

Cars, the Constitution, and Courts



Teacher Traffic Safety Academy 2023



Cars, the Constitution, and Courts Lesson Plan

Learning Objective: Students will...

1. Explore constitutional questions regarding the 4th, 6th, and 8th Amendments.
2. Understand the difference between questions of law and questions of opinion.
3. Analyze court cases and statutes and apply them to a traffic fatality case.

TEKS: Principles of Government and Public Administration 1E, 5A, 11L; Principles of Law, Public Safety, Corrections, and Security 4C, 6A-B, 8B; Criminal Investigation 6B, 8H; Court Systems 6A-B, 6D, 6G; Forensic Science 4C;

Materials Needed: *Cars, Constitutions, and Court* Slides Presentation, *Cars, Constitutions, and Court* Facts of the Case Student Handout, *Cars, Constitutions, and Court* Questions/Errors of Law Student Handouts, *Opinion of the Court* Student Handout

Vocabulary: errors of law (or “questions of law”), Court of Appeals, defendant, evidence, burden of proof, mitigating factor, hearsay, testimony, trier of fact, verdict, Event Data Recorder (or EDR, a.k.a. “black box”), breathalyzer (or intoxilyzer), toxicology, blood alcohol content, sentencing, civil, criminal

Estimated Time: 50 - 60minutes

Engaging Focus:


Have students make a T-Chart and on the left-hand side, ask students to brainstorm what they know about trial courts. Share out as a class. Students may state things like, “there is a judge, there is a jury, witnesses take the stand, evidence is presented,” etc.

Then ask students to brainstorm what they know about appellate courts (or Appeals Courts) on the right-hand side of the T-Chart. Students may begin to struggle coming up with different information. Feel free to brainstorm as a whole class. Here are some things students can write down:

- The Appeals Court doesn’t have trials. They don’t have a “do over” of the trial.
- There is a panel of judges instead of just one.
- They decide questions about law and whether mistakes were made at the lower (trial) level.
- There are no witnesses. Nobody “takes the stand” and presents evidence.
- The attorneys for each side get to speak before the panel in what are called, “oral arguments.”
- The judges discuss the case behind closed doors and then issue their ruling in the form of a written “Opinion of the Court.”

Teaching Strategy:

Slides 1-6: Introduce students to “Inquiry Based Learning.” These slides will peak their curiosity and ask them to raise questions about an event. You can have students write these down or put them on the board if you would like.



Slide 7: Have students read the “Facts of the Case” with a partner or in small groups. You can remind students that this is based on a real case and very little information has been changed (simply names, etc.). Allow students to discuss the case with their partner and describe what happened after they have read the facts.

Slide 8: If students haven’t already done so, give students time to discuss their opinions or any commentary on the case that is based on their opinions or experience. When it comes time to move on the activity, students will need to set aside their opinions and focus on the law and the facts.

Slides 9-11: These slides cover the requirement for a defendant to appeal a verdict. Defendants (or prosecutors, if they lost) cannot simply appeal the verdict because they didn’t like the outcome. An appeal must be based on an alleged error of law. The appeals court will review the question of law, but they do not review the facts of the case or second-guess the jury.

Slides 12-16: These slides will walk students through the 4 errors/questions of law that are being appealed in this case. Students will need to start thinking like the judges on the Court of Appeals. Reiterate that this will require them to set aside personal opinions, and they should be thinking about the law and how it applies to this particular case about a traffic fatality accident.

Slides 17-18: These slides are intended to remind students that criminal penalties are not the only consequence in the case of a car crash. The defendant is headed to prison, but the defendant is also facing steep lawsuits and mounting legal debt as a result of reckless driving. The students (as the Court of Appeals) will not be considering any civil litigation in this lesson. NOTE: Slide 18 has a hyperlink to a news story about a recent crash involving teenagers near Houston. <https://www.khou.com/article/news/crime/teens-involved-in-fatal-crash/285-76491702-23af-45f9-b939-3e8286cb8d98>

Slide 19-20: These slides summarize the 4 main points of appeal and prompt students to now consider the Error/Questions of Law and make decisions. Students will need copies of the *Questions/Errors of Law Student Handouts*. The handouts contain relevant laws and court cases (precedents) that they should consider and apply to the question at hand. Students will discuss these with their partner/group and then make a decision about each.

