE. IT IS AN ACTUAL POSSESSION CASE.

HE WAS FOUND IN ACTUAL POSSESSION OF THE PILLS CLEARLY MARKED TYLENOL.

THAT IS ACTUAL POSSESSION. I MEAN, WHAT ELSE IS AN ACTUAL POSSESSION, OTHER THAN --

IF HE IS FOUND IN ACTUAL POSSESSION OF TEN BAGGIES OF BROWN LEVI SUBSTANCE OR A WHITE CHALKY SUBSTANCE.

WHAT YOU ARE SAYING, THOUGH, IS HE COULD ACTUALLY BE IN POSSESSION AFTER SUBSTANCE AND NOT BE GUILTY OF POSSESSION, BECAUSE THEY, ALSO, HAVE TO HAVE KNOWN WHAT THE ILLICIT NATURE IS, AND THE STATE AGREES WITH. THAT NOW WE JUST GET BACK DOWN TO WHETHER THAT SHOULD BE AN INSTRUCTION, THEN, THAT THE JURY SHOULD HAVE BEEN TOLD IN THIS CASE THAT THE STATE HAD TO PROVE THAT HE KNEW OF ITS ILLICIT NATURE. I MEAN, ISN'T THAT WHAT WE ARE --

I DIDN'T THINK I WAS SAYING IT QUITE THAT WAY.

WHAT IS IT THAT YOU BELIEVE THE LAW IS OR SHOULD BE?

IN THIS CASE, I THINK THE SECOND DCA WAS RIGHT. THE INSTRUCTION SHOULD HAVE BEEN GIVEN. I THINK IF YOU ARE GOING TO HAVE AN ACROSS THE BOARD RULE, YOU SHOULD JUST GO AHEAD AND SAY JUDGES, GIVE THIS INSTRUCTION, IF IT IS BALONEY, THE JURY CAN FIND THAT, BUT, AGAIN, WHAT THE STATE IS ASKING FOR IS FOR THIS COURT TO MAKE AN ACROSS-THE-BOARD RULE, NO MATTER WHAT THE SITUATION IS AT TRIAL. THE DEFENDANT CANNOT GET A CHICONE INSTRUCTION, UNLESS HE PRESENTS EVIDENCE, TESTIFIES --

AND YOUR POSITION IS, THEN, TAKE IN ANY POSSESSION OF AN ILLEGAL SUBSTANCE CASE, IS A DEFENDANT REQUEST AN INSTRUCTION CONCERNING THE ILLICIT NATURE OF THE SUBSTANCE, THAT HE OR SHE IS ENTITLED TO THAT INSTRUCTION.

I WOULD SAY THAT IS THE SIMPLEST RULE THAT WOULD COST THE LEAST, IN TERMS OF JUDICIAL RESOURCES AND WHATEVER. IT WOULDN'T HAVE TO BE BROUGHT UP AGAIN ON --

I THINK THAT IS WHAT WE SAID IN CHICONE. AT LEAST THAT IS WHAT WE SAID. SO YOU ARE JUST ASKING US TO APPLY CHICONE.

IN ESSENCE, YEAH. I MEAN THAT PART OF -- THE OTHER THING IS THAT I THINK THE STATE ARGUED IN CHICONE THAT THIS WASN'T AFFIRMED IN THE COURT. IN CHICONE THE STATE ARGUED THIS IS BASICALLY AN AFFIRMATIVE DEFENSE, AND THE COURT REJECTED THAT IN CHICONE, AND I THINK THAT THE ARGUNIT THAT THE STATE IS MAKING TODAY IS JUST SAME ARGUMENT. YOU KNOW, THIS IS AN AFFIRMATIVE DEFENSE. IF YOU ARE A DEFENDANT AND YOU WANT THE CHICONE INSTRUCTION, YOU HAVE TO EITHER PRESENT EVIDENCE AND GIVE UP YOUR

