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NOTED THAT IT WAS NOT MAKING THE SAME DETERMINATION WITH REGARD TO A CRIMINAL SAYS CASE. IN ANOTHER CASE FROM THE FOURTH DCA THAT HAS BEEN CERTIFIED ON THE SAME QUESTION POSED HERE, THE CASE CALLED STATE VERSUS FREIDRIC. IN THAT CASE, WHILE IT WAS CERTIFIED, THE COURT NOTED ITS CONCERNS ABOUT APPLYING LOVE VERSUS GARCIA TO A CRIMINAL CASE.

IS LOVE PREDICATED ON A PROVISION IN THE EVIDENCE CODE?

IT IS.

IS THERE ANY INDICATION, IN EITHER THE LEGISLATURE AFTERNOONS ADOPTION OF THE PROVISION -- THE LEGISLATURE'S ADOPTION OF THE PROVISION OR THIS COURT'S ADOPTION, THAT WE INTENDED THAT THERE BE TWO SEPARATE RULES REFERENCE TO THAT, FOR CRIMINAL AND CIVIL?

THERE IS NOT, JUSTICE ANSTEAD. 93.06-A, SPEAKS IN ONE VOICE, AND IT LOOKS LIKE IT APPLIES IN CIVIL AND CRIMINAL CASES.

WHAT ARE THE CONCERNS OF RELIABILITY THAT WE SHOULD LOOK AT TO CONSIDER THIS?

WELL, LET ME MOVE TO IF LOVE DOES APPLY, IF THE EVIDENCE CODE DOES APPLY TO, BOTH, CIVIL AND CRIMINAL CASES, WITH REGARD TO THE BUSINESS RECORDS EXCEPTION. IT SHOULD NOT APPLY IN THIS CASE, UNDER 98.036-A, THE LANGUAGE IS THAT A BUSINESS RECORD, INCLUDING A HOSPITAL BUSINESS RECORD, IS PRESUMED TO BE RELIABLE, UNLESS THE OPPONENT CAN SHOW THAT THE SOURCE OF THE RECORD OR OTHER CIRCUMSTANCES SHOWS A LACK OF TRUSTWORTHINESS. THE SOURCE OF THE BUSINESS RECORD IN THIS CASE, AND THE BUSINESS RECORD WAS MERELY A HOSPITAL COMPUTER PIECE OF PAPER, GENERATED PIECE OF PAPER, THAT PURPORTED TO REFLECT THE PRINT OUT RESULT FROM A MACHINE THAT ANALYZED THE BLOOD. THERE IS NO QUESTION THAT THE BUSINESS RECORD WAS NOT THE PRINT OUT FROM THE MACHINE. THE SOURCE OF THE BUSINESS RECORD WAS THE PRINT OUT FROM THE MACHINE.

NOW YOU ARE GETTING TO THE SPECIFICS OF THIS CASE. GETTING BACK TO THE CERTIFIED QUESTION, WHICH IS WHETHER, AS A GENERAL PRINCIPLE, THE LOVE V GARCIA RATIONALE APPLIES IN CRIMINAL CASES, COULD YOU, JUST BEFORE YOU GO ON TO SPECIFICS OF THIS CASE, ARE YOU CONCEDED THAT THERE IS NO REASON, EITHER IN EXISTING CASE LAW OR IN THE STATUTES, THAT BUSINESS RECORDS EXCEPTION SHOULDN'T APPLY TO CRIMINAL CASES?

NO. I AM NOT CONCEDED THAT, JUSTICE PARIENTE. I AM DRAWING A DISTINCTION BETWEEN CRIMINAL AND CIVIL, BASED UPON THE SPECIFIC GUARANTEES OF THE CONFRONTATION CLAUSES OF BOTH THE FLORIDA AND FEDERAL CONSTITUTION, SO IT NEEDS A LITTLE CLOSER SCRUTINY.

OHIO VERSUS ROBERTS ALLOWS HEARSAY EXCEPTIONS TO BE USED, AND IS THAT VIOLATING THE CONFRONTATION CLAUSE?

IT DOES, IF THE EVIDENCE HAS BEEN PROPERLY ADMITTED, AND THE QUESTION WE HAVE, HERE, IS WHETHER OR NOT IT WAS PROPERLY ADMITTED, AND IN OHIO VERSUS ROBERTS, OF COURSE, THERE WAS AN OPPORTUNITY TO CONFRONT THE PRIOR TESTIMONY. THAT WAS A COURT PROCEEDING, A PRELIMINARY HEARING, IN WHICH THERE WAS AN OPPORTUNITY TO CONFRONT, SO THE THRESHOLD QUESTION WE ASK HERE IS WHETHER THIS BUSINESS RECORD IS PROPERLY ADMITTED, AND IT IS ONLY PROPERLY ADMITTED PIE GOING THROUGH THE TWO-STEP PROCESS THAT THIS COURT HAS LAID OUT FOR THE ADMISSION OF BUSINESS RECORDS, IN LOVE VERSUS

GARCIA, WHICH IS IT IS PRESUMED TO BE RELIABLE, IF IT IS KEPT IN THE ORDINARY COURSE OF BUSINESS, BUT THAT IS TEMPERED BY, AND IT IS TEMPERED BY THIS BECAUSE OF THE CONFRONTATION CLAUSE, THAT IT IS TEMPERED BY THE OPPORTUNITY FOR THE OPPONENT OF THE RECORD TO SHOW THAT IT IS UNTRUSTWORTHINESS, AND ONE WAY TO SHOW IT IS TO LOOK AT THE SOURCE OF THE BUSINESS RECORD, AND THE SOURCE OF THE BUSINESS RECORD WAS THE PRINT OUT IN THIS CASE, FROM THE DuPONT MACHINE, AND THAT PRINT OUT WAS NOT AVAILABLE. IT COULD NOT BE VERIFIED. THE BUSINESS RECORD COULD NOT BE VERIFIED, AND SO THE PROMISE OF THE BUSINESS RECORD HEARSAY EXCEPTION IS COMPLETELY LOST IN THIS CASE. THERE WAS NO PRINT OUT. THERE WAS NO BLOOD TO BE TESTED, AND, OF COURSE, THERE WAS NO TECHNICIAN, BUT LET ME FOCUS ON THE PRINT OUT, AND THE FACT HA IT WAS ABSENT, AND HOW IMPORTANT THAT IS. IT IS IMPORTANT -- JUSTICE SHAW?

ABSENT THE CONFRONTATIONISH DWRU -- THE CONFRONTATION ISSUE, IT WOULD BE NO PROBLEM IN A BUSINESS RECORD. IS THAT --

UNDER LOVE VERSUS GARCIA, IF LOVE VERSUS GARCIA SIMPLY WAS BROADENED TO INCLUDE CRIMINAL CASES, TOO, THERE WOULD NOBODY PROBLEM IN THAT SITUATION. -- THERE WOULD BE NO PROBLEM IN THAT SITUATION.

OTHER STATES THAT HAVE ADDRESSED THIS ISSUE, DID YOU FIND OTHER STATES THAT HAD, AND HOW DO THEY GO ON?