ALTERNATIVES: Jigsaw the *Questions/Errors of Law* if you are short on time. Give each group only the pages that pertain to their assigned issue:

Pages 1-2 of the handout applies to Issue #1.

Pages 3-4 of the handout applies to Issue #2.

Pages 5-6 of the handout applies to Issue #3.

Pages 7-8 of the handout applies to Issue #4.

As students discuss, tell them to complete the *Opinion of the Court* page to submit at the end of class!



Optional Extension Ideas:

1. Have students write out oral arguments as if they are the attorney for one side or the other in this case. Hold a “Moot Court” in which the attorneys make their case.
2. Have students research crash statistics regarding speeding fatalities and other crash events, using the following resources.
<https://www.txdot.gov/data-maps/crash-reports-records/motor-vehicle-crash-statistics.html>
<https://crashstats.nhtsa.dot.gov/#!/#%2F>
<https://cdan.nhtsa.gov/>
<https://www.ghsa.org/resources/publications>
<https://tea.texas.gov/finance-and-grants/state-funding/state-funding-reports-and-data/bus-accident-reporting-system>
<https://www.cdc.gov/injury/wisqars/index.html>
<https://nasdpts.org/stop-arm-violations>
<https://saferoads.org/>
3. Visit the following site for further activities surrounding the 4th Amendment protection from “unreasonable search and seizure.” <https://www.uscourts.gov/about-federal-courts/educational-resources/educational-activities/fourth-amendment-activities>
4. Have students debate the Data Privacy Act of 2015 and whether they would support a federal law requiring all cars to be manufactured with an Event Data Recorder (EDR, a.k.a. “black box”). Currently, nearly all (if not all) car manufacturers include them already, but it is not a federal requirement.

Cars, the Constitution, and Courts Facts of the Case

Cars, Constitutions, and Courts FACTS of the CASE:

The following fictional scenario occurred in the State of Texas

Jones (the defendant) crashed her automobile at approximately 2:03 a.m. on July 6, 2018 as she was driving on a residential street, Elm Street, which had a speed limit of 35 miles per hour. Smith was in the front passenger seat of the defendant's car when it crashed.

Morris testified at trial that she witnessed the crash. Specifically, Morris testified that she had just turned her vehicle onto Elm Street when she noticed defendant's vehicle "barreling down" Elm Street. According to Morris, she thought she was going to be "t-boned" because the defendant's vehicle was moving so fast, so she stopped short. Jones had the right of way.

Jones swerved to go around Morris's vehicle and hit a curb, which caused her car to become airborne and hit Edgar Lewis, a pedestrian that was walking on the sidewalk. Smith died as a result of the crash and Lewis suffered a broken leg. Jones was left unconscious after hitting her head during the crash but suffered no other injuries. Jones's car was totaled and taken to a wrecking yard while Jones was in the hospital getting her head injuries treated.

Jones later told police that she was traveling "maybe a little over the speed limit" down Elm Street when another car unexpectedly "cut her off." Sullivan, a police trooper, testified at trial as an expert in crash reconstruction and computerized event data recorders (EDRs) in automobiles. Sullivan testified that the EDR of Jones's vehicle was retrieved at the wrecking yard while Jones was in the hospital. The police were unable to obtain a search warrant for the EDR because no magistrates were available in the middle of the night. The EDR showed that Jones's vehicle was travelling 84 miles per hour two seconds prior to hitting the curb.

Thomas, a toxicologist, testified that a blood sample was taken from Jones while she was in the hospital, which showed a blood alcohol content of .07. This blood draw occurred 90 minutes after the crash. Jones did not give consent for the blood draw. Again, the police tried to obtain a blood search warrant, but could not find a magistrate to sign it at that hour.

The jury ultimately convicted Jones of intoxication manslaughter for Smith's death and sentenced her to 25 years in prison. Defendant then filed this appeal.

Cars, the Constitution, and Courts - Final Questions, Errors in Law

Issue #1:

Jones is claiming that her 4th Amendment protection from “Unreasonable Search and Seizure” was violated because she did not consent to the blood draw for the blood alcohol (toxicology) test.

Question: Did police violate Jones’s 4th Amendment rights when they took her blood sample and conducted a toxicology test to determine her blood alcohol content?