CONSTITUTIONAL RIGHT, OR YOU HAVE TO PRESENT THE -- TESTIFY, YOURSELF, AND GIVE UP YOUR CONSTITUTIONAL RIGHT NOT TO TESTIFY. OR PRESENT EVIDENCE FROM SOMEBODY ELSE AND GIVE UP THE RIGHT TO OPEN AND CLOSE. THOSE ARE SUBSTANTIAL RICE THAT YOU ARE ASKING -- RIGHTS THAT YOU ARE ASKING A DEFENDANT TO GIVE UP, AND IN A CASE LIKE, THIS WHERE THE STATE'S OWN EVIDENCE IS SO EXTREMELY WEAK, YOU KNOW, EVEN IF YOU ONLY APPLY IT TO THIS CASE OR CASES LIKE THAT, THE STATE, A DEFENDANT IN THIS -- THE DEFENDANT, THE DEFENDANT IN THIS CASE SHOULD NOT HAVE BEEN REQUIRED TO PRESENT EVIDENCE. I DON'T THINK HE EVER SHOULD BE. BUT ESPECIALLY IN A CASE LIKE THIS, WHERE THE STATE'S OWN EVIDENCE IS VERY WEAK. YES, SIR. I THOUGHT YOU WERE GOING TO ASK A QUESTION. YOU LOOKED LIKE YOU HAVE A HARD TIME FOLLOWING MY REASONING. BUT AT ANY RATE. THE OTHER THING, THE STATE NOTED THE SUPPLEMENTAL AUTHORITY IN THE CASE OF STATE VERSUS YOUNG, WHICH, COMPARED THIS SITUATION WITH THE PRESUMPTION RAISED BY THE POSSESSION OF RECENTLY STOLEN EVIDENCE. I THINK THAT CASE AND THIS CASE ARE CLEARLY DISTINGUISHABLE. IT IS NOT JUST POSSESSION OF STOLEN EVIDENCE. IT IS STOLEN EVIDENCE RECENTLY POSSESSION OF, AND IN YOUNG, THIS COURT SAID THAT DOESN'T AFFECT, THAT DOESN'T OUTWEIGH THE DEFENDANT'S CONSTITUTIONAL RIGHT NOT TO TESTIFY AND NOT TO INCRIMINATE HIMSELF. BUT IF YOU HAVE A DEFENDANT ON THE ONE HAND, WHO IS FOUND IN POSSESSION OF GOODS, YOU KNOW, A LOT OF PROPERTY STOLEN FROM DILLARD'S 15 MINUTES AGO, YES, THAT IS A VALID PRESUMPTION, BUT IN THIS CASE --

WASN'T THIS RECENTLY STOLEEN? I MEAN, HE WAS WALKING AWAY, AS I UNDERSTAND IT, FROM THE SCENE OF THE ALLEGED BURGLARY.

RIGHT. AND UNDER THAT CIRCUMSTANCE HE COULD VALUABLE IDENTICALLY CONVICTED, AND HE WAS VALIDLY CONVICTED OF PETTY THEFT, BUT THE STATE WAS ARGUING THAT HE HAD KNOWLEDGE THAT THESE PILLS CONTAINED CODEINE, EVEN THOUGH THE ONLY WAY YOU COULD SEE THAT ON THE PILLS WAS TO HAVE A MICROSCOPE.

BUT THIS SENTENCE, DOES IT RUN CONCURRENT WITH THE OTHER SENTENCES? YOU SAID HE HAD SERVED --

THE THREE COUNTS. THE BURGLARY, THE POSSESSION ON THE PETTY THEFT. I BELIEVE THEY WERE. LIKE I SAID, I THINK AS FAR AS THIS CLIENT, THIS DEFENDANT IS CONCERNED, HE HAS ALREADY SERVED A SENTENCE, BUT FOR FUTURE REFERENCE, I WOULD SAY THAT THE COURT NEEDS TO REJECT THE STATE'S REQUEST TO APPLY AN ACROSS-THE-BOARD RULE, SAYING BEFORE YOU CAN GET A CHICONE INSTRUCTION, YOU NEED TO PRESENT EVIDENCE, EITHER TESTIFY YOURSELF OR PRESENT TESTIMONY FROM SOME OF THE OTHER WITNESSES. IN ANSWER TO YOUR QUESTION, THE SIMPLEST WAY TO RESOLVE THIS, I BELIEVE, WOULD BE TO MAKE IT A PART OF THE STANDARD JURY INSTRUCTIONS. GIVE IT IN EVERY CASE OF POSSESSION. I MEAN, YOU KNOW, THERE ARE SOME CASES WHERE THE JURY IS GOING TO LOOK AT THAT AND SAY WHY DID THEY PUT THAT INSTRUCTION IN, BUT THERE ARE GOING TO BE OTHER SITUATIONS, LIKE THIS, WHERE THE JURY WILL SAY, WELL, REASONABLY SPOKEING -- SPEAKING, HE PROBABLY DIDN'T KNOW THAT IT CONTAINED CODEINE.

JUST FOR MY EDIFICATION, HOW IS IT THAT THIS DEFENDANT HAS ALREADY SERVED HIS SENTENCE?

HE WAS SENTENCED TO 30 MONTHS.