IT IS ADMISSIBLE, JUSTICE SHAW, AS A BUSINESS RECORD, IN CRIMINAL CASES. THERE IS NO QUESTION THAT OTHER STATES HAVE SAID THAT BUSINESS RECORD HEARSAY EXCEPTION CAN BE USED IN CRIMINAL CASES, AND OUR POSITION IS, FIRST, THAT FLORIDA HAS ITS OWN ARTICLE I SECTION 16, AND IT CAN LOOK AT IT INDEPENDENTLY, BUT I THINK IN THE VERY IMPORTANT PART OF OUR ARGUMENT, IS THAT ASSUMING THAT LOVE VERSUS GARCIA IS ADMISSIBLE IN CRIMINAL CASES, IT WAS NOT THEIR BUSINESS RECORD IN THIS CASE, WAS NOT ADMISSIBLE. I THINK THAT THE RULE HAS TO BE THAT, IF THE BUSINESS RECORD HEARSAY EXCEPTION IS GOING TO BE APPLICABLE TO A MEDICAL BLOOD BUSINESS RECORD OF A HOSPITAL, THEN THE SOURCE OF THAT RECORD HAS TO BE AVAILABLE TO THE OPPONENT OF THE BUSINESS RECORD, AND THE SOURCE IS THE PRINCE OUT, AND THERE ARE TWO THINGS THAT MAKE THAT SUCH A COMPELLING ARGUNIT. ONE IS THAT THE STATUTE, THE HEARSAY EXCEPTION, ITSELF, TALKS ABOUT, UNLESS THE SOURCE OR OTHER CIRCUMSTANCES, SHOWS TRUSTWORTHINESS, AND THE FLORIDA ADMINISTRATIVE CODE REQUIRED THAT THAT INSTRUMENT PLENTY OUT BE RETAINED FOR -- PRINT OUT BE RETAINED FOR TWO YEARS, AND WE HAVE CITED TO THE FLORIDA ADMINISTRATIVE CODE, WHICH SAYS, TO ASSURE ACCURACY, THE REPORTS, INCLUDING INSTRUMENT PRINTOUTS, MUST BE RETAINED FOR TWO YEARS.

AREN'T YOU, AGAIN, ARGUING THE SPECIFICS OF THIS PARTICULAR CASE? BECAUSE IF, IN FACT, THAT PRINT OUT WAS STILL AVAILABLE, WE WOULDN'T HAVE THIS ARGUMENT, AND WE WOULD BE BACK TO LOVE, WHETHER OR NOT THESE DOCUMENTS SHOULD BE ADMISSIBLE?

YES, JUSTICE QUINCE. THE QUESTION THAT HAS BEEN CERTIFIED MUST BE ANSWERED FIRST. IF THE ANSWER TO THAT CERTIFIED QUESTION IS NO, LOVE V GARCIA DOESN'T APPLY TO CRIMINAL PROCEEDINGS, WELL, THEN, THE CASE IS OVER.

SO IF THAT PRINT OUT WERE, IN FACT, AVAILABLE, WOULD WE ANSWER THIS QUESTION YES?

IF THE PRINT OUT WERE AVAILABLE, THIS WOULD BE A COMPLETELY DIFFERENT CASE. THIS CHALLENGE NEVER COULD HAVE BEEN MADE IN QUITE THE SAME WAY. THE PRINT OUT, OF COURSE, IF THE ANSWER TO THE QUESTION IS LOVE VERSUS GARCIA DOES APPLY, THEN THE COURT MUST LOOK AT WHETHER OR NOT, IN THIS CASE, IN THE CIRCUMSTANCES OF THIS CASE, THE BUSINESS RECORD WAS PROPERLY ADMITTED.

HOW DID THE FOURTH DISTRICT DEAL WITH THE ISSUE OF THE PRINT OUT?

THEY DIDN'T. IN FACT, THEY MISUNDERSTOOD, AND I HATE TO SAY THIS BUT THEY MISUNDERSTOOD WHAT THE ARGUMENT WAS, BECAUSE THEY SAID THAT WE ARGYAUD THAT YOU CAN'T INTRODUCE A BUSINESS RECORD, WITHOUT THE TECHNICIAN. WE ARE NOT SAYING THAT. A BUSINESS RECORD IS ADMISSIBLE, WITHOUT THE TECHNICIAN, IF IT -- IF IT IS OFFERED. I CAN'T SAY IT IS ADD MIFBLING, BUT IT CAN BE -- ADMISSIBLE, BUT IT CAN BE OFFERED WITHOUT THE TECHNICIAN, SO YOU CAN OFFER THE BUSINESS RECORD WITHOUT TESTIMONY THIS. IS KEPT IN THE ORDINARY COURSE OF BUSINESS, AND THEN THE BURDEN SHIFTS TO THE OPPONENT TO SHOW UNTRUSTWORTHYNESS, AND WHAT WE ARE SAYING IS ONE CANNOT SHOW UNTRUSTWORTHYNESS, WHERE THE SOURCE OF THAT BUSINESS RECORD IS COMPLETELY UNAVAILABLE, AND THAT IS THE BALANCING THAT HAS TO GO ON.

WELL, WHAT YOU ARE SAYING, THOUGH, IS THAT, IF WE ANSWER THE CERTIFIED QUESTION THAT LOVE VERSUS GARCIA APPLIES IN THIS CASE, THAT WE ARE TO EXERCISE ANSWER LATER JURISDICTION, AND NOT REALLY ON A QUESTION OF LAW BUT JUST ON THE BASIS THAT THE DISTRICT COURT MADE A MISTAKE, AS TO THE AND ITS UNDERSTANDING OF THE ARGUMENT.

JUSTICE WELLS --

ESSENTIALLY WHAT WE ARE --

I WOULDN'T PUT IT QUITE THAT WAY. IF THE COURT HAS JURISDICTION, THEN IT HAS JURISDICTION TO DECIDE THE WHOLE CASE, AND IF THE COURT, IF THE THRESHOLD ISSUE IS DOES LOVE VERSUS GARCIA APPLY, THAN IS THE BASIS FOR JURISDICTION, THEN IT MUST ANSWER THAT QUESTION, AND THEN IT MUST LOOK TO THIS CASE, TO SEE WHETHER OR NOT IT WAS PROPERLY APPLIED IN THIS CASE. AND IN THIS CASE, HOW COULD ONE VERIFY THE BUSINESS RECORD?

BACK ON THAT POINT, ESSENTIALLY WHERE WE ARE HERE IS THAT YOUR POSITION IS YOU PRESENTED THIS ISSUE AS TO WHETHER LOVE VERSUS GARCIA WAS PROPERLY HANDLED IN THE TRIAL COURT, IF IT APPLIED. AND THE DISTRICT COURT CHOSE NOT TO EVEN DEAL WITH THAT IN ITS OPINION.

I WOULDN'T SAY IT QUITE THAT WAY, JUSTICE WELLS.

IT DIDN'T DEAL WITH T.