Before you answer/decide, consider the following points of law and relevant information:

- A needle stick for a blood draw has been deemed more invasive than the collection of a breath sample by breathalyzer, but it is also more accurate and the results are less prone to being challenged in court. A blood draw is taken by a qualified technician (usually a nurse or phlebotomist) to determine a person’s blood alcohol content for the purposes of determining whether they were driving impaired.
- When a law enforcement officer asks someone for a breath or blood sample, that person does not have to agree (consent) to the search. However, in Texas, one’s license may be suspended for a minimum of 180 days for refusing—regardless of whether they are ultimately convicted of the underlying offense.
- In Texas, many jurisdictions conduct “No Refusal Weekends,” during which time magistrates are “on call” to issue blood search warrants very quickly for individuals suspected of impaired driving that do not consent to breath or blood testing. No Refusal Weekends often occur during holiday weekends when more impaired driving occurs, such as Thanksgiving.
- The 4th Amendment warrant requirement to conduct searches has several exceptions. The State often claims that a warrantless blood draw is justified due to the “exigent circumstances” exception, which is an emergency situation where the time it would take to obtain a warrant could lead to the evidence becoming inaccessible.

4th Amendment to the U.S. Constitution: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause,

supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Texas Transportation Code Section 724.012 *(only select subsections provided)*

(a) One or more specimens of **a person’s breath or blood may be taken if** the person is arrested and at the request of a peace officer having reasonable grounds to believe the person:

- (1) while intoxicated was operating a motor vehicle in a public place, or a watercraft; or
- (2) was in violation of Section 106.041, Alcoholic Beverage Code.

(a-1) A peace officer **shall require the taking of a specimen of the person’s blood if:**

- (1) the officer arrests the person for an offense under Chapter 49, Penal Code, involving the operation of a motor vehicle or a watercraft;
- (2) the person refuses the officer’s request to submit to the taking of a specimen voluntarily;
- (3) the person was the operator of a motor vehicle or a watercraft involved in an accident that the officer reasonably believes occurred as a result of the offense; and
- (4) at the time of the arrest, the officer reasonably believes that as a direct result of the accident any individual has died, will die, or has suffered serious bodily injury.

(e) A peace officer **may not require the taking of a specimen under this section unless** the officer:

- (1) obtains a warrant directing that the specimen be taken; or
- (2) has probable cause to believe that exigent circumstances exist.

Texas Penal Code Section 49.01(2)

“Intoxicated” means: not having the normal use of mental faculties or physical faculties by reason of the introduction of alcohol, a controlled substance, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or having an alcohol concentration of 0.08 or more.

In [State v. Villarreal, 475 S.W.3d 784 \(Tex. Crim. App. 2014\)](#), the Texas Court of Criminal Appeals held that officers cannot take a blood draw from a DWI suspect unless they have the suspect’s consent, a warrant, or some other constitutional exception to the warrant requirement, such as exigent circumstances.

In [Missouri v. McNeely, 569 U.S. 141 \(2013\)](#), the U.S. Supreme Court held that the natural dissipation of alcohol from the blood does not alone constitute an exigent circumstance justifying a warrantless blood draw. The Court also reiterated that, in the context of impaired driving cases, whether or not there is an exigent circumstance must be analyzed on a case-by-case basis because no two cases are exactly alike.

Issue #2:

Jones is claiming that her 4th Amendment protection from “Unreasonable Search and Seizure” was violated because the data in the Event Data Recorder (EDR), often referred to as the “black box,” in the car was her personal property and was seized by the police without a warrant.

Question: Did the police violate Jones’s 4th Amendment rights when they took the EDR from her car and analyzed it without her consent?


Before you answer/decide, consider the following points of law and relevant information:

- Nearly all car manufacturers install EDRs. There are federal safety regulations for EDRs that impose standards for the “collection, storage, and retrievability of onboard motor vehicle crash event data” to ensure that it records “in a readily usable manner, data valuable for effective crash investigations.” (49 CFR § 563.1, § 563.2).
- “Event Data Recorders” gather the following information in cars: (1) vehicle speed; (2) accelerator or throttle position; (3) frontal, side and curtain airbag deployment; (4) application of the brakes; (5) number of crash events; and (6) steering input. Additionally, these devices must also gather data about: (a) the seat belt status of the driver and front passenger; (b) engagement of the ABS; and (c) the vehicle roll angle. Generally, the event data recorder gathers a total of about 20 seconds worth of data concerning an automobile crash, including the 5 to 10 seconds before as well as seconds during and after the crash. ([source](#)). For more information on EDR’s, see [NHTSA’s webpage](#).
- The 4th Amendment warrant requirement to conduct searches has several exceptions. The State often claims that a warrantless blood draw is justified due to the “exigent circumstances” exception, which is an emergency situation where the time it would take to obtain a warrant could lead to the evidence becoming inaccessible.