RIGHT, AND THE MATTER WAS 30 MONTHS IN GETTING DECIDED BY THE DISTRICT COURT, OR WHAT HAPPENED?

I AM SORRY.

THE MATTER WAS NOT DECIDED BY THE DISTRICT COURT FOR 30 MONTHS?

I THINK BECAUSE THE -- FOR SOME REASON, THIS -- HE WAS SENTENCED BACK IN 1996, AND IT TOOK A WHILE TO WEND WAITS WAY THERE THROUGH -- TO WEND ITS WAY THROUGH ANOTHER COURT SYSTEM. ANOTHER ATTORNEY ACTUALLY REPRESENTED HIM, FRED VOLORATH, AND I ONLY GOT THIS CASE AFTER THIS COURT ACCEPTED JURISDICTION, SO WHY IT TOOK SO LONG --

IN BOTH OF THESE, THE SECOND DISTRICT REVERSED ON BOTH COUNTS. RIGHT?

THE SECOND DISTRICT REVERSED THE BURGLARY CONVICTION AND SAID BECAUSE THERE WERE THREE WITNESSES.

BUT THEY REVERSED ON. THAT.

THEY REVERSED HIS BURGLARY CONVICTION, SO IN ANSWER TO YOUR QUESTION, I BELIEVE THAT THE ENTIRE SENTENCE WAS JUST MADE CONCURRENT.

IS THIS ONE OF THE CASES THAT WAS IN THE BACKLOG THAT THE SECOND DISTRICT GOT AN EMERGENCY APPROPRIATION?

I HAVE A FEELING THAT IT WAS. IF THERE ARE NO FURTHER QUESTIONS.

COUNSEL. REBUTTAL?

THE STATE WOULD JUST ADD THAT THERE IS NO BURDEN SHIFTING INVOLVED, WITH USING A PERMISSIBLE INFERENCE OF ILLICIT KNOWLEDGE. THE FLORIDA SUPREME COURT HELD THAT, IN 1968, IN STATE V YOUNG. WHEN IT WAS DEALING WITH UNEXPLAINED POSSESSION OF STOLEN -- RECENTLY STOLEN PROPERTY. THE REASON IT DOES NOT SHIFT THE BURDEN IS BECAUSE IT IS A PERMISSIBLE INFERENCE IN THE JURY NOT OBLIGATED IN ANY WAY TO ACCEPT IT AS MANDATORY. SO --

SO IS THE STATE ENTITLED TO A JURY INSTRUCTION ON THAT?

I BEG YOUR PARDON?

IS THE STATE ENTITLED TO A JURY INSTRUCTION ON THIS PERMISSIBLE PRESUMPTION?

IT WOULD BE VERY NICE, IF WE HAD ONE. I CONFESS. I HADN'T EVEN CONSIDERED ASKING YOU FOR THAT. I MUST LEARN TO THINK LARGER.

THIS JURY DID NOT KNOW THAT THE STATE HAD TO PROVE THAT THIS DEFENDANT HAD TO KNOW THE ILLICIT NATURE OF THE SUBSTANCE. THIS JURY DID NOT KNOW THAT. CORRECT?

EXCUSE ME. YES. THAT'S CORRECT. BECAUSE THE CHICONE INSTRUCTION WAS NOT BEGIN.

SO WITHOUT IT, THE -- WAS NOT BEGIN.

WITHOUT IT, THE STATE -- IT DOESN'T MATTER. THEY DON'T NEED TO WORRY ABOUT, IN THIS CASE, IN FRENSS OR PRESUMPTIONS, BECAUSE IT IS NOT CLEAR THE JURY EVEN HAD TO WORRY THEMSELVES ABOUT IT. I AM TRYING TO THINK WHAT WAS IT THE STATE THOUGHT -- I GUESS THEY THOUGHT THEY HAD TO ESTABLISH THAT IT WAS AN ILLICIT SUBSTANCE.

YES. AND OF COURSE THERE WAS THE GUILTY KNOWLEDGE OF THE CHANGING STORIES AND EXPLANATION. AT THIS POINT, THE STATE WOULD ASK THE COURT TO MODIFY THE CHICONE INSTRUCTION, SO THAT THE DEFENDANT IS REQUIRED TO PUT IN SOME EVIDENCE, DURING THE TRIAL, IN ONE FORM OR ANOTHER, THAT RAISES THE ISSUE OF LACK OF KNOWLEDGE. THANK YOU VERY MUCH FOR YOUR ATTENTION.

THANK YOU. COUNSEL.