IT DIDN'T DEAL WITH WHAT WE ARE TALKING ABOUT, IN TERMS OF THE ABSENCE OF THE PRINT OUT. IT TOOK THE POSITION THAT LOVE VERSUS GARCIA APPLIES. THIS COURT'S DECISION, BECAUSE UNTIL LOVE VERSUS GARCIA AROSE IN THE MIND OF THE DISTRICT COURT AS BEING RELEVANT TO THIS, THE LAW WAS, UNDER STATE VERSUS STRONG, THAT, FROM THIS COURT, IN ORDER TO INTRODUCE MEDICAL BLOOD REPORTS, YOU HAD TO MEET A THREE-PART TEST, AND THAT WAS THE RULE, AND THEN THE FOURTH DCA SAID, NO, LOVE VERSUS GARCIA CAME AFTER STATE VERSUS STRONG, SO WE ARE GOING TO APPLY LOVE VERSUS GARCIA, AND IN THE TRIAL COURT, BY THE WAY, THE STATE TOOK THAT POSITION. THE STATE, PERHAPS, BECAUSE IT KNEW IT DIDN'T HAVE A PRINTOUT. IT COULDN'T PROVE THE CASE THE OTHER WAY. SAID WE ARE GOING ON LOVE VERSUS GARCIA. WE ARE ADMITING THIS SOLELY AS --

WHAT I AM TRYING TO GET TO IS, REALLY, AN ISSUE OF HOW EXPANSIVE THIS COURT'S -- WHAT I WOULD TERM TO BE ANSWER LATER JURISDICTION IS IN THE CERTIFIED QUESTIONS, AND IN THAT THIS CASE PRESENTS US WITH A PRECISE TYPE OF ISSUE IN THAT REGARD, IN THAT IT IS NOT ONE, A SECONDARY ISSUE OF LAW THAT IS BEING DEALT WITH, AS IF WE TAKE THE CASE. NOW THAT WE HAVE TAKEN THE CASE ON THE CERTIFIED QUESTION, WE ARE, REALLY, TAKING -- WE TAKE THE CASE. WE ANSWER IT THAT THE LOVE VERSUS GARCIA EXISTING LAW APPLIES TO THIS CASE,

AS THE DISTRICT COURT SAID IT DID, BUT THEN WE GO AHEAD AND REVIEW THE CASE, AS IF WE WERE AN ERROR-CORRECTING COURT. AND I JUST WONDER IF THAT IS THE WAY THIS TYPE OF JURISDICTION SHOULD WORK.

I THINK IT SHOULD, YOUR HONOR, BECAUSE IF IT DOESN'T, JUSTICE WELLS, THEN YOU WOULD ANSWER A QUESTION IN A VACUUM, WITHOUT ADDRESSING THIS NEW LAW DECISION TO THE PRECISE FACTS OF THE CASE, AND THE COURT HAS HELD, IN PRIOR CASES, ONCE IT TAKES JURISDICTION OF A CASE, IT HAS JURISDICTION TO DECIDE ALL ASPECTS OF THE CASE. AND SO THIS WOULD BE AN ASPECT OF THE CASE THAT NEEDED TO BE DECIDED, AND APROPOS OF THAT, TAKING IT ONE STEP FURTHER, THERE IS ANOTHER QUESTION IN THIS CASE, AND THAT IS THAT, EVEN IF THE BUSINESS RECORD SHOULD HAVE BEEN ADMITTED, UNDER THE CIRCUMSTANCES, WHAT WAS EXCLUDED WAS THE PERSONNEL RECORD FROM THE WOMAN WHO ALLEGEDLY REPORTED THE RESULTS. NOW, THAT TAKES ME A STEP, EVEN, BEYOND THE CERTIFIED QUESTION AND THE ISSUE THAT ARISES FROM THE CERTIFIED QUESTION, BUT THAT, TOO, IS FAIRLY WITHIN THIS COURT'S JURISDICTION, AND THIS IS VERY IMPORTANT TO THE CASE.

BUT NONE OF THAT, REALLY, APPEARS IN THE FOURTH DISTRICT.

IT DOES NOT. IT DOES NOT. BUT ONCE THEY CERTIFY THE QUESTION TO THIS COURT, THE WHOLE CASE IS BEFORE THIS COURT, AND THE PERSONNEL RECORD, AND I THINK THIS PLAYS IN VERY CLOSELY WITH WHAT HAPPENED IN THIS CASE, NOT BEING FAIR. THE TECHNICIAN -- THIS IS A REPORTING ISSUE. WHEN WE GET BEYOND LOVE -- IF LOVE VERSUS GARCIA APPLIES, SHOULD IT APPLY ON THIS CASE ON THESE FACTS, AND OUR CASE IS, OF COURSE, ABSENT THE PRINT OUT, SO YOU DON'T HAVE THE SOURCE OF THE DOCUMENT TO SHOW UNTRUSTWORTHYNESS. BUT BEYOND THAT, EVEN IF THIS COURT HELD THAT LOVE VERSUS GARCIA APPLIES AND THAT THE RECORD THAT WAS OFFERED WAS ADMISSIBLE, THE NEXT QUESTION IS THE PERSONNEL RECORD, THE ONLY WAY, THEN THAT, THE DEFENDANT COULD SHOW THAT THIS REPORTING WAS NOT RELIABLE WAS TO INTRODUCE THE PERSONNEL RECORD OF THE TECHNICIAN, WHO HAD JUST A COUPLE OF MONTHS BEFORE, MADE A REPORTING ERROR. THE RECORD, RECORDS, VOLUME 7 PAGE 630 TO 631, CONTAINS THE EXACT REPORT, AND IT WAS THAT SHE WAS DISCIPLINED FOR REPORT AGO POSITIVE COCAINE INSTEAD OF MARIJUANA TEST, AND THE DISCIPLINARY REPORT SAID THAT A CORRECT REPORT HAD TO BE MADE TO THE DOCTOR, AND YOU HAVE TO TAKE EXTRA CARE IN REPORTING RESULTS, AND THE TRIAL JUDGE SAID NONE OF THIS IS ADMISSIBLE. EVEN IF SHE WERE HERE, YOU COULDN'T CROSS-EXAMINATION HER ON THIS.

DID THE TECHNICIAN ACTUALLY DO THE REPORT SOMETHING I THOUGHT THAT THE TECHNICIAN ACTUALLY DREW THE BLOOD, AND THEN THE REPORTING, THERE WAS SOME KIND OF MACHINE THAT ACTUALLY RAN, DID THE TESTING, AND THERE WAS A PRINTOUT FROM THAT.

NO, JUSTICE QUINCE. SOMEONE ELSE DREW THE BLOOD, AND THEN IT WAS TAKEN TO THE TECHNICIAN, MISS LOL DOS, AND SHE IS THE ONE THAT CONDUCTED THIS IN THE DuPONT TEST MACHINE.

WHAT DID SHE ACTUALLY DO?

SHE TOOK THE VIAL OF BLOOD AND PUT IT INTO THE MACHINE AND THERE IS A CENT ARRIVE GALL KIND OF WHEEL THAT OCCURS AND THEN A PRINT OUTCOMES FROM THE -- A CENTRIFUGAL TYPE OF WHEEL THAT OCCURS AND THEN A PRINTOUT, AND SHE TYPES THAT IN, AND IT GOES INTO THE HOSPITAL COMPUTER, AND WHAT WAS INTRODUCED WAS THE ULTIMATE COMPUTER RECORD, NOT THE PRINT OUT, SO WE DON'T KNOW IF SHE TYPED THAT NUMBER IN PROPERLY, AND THAT IS WHAT THIS IS ALL ABOUT. ONLY THE PRINT OUT WOULD TELL US IF, INDEED, SHE WERE CORRECT IN HER REPORTING.

WOULD YOU SPECIFICALLY, AND I GUESS WE WOULD HAVE TO LOOK AT THE BRIEFS IN THIS FOURTH DISTRICT. DID YOU SPECIFICALLY RAISE, AS A SEPARATE ISSUE ON APPEAL, THAT THE

UNAVAILABILITY OF THE ACTUAL PRINT OUT, IN VIOLATION OF THE ADMINISTRATIVE CODE, RENDERED THIS BUSINESS RECORD UNTRUST WORTHY?