4th Amendment to the U.S. Constitution: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Driver Privacy Act of 2015 Section 24302 - Limitations on data retrieval from vehicle event data recorders

(a) Ownership of data. Any data retained by an event data recorder (as defined in section 563.5 of title 49, Code of Federal Regulations), regardless of when the motor vehicle in which it is installed was manufactured, is



the property of the owner, or, in the case of a leased vehicle, the lessee of the motor vehicle in which the event data recorder is installed.

(b) Privacy. Data recorded or transmitted by an event data recorder described in subsection (a) may not be accessed by a person other than an owner or a lessee of the motor vehicle in which the event data recorder is installed unless—

(1) a court or other judicial or administrative authority having jurisdiction—

(A) authorizes the retrieval of the data; and

(B) to the extent that there is retrieved data, the data is subject to the standards for admission into evidence required by that court or other administrative authority;

(2) an owner or a lessee of the motor vehicle provides written, electronic, or recorded audio consent to the retrieval of the data for any purpose, including the purpose of diagnosing, servicing, or repairing the motor vehicle, or by agreeing to a subscription that describes how data will be retrieved and used;

(3) the data is retrieved pursuant to an investigation or inspection authorized under section 1131(a) or 30166 of title 49, United States Code, and the personally identifiable information of an owner or a lessee of the vehicle and the vehicle identification number is not disclosed in connection with the retrieved data, except that the vehicle identification number may be disclosed to the certifying manufacturer;

(4) the data is retrieved for the purpose of determining the need for, or facilitating, emergency medical response in response to a motor vehicle crash; or

(5) the data is retrieved for traffic safety research, and the personally identifiable information of an owner or a lessee of the vehicle and the vehicle identification number is not disclosed in connection with the retrieved data.

Texas Code of Criminal Procedure Article 18.02(a)(10)

“A search warrant may be issued to search for and seize...property or items...constituting evidence of an offense...”

In [Swearingen v. State, 101 S.W3d 89](#), the Texas Court of Criminal Appeals described another exception to the 4th Amendment’s warrant requirement: “abandonment.” If a defendant voluntarily abandons property, they no longer have standing to contest the reasonableness of a search of that property.



Issue #3:

Jones is claiming her 6th Amendment right to confront the witnesses against her was violated because the data from the EDR presented at trial was “inadmissible hearsay” and there is no way to cross examine a computer generated report.


Question: Did the officer’s testimony at trial violate the 6th Amendment Confrontation Clause because he presented the EDR data during his testimony?

Before you answer/decide, consider the following points of law and relevant information:

- **Hearsay** (noun) is defined as “information received from other people that one cannot adequately substantiate; rumor.”
 - In a legal context, *hearsay* is more specific and can be defined as “the report of another person's words by a witness.” Hearsay is generally inadmissible in court. For such a report to be admissible as evidence, the person that originally gave the report generally must appear as a witness themselves to testify as to the content of the report.
 - Used in a sentence: "everything they had told him would have been ruled out as *hearsay*."

Sixth Amendment to the U.S. Constitution: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; **to be confronted with the witnesses against him**; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.”

-
- In several cases, the Texas courts have had to grapple with whether a machine can make statements (or be a “declarant”). In one example, a court compared machines to bloodhounds, who are not persons and thus cannot be declarants. Texas courts have generally decided that hearsay problems are not present when a machine “talks,” transmits data, or otherwise communicates information.
 - Courts have made a distinction between “computer-generated data” and “computer-stored data”:
 - **Computer-stored data:** For example, during testimony, if an officer was reading information which had been entered by another person, such as



an email. This could constitute hearsay. This is an example of when a computer serves as a vehicle for storing or transmitting statements made by a person.

- **Computer-generated data:** In the same example, however, if the office was reading information which was automatically recorded by the machine, such as climatological data, it is probably not hearsay.

 - In 1996, the Fort Worth Court of Appeals considered whether breathalyzer (or “intoxilyzer”) results constitute hearsay. The court determined that a breathalyzer “is a computer, not a person” and “[b]y definition, therefore, the intoxilyzer is not a declarant.” See [Torres v. State, 109 S.W.3d 602 \(Tex. App.—Fort Worth \(2003\)\)](#).

 - In 2022, the Dallas Court of Appeals concluded that inputs from a driver “are not ‘statements’...The types of inputs the black box records, such as whether the brake or accelerator pedals were depressed or whether the steering wheel was being turned, do not constitute the driver's ‘oral or written verbal expression, or nonverbal conduct that [the driver] intended as a substitute for verbal expression.’” See [Nguyen v. State, 2022 Tex. App. LEXIS 6533 \(2022\)](#). The court also stated that even though “people programmed the software used to retrieve the data and render it as a legible report,” the printed EDR report does not equal *testimony*. They explained, “there can be no statements which are wholly machine-generated in the strictest sense; all machines were designed and built by humans. But certain statements involve so little intervention by humans in their generation as to leave no doubt that they are wholly machine-generated for all practical purposes.”
-



Issue #4:

Jones is claiming that her 8th Amendment protection from “cruel and unusual punishment” was violated because she received a 25-year sentence and this is her first impaired driving offense of any kind.

Question: Did the 25-year sentence violate Jones’s 8th Amendment protection from “cruel and unusual punishment”?

Before you answer/decide, consider the following points of law and relevant information:

8th Amendment to the U.S. Constitution: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

Article I, Section 13 of the Texas Constitution: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.”

- Intoxication Manslaughter (Texas Penal Code Section 49.08) is a second degree felony in Texas, which carries a sentence of 2-20 years and fines of up to \$10,000. Intoxication Manslaughter can be a first second felony, which carries a sentence of up to life in prison and a \$10,000 fine, if a firefighter, emergency medical services personnel, peace officer, or judge is killed as a result of the offense during the discharge of their official duties (Texas Penal Code Section 49.09(b-2)).
- “Grossly disproportionate” sentences may constitute cruel or unusual punishment.
- Sentences that fall within the statutory range are presumed to be proportionate and thus are not considered to be cruel or unusual. For a defendant to overcome this, they must present unusual circumstances that render their sentence disproportionate.
- A “mitigating factor” makes a bad thing less severe or serious. Some courts have stated that a defendant’s remorse is not a mitigating factor to support a shorter sentence when the sentencing guidelines are mandatory. But some have stated that a defendant’s *lack* of remorse and accepting responsibility for one’s own actions can be a factor in sentencing. See [State v. Young, 2018 Tenn. Crim. App. LEXIS 608](#), a Tennessee case.

Cars, the Constitution, and Courts Opinion of the Court

Your Name:

Cars, Constitutions, and Court - Opinion of the Court

"All rise...Oyez, oyez, oyez! The Honorable Texas Court of Appeals is now in session. All persons who have business before the Court are admonished to draw near and give their attention, for the Court is now in session!"

Instructions: After reading the facts of the case and the relevant law and cases, discuss the question for each issue with your partner. After discussion, record your answer to the question. Be sure to explain your reasoning and use the information you were given to support your answer!

Issue #1:

Amber is claiming that her 4th Amendment protection from "Unreasonable Search and Seizure" was violated because she did not consent to the blood draw for the blood alcohol (toxicology) test.

Question: Did police violate Amber's 4th Amendment rights when they took her blood sample and conducted a toxicology test to determine her blood-alcohol content?

Your answer and reasoning for Issue/Question #1:

Issue #2:

Amber is claiming that her 4th Amendment protection from "Unreasonable Search and Seizure" was violated because the data in the Event Data Recorder (or EDR, a.k.a. the "black box") in her car was her personal property and was obtained without a warrant.

Question: Did police violate Amber's 4th Amendment rights when they took the EDR from her car and analyzed it without her consent?

Your answer and reasoning for Issue/Question #2:



Issue #3:

Amber is claiming her 6th Amendment right to confront the witnesses against her was violated because the data used at trial from the Event Data Recorder (or EDR, a.k.a. the “black box”) is “inadmissible hearsay,” because there is no way to cross-examine the computer-generated report.