WE DID NOT MENTION THE ADMINISTRATIVE CODE, BUT WE DID SAY EVERYTHING ELSE, THAT THE PRINT OUT SHOULD NOT HAVE BEEN ADMITTED, BUT THE ADMINISTRATIVE CODE WAS NOT MENTIONED. MY TIME IS UP. I WOULD LIKE TO SAVE MY THREE MINUTES FOR REBUTTAL.

YOU MAY DO SO. MR. WHEELER.

MAY IT PLEASE THE COURT. MY NAME IS ROBERT WHEELER, REPRESENTING THE STATE OF FLORIDA IN THIS CASE.

HOW ABOUT THE CONFRONTATION ISSUE HERE? ISN'T THERE A PROBLEM WITH THAT?

NO, SIR. THERE IS NOT A CONFRONTATION PROBLEM HERE. WHAT WE HAVE, HERE, BEFORE THE COURT, IS AN ISSUE, THE GENERAL BROAD ISSUE CONCERNING THE ADMISSIBILITY OF MEDICAL BLOOD EVIDENCE AND WHETHER THAT IS GOING TO BE ALLOWED, UNDER THE BUSINESS RECORD EXCEPTION, IN A CRIMINAL CONTEXT, AND THIS COURT HAS MADE THE DETERMINATION, IN THE CASE OF LOVE V GARCIA, WHICH IS A CIVIL CASE, UNDER THE SAME EVIDENTIARY RULES, THAT, INDEED, IT WILL BE ADMISSIBLE, UNDER THE SAME EXCEPTION.

BUT HOW CAN IT BE TESTED, WHETHER OR NOT THIS TECHNICIAN WROTE THE RIGHT FIGURES DOWN FROM THE PRINT OUT, ESPECIALLY IN LIGHT OF THAT SITUATION WAS AGGRAVATED HERE, WHEN THE COURT DID NOT ALLOW THE REPRIMAND OF THE TECHNICIAN TO BE ENTERED INTO EVIDENCE? SO HOW IS THAT TESTED? HOW?

WELL, JUSTICE SHAW, THERE IS A SPECIFIC TEST THAT THIS COURT SET FORTH IN LOVE V GARCIA, THAT THE MEDICAL REPORT IS PRESUMED TRUSTWORTHY, AND THEN IT IS THE PARTY OPPOSING THE ADMISSIBILITY OF THE DOCUMENTATION TO PROVE THAT IT IS UNTRUSTWORTHY.

WELL, THERE IS A PROBLEM. HE WAS NOT ALLOWED -- HOW WOULD HE DO THAT, TO SHOW THAT THIS IS A SLOPPY TECHNICIAN? THAT WOULD BE -- THAT COULD BE PART OF THIS PROOF, COULD IT NOT?

THAT -- THAT HE -- THAT IS CORRECT, AND IT IS PART OF MY POINT. HE IS PERMITTED TO CHALLENGE THE TRUSTWORTHINESS, AND THERE ARE NUMEROUS WAYS THAT HE COULD CHALLENGE THAT TRUSTWORTHINESS. THERE IS NOT JUST QUESTIONING OF THE TECHNICIAN. THERE IS NOT JUST COMPARISON TO THE PRINT OUT. THERE IS NUMEROUS WAYS. THEY COULD CHALLENGE THE MACHINE. THEY COULD CHALLENGE THE FACTS OF THE BLOOD COLLECTION PROCESS. THEY COULD CHALLENGE THE FACT THAT THERE WAS NO DUPLICATE TESTING PERFORMED. THEY COULD BRING FORTH, IN FRONT OF THE JUDGE, TESTIMONY CONCERNING THE MACHINE THAT IT WAS THE HOSPITAL POLICY THAT IT SHOULD NOT BE USED FOR FORENSIC TESTING.

BUT YOU CAN'T CHALLENGE THE TECHNICIAN?

NO. YOU CAN'T CHALLENGE THE TECHNIQUES, YOUR HONOR, BUT --

WHY WOULD THE TECHNICIAN BE --

THE ODDS FOR -- IT IS -- TO SAY THAT THIS IS THE BEST WAY OF CHALLENGING THE TRUSTWORTHINESS, I THINK, IS A MISNOMER, BECAUSE THIS TECHNICIAN PERFORMS HUNDREDS, IF NOT THOUSANDS, OF THESE TESTS.

WOULDN'T THE BEST EVIDENCE OF WHETHER YOU -- WHETHER THE TECHNICIAN ACTUALLY

WROTE THE RIGHT FIGURES DOWN BE THE TESTIMONY OF THE TECHNICIAN?

WOULD THAT BE THE BEST EVIDENCE?

ADMITTEDLY.

IS THAT WHAT WE NORMALLY USE IN COURT?

YES, JUSTICE SHAW, AND ADMITTEDLY THAT WOULD BE THE BEST WITNESS TO TESTIFY IN REGARDS TO WHETHER SHE PERFORMED IT, BUT IN ALL LIKELIHOOD, WITH THE HUNDREDS IF NOT THOUSANDS OF TEST THAT IS THESE PEOPLE DO, OTHER CASES HAVE POINTED OUT THAT THE PROBABILITY OF THEM REMEMBERING THIS SPECIFIC TEST ON THIS SPECIFIC DAY IS ALMOST NULL. I MEAN THE PROBABILITY THAT THEY WILL REMEMBER THAT. SO THE TRUSTWORTHINESS --

ISN'T THAT WHY IT IS IMPORTANT, THEN, IN THIS CASE, THAT THE ACTUAL PRINT OUT, AS MR. ROGOW POINTED OUT, WASN'T AVAILABLE, BECAUSE THAT WAS THE WAY THAT YOU COULD TELL IF IT WAS ACCURATELY TRANSCRIBED AND NOT SOME MISTAKE MADE?

THAT IS ANOTHER WAY.

THAT IS AN IMPORTANT WAY. OTHERWISE THERE IS NO WAY OF KNOWING IF IT WAS ABSENTLY TRANSCRIBED. SCRUTINIZING THE TESTIMONY OF THE PERSON THAT DID IT OR HAVING THE PRINT OUT.

NO, JUSTICE PARIENTE, I DISAGREE WITH THAT, BECAUSE THERE WERE OTHER QUALITY CONTROLS IN EFFECT THAT THEY USED TO PROVE THAT THIS WAS, IN FACT, THE CORRECT TRANSCRIPTION FROM THE MACHINE PRINT OUT, WHICH ADMITTEDLY IS NOT AVAILABLE, AND SHOULD HAVE BEEN AVAILABLE.

IS THAT PART OF THE ADMINISTRATIVE CODE?

YES, IT IS, AND THEY WOULD HAVE LIKED IT TO BE AVAILABLE, AND THEY WERE REQUIRED TO KEEP IT FOR TWO YEARS, BUT UNFORTUNATELY IT WAS MISPLACED, AND THE OTHER QUALITY CONTROLS THAT ARE IN PLACE, QUALITY CONTROLS THROUGH THE COMPUTER, QUALITY CONTROLS THROUGH THE SUPERVISOR, THOSE WERE -- THOSE ARE CONTROLS THAT, THERE IS OTHER EVIDENCE THAT, IN FACT, THIS WAS TRANSCRIBED PROPERLY.

WHAT PART DOES THE AND IS SENSE OF THE PRINT OUT PLAY IN THE ANALYSIS? IN YOUR VIEW, IT PLAYS ABSOLUTELY NO PART?