Question: Did the officer’s testimony at trial violate the 6th Amendment Confrontation Clause, because he presented the EDR data during his testimony?

Your answer and reasoning for Issue/Question #3:

Issue #4:

Amber is claiming that her 8th Amendment protection from “cruel and unusual punishment” was violated because she received a 10-35 year sentence and this is her first offense.

Question: Did the sentence of 10-35 years in prison violate Amber’s 8th Amendment protection from “cruel and unusual punishment” because it was her first offense (and she still insists it was an accident)?

Your answer and reasoning for Issue/Question #4:



Cars, the Constitution, and Courts Slide Presentation

INQUIRY

Based Learning

Cars, the Constitution, & Courts

**Btw, this case is based
on actual events...***

You and your partner sit on The Court of Appeals.

With your partner, you will need to decide:

1. Questions of LAW
2. Questions of MORALITY and FAIRNESS (which are different from questions of law!)

Be prepared to defend your conclusions to the class!

*Some details may have been altered, such as names and locations.



Meet Amber Tidmore.

Amber is on Summer Break!

LUCKY!



This is Daniel.

Amber and Daniel are friends.





**Amber and Daniel
are out on the night
of July 6, 2018.**



**What
questions
are you
asking
at
this point?**





Read the **Facts of the Case** and discuss with your partner. You should both be able to describe the crash and how the evidence supported a conviction.

— Think Like the Jury



Opinions

Before you analyze the appeal (and the potential errors of law), discuss your personal opinions on this case.

— Think Like Yourself (go ahead and get it out of the way so you can be **unbiased** when you need to be!)

In order to appeal her conviction, Amber must claim that there has been an Error of Law

- It is different from **factual errors** (such as believing the evidence was inaccurate).
- **The jury is the trier of fact** and decides what they believe to be the truth.
- Disagreeing with the jury's verdict is not a valid reason for appeal.
- **An error of law is a mistake** in which the law was not applied properly.
- **Example:** An error of law could be something the judge did incorrectly at trial.



With your partner, decide which of these are **EXAMPLES of Errors of Law** and which are **NON-EXAMPLES**.

— Think Like an Attorney!

1. Claiming that the defendant is innocent and the jury made a major mistake.



2. Claiming the jury overheard the bailiff talking about the evidence with the judge in the hallway when the trial was in recess.

3. Claiming the judge should have excluded the blood test (toxicology) evidence because police did not have a search warrant.

4. Claiming the expert witness for the defense had more experience and knowledge than the prosecution's witness.

5. Claiming the sentence is "cruel and unusual punishment" for a 1st time offender, because it is so long.

Were you right?

EXAMPLES of Errors of Law and NON-EXAMPLES:

1. Claiming that the defendant is truly innocent and a major miscarriage of justice has taken place.
2. **Claiming the jury overheard the bailiff talking about the evidence with the judge in the hallway when the trial was in recess.**
3. **Claiming the judge should have excluded the blood test (toxicology) evidence because police did not have a warrant.**
4. Claiming the expert witness for the defense had more experience and knowledge than the prosecution's witness.
5. **Claiming the punishment amounts to "cruel and unusual punishment."**



Court of Appeals

Now, you will evaluate Amber's claims on Appeal. She is claiming 4 separate Errors of Law in her case.

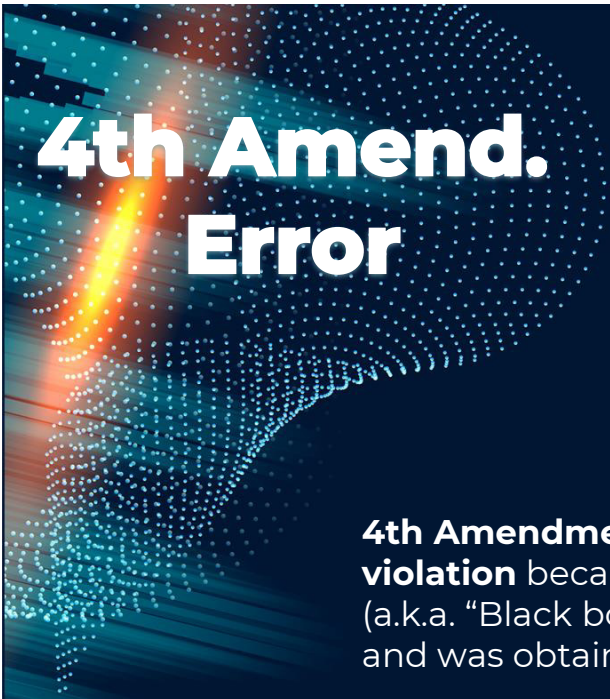
— Think Like a Judge on the Court of Appeals