I THINK IT PLAYS ABSOLUTELY NONE, AND THE REASON BEING IS BECAUSE THE PRINT OUT THAT THEY RECEIVED FROM THE COMPUTER, ITSELF, THAT WAS A BUSINESS RECORD IN AND OF ITSELF. THAT IS WHAT IS NORMALLY DONE IN THIS CASE. THERE IS MACHINES, YES, THAT DO HAVE AN ORIGINAL PRINT OUT THAT COME OUT, BUT A LOT OF THESE MACHINES JUST HAVE A DIAL OR THEY JUST HAVE A PRINTOUT, ACTUALLY, ON THE MACHINE, AND THAT TECHNICIAN ROUTINELY HAS TO LOOK AT THAT PRINT OUT AND TRANSCRIBE IT ON TO A COMPUTER, AND THAT COMPUTER AUTOMATICALLY LOGS IT IN, AND WHEN THEY PRINT OUT A DOCUMENT, IT GOES UP INTO THE PATIENT'S SHEET AND MEDICAL RECORDS, AND THAT IS WHAT THE MEDICAL PROVIDERS RELY ON, AND SO WE DON'T -- THAT IS A BUSINESS RECORD, IN AND OF ITSELF, THAT IS -- IS PRESUMED TRUSTWORTHY, AS IF IT WAS THE PRINT OUT, AS IF IT WAS THE ORIGINAL DOCUMENT, AND IT IS SUBJECT TO --

WHY DOES THE STATE REQUIRE THAT THE PRINT OUT BE KEPT FOR A PERIOD OF TWO YEARS?

FOR RECORDKEEPING PURPOSES, AND FOR --

DOESN'T THE STATE REQUIRE IT FOR THE VERY PURPOSE THAT WE ARE TALKING ABOUT TODAY?

I DON'T BELIEVE IT IS FOR THE VERY PURPOSE THAT WE ARE TALKING FOR TODAY. I THINK IT IS TO --

SO IT HAS NO RELEVANCE, THE FACT THAT IT IS KEPT. IT HAS NO RELEVANCE TO THE ISSUE THAT WE ARE TALKING ABOUT?

I DON'T THINK IT DOES.

TELL ME, AGAIN, NOW, WHY IT IS REQUIRED TO BE KEPT FOR TWO CAREERS?

IT IS REQUIRED TO BE KEPT FOR TWO YEARS, ADMITTEDLY, TO SHOW THE -- TO BE ABLE TO GO BACK, I GUESS, AND TO CHECK, TO CHECK THE ACCURACY OF THE TEST AND FOR RECORDKEEPING PURPOSES AND TO MAKE SURE THAT THE SAME SPECIMEN --

CHECK THE ACCURACY OF THE TEST. ISN'T THAT WHAT WE ARE TALKING ABOUT HERE?

WE ARE TALKING ABOUT THE ACCURACY OF THE TEST.

SO HOW IS IT THAT IT HAS NO RELEVANCE?

I WOULD SAY IT IS RELEVANT, JUSTICE ANSTEAD, TO CHALLENGE THE TRUSTWORTHINESS. YES. I AGREE WITH THAT. WHETHER IT IS THE ONLY WAY TO CHALLENGE IT, I WOULD DISAGREE WITH THAT, AND WHETHER IT IS -- I GUESS WHAT I AM TALKING ABOUT OF HOW RELEVANT IT IS, AND IN THIS CASE I DON'T THINK THAT IT IS THAT RELEVANT, BECAUSE WE HAVE A DOCUMENT WHICH WAS GENERATED FROM THE COMPUTER, THAT WAS A BUSINESS RECORD, IN AND OF ITSELF, THAT WAS SUBJECT TO THE SAME PRULINGSS AND THE SAME ATTACKS AS TO ITS TRUSTWORTHINESS.

HOW CONCERNED SHOULD WE BE, HERE, WITH REFERENCE TO THE ORIGINAL ROUTES AND PURPOSES OF THE BUSINESS RECORD HEARSAY RULE, AS FAR AS TRACING BACK THE FACT THAT WE STARTED WITH SOMETHING, WHERE THERE WERE REPEATED INFERENCES OF ACTUAL TRANSACTIONS OR FACTS TAKING PLACE THAT, BECAUSE THEY WERE REPEATED SO MUCH, AS A PRACTICE OF THE BUSINESS OR WHATEVER, THAT THEY BECAME RELIABLE FOR THAT VERY REASON. THAT IS THAT THE BUSINESS ENTITY, WHATEVER GROUP IT WAS THAT WAS DOING THIS, BECAUSE OF THE VERY FACT IT WAS IN THEIR OWN SELF INTEREST TO RECORD THOSE TRANSACTIONS, FACTUAL TRANSACTIONS AS THEY OCCURRED, THAT EVENTUALLY THE COURT SAID, WELL, WE CAN RELY ON THOSE, AS OPPOSED TO, NOW, WE COME FORWARD, AND WE HAVE SITUATIONS LIKE THIS, WHERE, REALLY, WHAT WE ARE TALKING ABOUT IS SCIENTIFIC TESTING, AND THE RELIABILITY OF SCIENTIFIC TESTING, AND NOT HAVING THE TECHNICIAN, YOU KNOW, OR THE TEST ACTUALLY, YOU KNOW, BROUGHT INTO COURT, BUT, RATHER, BECAUSE AT SOME POINT THE RESULTS OF THE SCIENTIFIC TESTING WAS WRITTEN DOWN, SO I AM SAYING HOW FAR SHOULD WE EXAMINE THIS, AND IT SEEMING TO BE FAR REMOVED FROM THE ORIGINAL ORIGIN AND PURPOSE OF THE BUSINESS RECORDS EXCEPTION? IS THAT A RELEVANT CONSIDERATION?

I THINK IT IS. I THINK WHAT THIS COURT CAN DO IS GO BACK TO ITS DECISION IN LOVE V GARCIA, AND I THINK FOR THOSE SAME REASONS, IT IS APPLICABLE IN A CRIMINAL CONTEXT, ALSO, BECAUSE WHEN THE MEDICAL RECORD IS ORIGINATED, IT IS RELIED UPON AS TRUSTWORTHY BY THE MEDICAL PROVIDER, AND IF IT IS RELIED TRUSTWORTHY ENOUGH FOR A MEDICAL PROVIDER, TO PROVIDE MEDICAL TREATMENT TO A PATIENT, IF IT IS THAT TRUSTWORTHY, THEN IT IS CERTAINLY TRUSTWORTHY ENOUGH FOR A COURT TO RELY UPON IT, UNDER THE BUSINESS RECORD EXCEPTION. SO I THINK FOR THOSE SAME REASONS, WE CAN MOVE AWAY FROM THE STANDARD, FROM THE ORIGINAL STANDARD, WHICH WAS IN STRONG V STATE.

HOW WOULD THE BLOOD ALCOHOL RESULTS THAT WE HAVE HERE HAVE BEEN UTILIZED BY THE

MEDICAL PROVIDER, IN THE TREATMENT OF THE PATIENT?

IN NUMEROUS WAYS. THIS -- THE DEFENDANT HAD NUMEROUS INJURY, AND IN THE APPLICATION OF MEDICINES OR SURGERY, ANDES THESEIA, I AM SURE, YOU NEED TO HAVE A BLOOD ALCOHOL LEVEL, IN ORDER TO ADMINISTER CERTAIN MEDICATIONS, AND THAT IS WHY IT IS IMMEDIATELY DONE.

ARE THOSE THE FACTS OF THIS CASE?