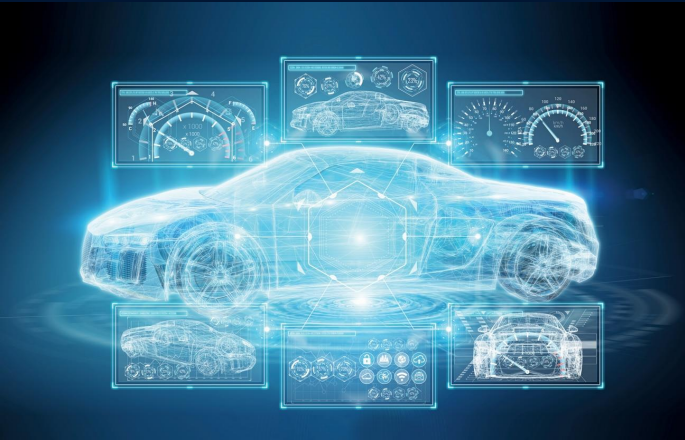
4th Amend. Error



4th Amendment Unreasonable Search and Seizure violation because she did not consent to the blood draw for the blood alcohol (toxicology) test.



4th Amend. Error



4th Amendment Unreasonable Search and Seizure violation because the data in the Event Data Recorder (a.k.a. "Black box") in her car was her personal property and was obtained without a warrant.



6th Amend. Error



6th Amendment Confrontation Clause violation, claiming that the data from the Event Data Recorder (a.k.a. "black box") in her car equals inadmissible hearsay and that there is no way to cross-examine the computer-generated report used at trial.

8th Amend. Error

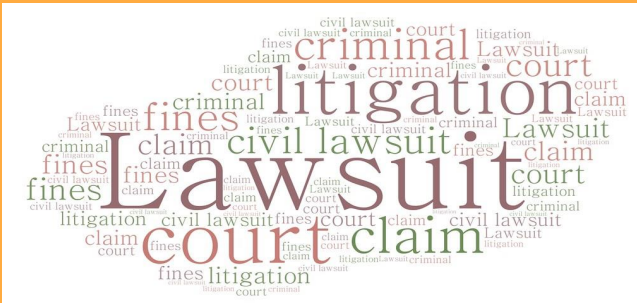


8th Amendment Cruel and Unusual Punishment for the sentence of 10-35 years. (See also: Article I, Section 13 of the Texas Constitution)

Side Note: Amber is also being sued for \$1.2 million by Leif Culver (injured) and for \$3 million by the parents of Daniel McRay (deceased). The constitutional protections above (and others like the “right to remain silent”) do not extend to civil cases where Amber is subject to depositions and discovery. The “burden of proof” in civil cases is also lower than in criminal cases.

Criminal Cases = Beyond a Reasonable Doubt [99.9%]

Civil Cases = Preponderance of the Evidence [>50%]



It could happen to you.

— Criminal charges, jail time, and lawsuits aren't hypothetical outcomes.



May 2022, Harris County - [Link](#)

Summary: Amber is alleging the following Errors of LAW in her appeal:

4th Amendment Unreasonable Search and Seizure violation

because she did not consent to the blood draw for the blood alcohol (toxicology) test.

4th Amendment Unreasonable Search and Seizure violation

because the data in the Event Data Recorder (a.k.a. "Black box") in her car was her personal property and was obtained without a warrant.

6th Amendment Confrontation Clause violation, claiming that the data from the Event Data Recorder (a.k.a. "black box") in her car equals inadmissible hearsay and that there is no way to cross-examine the computer-generated report used at trial.

8th Amendment Cruel and Unusual Punishment for the sentence of 10-35 years. (See also: Article I, Section 13 of the Texas Constitution)



With your partner, discuss the 4 issues that form the basis for Amber's appeal. Be prepared to use the information in the legal background to support your decisions regarding each ERROR/Question of Law!