YES, IT IS, AND IN FACT THIS CASE WAS APPARENTLY DONE STAT, BECAUSE THEY NEEDED TO RENDER TREATMENT TO THIS PARTICULAR PATIENT, AND STAT MEANING THAT WE NEED TO GET IT DONE WITHIN AN HOUR, AS SOON AS POSSIBLE, AND IN FACT, THEY DON'T EVEN WAIT FOR THE MEDICAL RECORD TO COME UP, WHEN THEY PUT IT INTO THE COMPUTER. IT IS AUTOMATICALLY IN THE COMPUTER, SO THAT THEY CAN RELY ON IT WITH THE PATIENT.

ONE LAST QUESTION, YOU AGREE THAT THE OPPONENT OF HAVING THIS EVIDENCE RECEIVED, CAN CHALLENGE THE RELIABILITY. IS THAT CORRECT? AND THERE WILL BE INSTANCES IN WHICH THE RECORD WILL NOT BE ALLOWED INTO EVIDENCE, BECAUSE OF A SUCCESSFUL CHALLENGE?

I AGREE WITH THAT, YES.

HYPOTHETICALLY, WITH REFERENCE TO A HOSPITAL, WITH THE BLOOD TESTING, HYPOTHETICALLY WHAT WOULD YOU SEE AS A VALID CHALLENGE, ONCE THERE IS A RECORD THERE? WHAT WOULD BE AN EXAMPLE THAT YOU WOULD SEE OF A VALID CHALLENGE TO THE ADMISSIBILITY OF THAT RECORD?

JUSTICE ANSTEAD, I THINK THERE IS PLENTY OF VALID CHALLENGES, AND I THINK THAT THEY WERE BROUGHT OUT BY OPPOSING COUNSEL AT TRIAL, IN REGARDS TO THE WEIGHT, AND THOSE SAME CHALLENGES, AND THOSE ARE ALL IN THE RECORD, AND I WILL TELL YOU WHAT THEY ARE SPECIFICALLY, BUT WHAT HE DID WAS HE BROUGHT OUT THESE CHALLENGES IN REGARDS TO THE WEIGHT, AS OPPOSED TO THE ADMISSIBILITY OF THE DOCUMENT, BUT THAT DOESN'T MEAN THAT THEY COULDN'T HAVE BEEN BROUGHT OUT, IN REGARDS TO THE ADMISSIBILITY, AND ONE CHALLENGE BEING THAT THIS BLOOD TESTING MACHINE WAS A SERUM BLOOD-TESTING MACHINE, AND IN ORDER TO OBTAIN THE WHOLE BLOOD ANALYSIS, YOU NEEDED TO GO THROUGH SEVERAL MATHEMATICAL COMPUTATIONS, IN ORDER TO BRING IT DOWN TO THE UNDERSTANDABLE LEVEL, AND THEY CHALLENGED THIS TESTING PROCEDURE, ITSELF, BECAUSE IT WAS A SERUM BLOOD TESTING MACHINE, AS OPPOSED TO A WHOLE BLOOD TESTING MACHINE. THEY COULD CHALLENGE IT IN THAT MANNER. THEY COULD CHALLENGE THE FACT OF THE WHOLE HOSPITAL POLICIES, WITH NO DUPLICATE TESTING PROCEDURES. THEY COULD CHALLENGE ON THE CHAIN OF CUSTODY. THEY COULD BRING SOMEBODY IN THAT WAS WITH THIS GENTLEMAN AT THE BAR AND BRING HIM IN AND SAY THIS PERSON NEVER DRANK. THEY COULD BRING IN WITNESSES TO SHOW THAT THIS PERSON WAS HAD, IN EFFECT, NOT DRUNK. NOW, YOU KNOW, THERE WOULD BE WITNESSES TO THE CONTRARY BROUGHT IN BY THE STATE, BUT THAT IS HOW THEY COULD CHALLENGE IT. THEY COULD CHALLENGE IT IN THAT MANNER. THE WAY THEY CHALLENGED IT IN THIS CASE WAS THEY BROUGHT IN THE PERSONNEL RECORD OF THE TECHNICIAN, WHICH SHOWED AN ERROR WHICH HAD OCCURRED TWO AND-A-HALF MONTHS PRIOR ON, A COMPLETELY DIFFERENT TEST, TYPE OF TEST, AND A COMPLETELY DIFFERENT TYPE OF ERROR, AND THEY PUT THAT FORT BEFORE THE JUDGE, TO SHOW THAT THIS DOCUMENT WAS NOT TRUSTWORTHY, AND THE COURT DIDN'T BUY THAT. AND IN ALL HONESTY. AND SO IT WAS NOT ALLOWED IN, IN REGARDS TO WEIGHT, BUT IT WAS ALLOWED IN, IN REGARDS TO ADMISSIBILITY. SO THERE IS NUMEROUS CHALLENGES THAT THEY COULD BRING FORTH, IN REGARDS TO TRUSTWORTHINESS, AND, YES, IN SOME CASES, IT WON'T BE ALLOWED, BUT IT IS GOING TO HAVE TO BE WEIGHTS AND BALANCES.

WELL, DOES THE STATE CONCEDE THAT THERE IS AN ADDITIONAL OVERLAY, WHERE YOU HAVE A



CRIMINAL CASE, AS OPPOSED TO A CIVIL LOVE VERSUS GARCIA SITUATION?

I AM SORRY. I DON'T KNOW WHAT YOU MEAN BY ADDITIONAL OVERLAY.

DOES THE STATE CONCEDE THAT, WHERE YOU HAVE A CRIMINAL CASE, YOU HAVE AN ADDITIONAL CONCERN, I.E. CONFRONTATION IS WHAT I AM GETTING AT.

I THINK THERE IS A CONCERN OF CONFRONTATION, WHICH IS RELIEVED BY THE FACT THAT BUSINESS RECORD EXCEPTION IS A FIRMLY-ROOTED HEARSAY EXCEPTION, AND THE CASE LAW IS CONSISTENT THAT, WITH THESE FIRMLY ROOTED HEARSAY EXCEPTIONS, THERE IS NO VIOLATION OF THE CONFRONTATION CLAUSE.

SO THE DEFENDANT WOULD NOT HAVE THE RIGHT TO BE CONFRONTED, EITHER BY THE ORIGINAL DOCUMENT OR THE PERSON THAT TRANSCRIBED THE ORIGINAL DOCUMENT? THAT IS WHAT THE STATE'S POSITION IS?

IT IS THEIR BURDEN TO BRING THAT TECHNICIAN, IF THEY WANT TO. TO USE THAT TECHNICIAN TO REBUT THE TRUSTWORTHINESS. IF THIS COURT IS GOING TO REQUIRE THAT THE STATE PROVIDE THE TECHNICIAN, THAT TURNS THE WHOLE EXCEPTION ON ITS HEAD, BECAUSE THAT IS WHAT WE NEEDED TO DO, UNDER THE STATE V STRONG STANDARD, IS TO BRING IN THE TECHNICIAN AND HAVE HER TESTIFY, AS TO WHAT IS NEEDED AND HER QUALIFICATIONS AND THE RELIABILITY OF THE TEST AND THE METHOD OF THE TESTING. SO IF WE ARE GOING --

THAT GOES BACK TO THE QUESTION I ASKED YOU, THOUGH, AND THAT IS THAT IS, IN TALKING ABOUT THE ROOTS OF THE BUSINESS RECORDS EXCEPTION, IS THE QUESTION WHETHER OR NOT THE BUSINESS RECORDS EXCEPTION IS FIRMLY ROOTED OR IS THE QUESTION WHETHER OR NOT THE USE OF THE BUSINESS RECORDS EXCEPTION TO ADMIT BLOOD TEST RESULTS IS FIRMLY ROOTED? HOW LONG HAVE WE BEEN DOING THAT? NOT VERY LONG, HAVE WE?

NO. NOT VERY LONG, AND BUT OTHER JURISDICTIONS HAVE, AND I HAVE POINTED THAT OUT IN MY BRIEF, AND THE FEDERAL COURTS HAVE, AND, IN FACT, THE FIRST DCA HAS ALLOWED IT IN CRIMINAL CASES.

BUT THERE ARE SOME JURISDICTION THAT IS DO NOT. IS THAT CORRECT?

THERE ARE SOME JURISDICTION THAT IS DO NOT, BUT I THINK I CAN SAFELY SAY THAT THAT IS THE MINORITY.

WHAT IS THE OLDEST CASE THAT YOU HAVE THAT HAS RECOGNIZED THE USE OF BLOOD TEST RESULTS, AT LEAST AS BUSINESS RECORD EXCEPTION?

THE OLDEST CASE THAT I HAVE WHICH IS FROM ANOTHER JURISDICTION IS A NEW JERSEY CASE OUT OF 1975, AND THAT IS STATE VMARTARELLI, 346 ATLANTIC SECOND 618. I, ALSO, HAVE CASES FROM GEORGIA 1997, NEW MEXICO 1995, MARYLAND 1998.

IN COMPARISON TO THE ROOTS, THOUGH, OF THE BUSINESS-RECORD EXCEPTION, THAT DOESN'T SEEM TO BE VERY FIRMLY ROOTED, DOES IT, IN OUR JURIES PRUDENSE?

NO. I THINK THE LAW HAS EVOLVED FOR THIS MEDICAL RECORDS, BUSINESS RECORDS, UNDER THE EXCEPTION, HAS EVOLVED --

DON'T YOU THINK IT IS AN EXCEPTION TO USE WHETHER OR NOT THIS IS A WELL-ESTABLISHED EXCEPTION, WHEN THE LAW, WITH REGARD TO BLOOD ALCOHOL RESULT, A VERY RECENT LAW. ISN'T THERE A REAL CONTRAST THERE?

THE WAY I LOOK AT IT, JUSTICE ANSTEAD, IS A BUSINESS RECORD IS A BUSINESS RECORD.

WELL, ISN'T THAT THE WHOLE ISSUE THAT WE ARE GRAPPLING WITH HERE?

I THINK SO. AND I THINK, IN THIS INDICATION -- IN THIS SITUATION, A BUSINESS RECORD IS A BUSINESS RECORD, AND WHEN IT IS GOING TO BE ALLOWED IN UNDER THAT EXCEPTION, WHETHER IT IS IN REGARDS TO MEDICAL BLOOD EVIDENCE, WHETHER IT IS IN REGARDS TO OTHER SITUATIONS, I THINK THAT IT IS TRUSTWORTHY ENOUGH FOR THE MEDICAL PROVIDERS TO RELY UPON IT. IT IS TRUSTWORTHY ENOUGH FOR ITS ADMISSIBILITY INTO EVIDENCE.

YOU DON'T SEE A DISTINCTION, IF, SAY, THIS WAS A SITUATION WHERE, WHAT HAD TO BE ESTABLISHED WAS THE TIME OF CALL, AND SOMEBODY HAD WRITTEN DOWN THE CALL CAME IN AT 9:30, AND THAT WAS WRITTEN CONTEMPORANEOUSLY WITH THE PHONE CALL, AND THAT IS A TRADITIONAL USE OF THE BUSINESS RECORDS, TO TO GET A TIME FRAME OF SOMETHING, THAT THE CONSIDERATIONS THE COURT OUGHT TO LOOK TO, FOR THAT TYPE OF SORT OF MECHANICAL RECORDING, IS THE SAME AS WHAT THE COURT SHOULD LOOK AT FOR A MORE SOPHISTICATED MEDICAL OR SCIENTIFIC TEST?

YES, JUSTICE PARIENTE. I THINK IT K I THINK, EVEN BECAUSE OF THE LOGISTICS OF THE EXCEPTION, I THINK IT CAN.

AND THE REASON, IN THIS CASE, THAT THE FACT THE PRINT OUT WAS NOT AVAILABLE SHOULD NOT AFFECT ITS ADMISSIBILITY, IS BECAUSE THERE WAS OTHER TESTIMONY THAT THE COMPUTER, ITSELF,, WHAT, SAVED THE DATA? WHAT MADE IT, REALLY, UNNECESSARY TO HAVE THE PRINT OUT? JUST IF YOU COULD EXPLAIN THAT TO ME.

THERE ARE CERTAIN QUALITY CONTROLS THAT WERE IN EFFECT. THE SUPERVISOR WOULD REVIEW ALL OF THE RESULTS FROM THE PREVIOUS EVENING AND MAKE SURE THAT THEY WERE WITHIN CERTAIN PARAMETERS. THERE WAS ALWAYS RESULTS, IF THEY WERE OUTSIDE CERTAIN PARAMETERS, THAT THERE WOULD AND FLAG ON AND THAT THEY WOULD NEED TO MAKE SURE.

IN OTHER WORDS THE SUPERVISOR WOULD LOOK AT THE PRINT OUT, AND WHAT HAD BEEN PLACED INTO THE COMPUTER? IF THERE WAS A MISTAKE, THAT WAS OBVIOUS, THEN IT WOULD HAVE BEEN ADDRESSED AT THAT TIME ON THE COMPUTER, BUT, ALSO, THE COMPUTER, ITSELF, WHEN THE TECHNICIAN IS TYPING IN RESULTS INTO THE COMPUTER, ITSELF, IF THERE WAS AN ERROR THAT WAS RECOGNIZABLE FROM THE TRANSLATION FROM THE TAPE, THE COMPUTER ASKS THE QUESTION. A SCREEN POPS UP. DO YOU REALLY WANT TO PUT THIS IN? SHE HAS TO TYPE IT ALMOST THREE TIMES, IN ORDER TO BE ABLE TO PUT THOSE RESULTS IN. THEN, AGAIN, IF THEY ARE OUTSIDE CERTAIN PARAMETERS, IF, FOR SOME REASON, SHE IS MAKING A MISTAKE IN HER TYPING THAT WOULD MAKE THAT RESULT OUTRAGEOUS, THEN WHAT SHE NEEDS TO DO IS GO THROUGH A SERIES OF STEPS WHERE SHE CONTACTS THE DOCTOR OR SHE CONTACTS THE NURSE IMMEDIATELY, AND THEN SHE NEEDS TO NOTE THAT ON HER RECORDS, IN THAT SAME COMPUTER, SO THERE ARE QUALITY CONTROLS TO MAKE SURE THAT THE TECHNICIAN IS TYPING IN A PROPER RESULT.

AND THOSE ISSUES ARE PART OF THE RECORD IN THIS CASE?

YES, THEY ARE.

OKAY. YOUR TIME IS COMPLETE.

THANK YOU VERY MUCH. THE STATE ASKS THAT YOU AFFIRM THE SENTENCING CONVICTION IN HIS THIS CASE.

THANK YOU, MR. WHEELER.

THERE IS NO EVIDENCE THAT ANY QUALITY CONTROLS WERE USED IN THIS CASE, ON THIS REPORT. AND THERE -- THE STATE'S ARGUMENT ABOUT THE LOSS PRINT OUT NOT BEING SO IMPORTANT AND THE PURPOSE OF IT, THE ADMINISTRATIVE CODE SAYS, TO BE SURE THAT ACCURATE TEST RESULTS ARE REPORTED, THE PRINTOUTS MUST BE RETAINED FOR TWO YEARS. THAT IS THE ONLY PURPOSE, TO ASSURE ACCURACY OF THE REPORTS.

WHAT WAS THE EXPLANATION IN THE RECORD, HERE, OF THE LOSS OF THE PRINT OUT?

NONE. THEY COULDN'T FIND IT, AND THEY DIDN'T HAVE IT, AND THAT IS THE END OF IT.

WAS IT THEIR TESTIMONY THAT IT WAS THEIR PRACTICE TO KEEP THESE THINGS FOR TWO YEARS, BUT THAT IN THIS PARTICULAR INSTANCE, THEY COULDN'T LOCATE IT OR NOT WHAT?

NO, JUSTICE ANSTEAD. NO TESTIMONY ABOUT THAT AT ALL, AND THE REASON THEY WENT SIMPLY ON THE BUSINESS RECORD IS BECAUSE THAT IS ALL THEY HAD, AND THEY MADE THAT VERY CLEAR, THAT THAT IS ALL THEY HAD, AND THIS CASE WAS GOING TO BE BASED UPON THE BUSINESS RECORD, AND THAT WAS THE HEART OF THE CASE. THE JUDGE SAID, IF I KEEP THIS RECORD OUT, THE CASE IS OVER.

IN A DUI PROSECUTION, IS THE PRINT OUT NORMALLY INTRODUCED?

WELL, IN MOST DUI PROSECUTIONS WITHOUT MEDICAL BLOOD, YOU WOULD HAVE THE CHARTS FROM THE GAS CHROMATOGRAPHY TESTS THAT ARE USED IN FORENSIC TESTING. OBVIOUSLY GREAT CARE IS TAKEN. BUT IN THIS CASE THERE WAS NOTHING EXCEPT THE BARE BUSINESS RECORD.

NOW, YOUR CANNON IS THAT YOU HADN'T -- YOUR CANNON ONE IS THAT YOU -- YOUR CONON IS THAT YOU HADN'T RAISED ADMINISTRATIVE CODE AS AN ISSUE?

NO. IT WAS NOT. WHAT WAS VERY SPECIFICALLY RAISED IN THE RECORD AT PAGE 222, IN THE MOTION IN LIMINE, WITHOUT THE PRINT OUT, WE DON'T HAVE ANYTHING. WE CAN'T TELL WHETHER OR NOT THE RECORD IS CORRECT. AND THE ADMINISTRATIVE CODE ISN'T MENTIONED, EITHER. BUT THE CODE IS LIKE NOT HAVING A CASE. IF THE PRINT OUT IS NECESSARY AND THE LAW MAKES IT CLEAR THAT THE PRINTOUTS ARE NECESSARY, THE OBJECTION WAS PROPERLY BEFORE THE COURT. THE PRINT OUT SHOULD HAVE BEEN IN. AND OUR POSITION IS THE SAME, WITH OR WITHOUT THE ADMINISTRATIVE CODE, BUT THE ADMINISTRATIVE CODE, CERTAINLY, BOLSTERS OUR POSITION.

DOES THE RECORD, DO WE HAVE EVIDENCE THAT DESCRIBES THE TEST EQUIPMENT, WITH REGARD TO HOW IT OPERATES? IS THAT IN THE RECORD, AS DESCRIBED BY THE STATE? HE WAS DESCRIBING THAT THE READING IS TAKEN, AND THEN YOU ARE USING THE SAME EQUIPMENT, AND THERE ARE CHECKS AND BALANCES, WITHIN THE PIECE OF EQUIPMENT, ITSELF.

THE TEST EQUIPMENT IS NOT CHALLENGED HERE. IT WAS CHALLENGED BELOW. THERE WAS EVIDENCE BROUGHT OUT WITH REGARD TO THE TEST EQUIPMENT. IT THIS IS ONLY A REPORTING ISSUE THAT WE ARE TALKING ABOUT.

THAT IS WHAT I AM TRYING TO GET TO. HE APPEARS TO BE SUGGESTING THAT, REALLY, THE PRINT OUT WE ARE TALKING ABOUT IS A RED HERRING WE ARE CHASING, BECAUSE YOU SEE THE RESULTS ON A SCREEN. SOME TYPE OF DIGITAL SCREEN, IS WHAT I AM UNDERSTANDING, AND THAT WITHIN THIS EQUIPMENT IS WHERE THAT, THEN, GENERATES THE REPORT THAT IS ACTUALLY THE MEDICAL RECORD, THAT THE SEPARATE PIECE OF PAPER ADDS NOTHING TO WHAT WE ARE TALKING ABOUT, AS I UNDERSTAND THE STATE'S POSITION.

THAT IS NOT THE WAY I READ THIS RECORD. THAT THE PRINT OUT WAS THE DOCUMENT FROM WHICH THE TECHNICIAN WOULD, THEN, TYPE IN THE NUMBER.

ON A DIFFERENT PIECE OF EQUIPMENT?

ON A DIFFERENT PIECE OF EQUIPMENT. ON COMPUTER EQUIPMENT.

DO YOU ADMIT THE SAFEGUARDS THAT HE REFERRED TO, AND THAT IS THAT IF YOU ARE TYPING IN A DIFFERENT FIGURE THAN THE PRINT OUT SHOWS, THAT THE COMPUTER WOULD CALL THAT TO YOUR ATTENTION IN SOME WAY?

THERE IS NO EVIDENCE THAT IN THIS CASE ANY OF THAT WAS APPLICABLE, THAT MAYBE SOME GENERAL CONCEPT THAT MAY BE USED, BUT IT IS NOT, THERE IS NO EVIDENCE THAT THAT IS WHAT HAPPENED IN THIS CASE, THAT SHE USED THE MACHINE THAT WAY, THAT THE MACHINE OPERATED THAT WAY ON THE DAY THAT SHE WAS WORKING WITH IT. THERE IS NO EVIDENCE OF THAT IN THIS CASE. NOW, WHETHER OR NOT IN SOME FASHION THE MACHINES OFTENTIMES WORK THAT WAY, IT MAY BE, BUT THAT IS NOT WHAT THE TESTIMONY WAS IN THIS CASE, AND THE LAST POINT I WANT TO MAKE IS HE SAID, WELL, YOU COULD HAVE BROUGHT THE TECHNICIAN IN. IT IS CLEAR THE TECHNICIAN WAS NOT AVAILABLE TO US,ES -- EITHER, AND THE RECORD REFLECTS THAT, AT PAGE R-7, 636. SHE IS UNAVAILABLE TO US AS WELL AS SHE IS TO MR. LUBIN. THE TECHNICIAN WAS NOT AVAILABLE. THERE WAS NO TECHNICIAN. THERE WAS NO BLOOD. THERE WAS NO PRINT OUT. THERE WAS NO WAY TO CHALLENGE THIS BUSINESS RECORD. IT BECAME AN IRREBUTTABLE PRULINGS OF THE MEDICAL -- PRESUMPTION OF THE MEDICAL BLOOD.

THANKS YOU. THANKS TO BOTH OF YOU FOR YOUR ASSISTANCE. NEXT CASE ON THE COURT'S