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John Calvin Taylor II v. State of Florida

MR. CHIEF JUSTICE

GOOD MORNING AND WELCOME TO THE ORAL ARGUMENT CALENDAR AT THE FLORIDA SUPREME COURT. WE ARE PARTICULARLY PLEASED TO HAVE WITH US, THIS MORNING, DR. MYERS'S CLASS FROM FLORIDA A&M, ON THE AMERICAN COURT SYSTEM. WE ARE ALWAYS PLEASED TO HAVE ALL OF THE VISITORS HERE, TO PARTICIPATE IN OUR ORAL ARGUMENT. SO THE FIRST CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS TAYLOR VERSUS STATE OF FLORIDA. MS. CAREY.

THANK YOU, YOUR HONOR. CHIEF JUSTICE WELLS, THIS HONORABLE COURT, MY NAME IS NADA CAREY, AND I AM REPRESENTING JOHN TAYLOR, THE APPELLANT. MR. TAYLOR WAS CONVICTED OF FIRST-DEGREE MURDER AND ROBBERY IN THE DEATH OF A YOUNG WOMAN IN CLAY COUNTY, FLORIDA.

COULD YOU SPEAK UP? MR. CHIEF JUSTICE

WOULD YOU MIND PULLING THE MICROPHONE.

IS THAT BETTER? MR. CHIEF JUSTICE

THANK YOU.

THE TRIAL JUDGE, FINDING THREE AGGRAVATORS AND THREE MITIGATING CIRCUMSTANCES, SENTENCED MR. TAYLOR TO DEATH. I PLAN TO FOCUS MY ARGUMENT, TODAY, ON THE SEARCH AND SEIZURE ISSUE. THERE ARE SEVERAL OTHER IMPORTANT ISSUES I WOULD LIKE TO JUST FLAG FOR THE COURT. THE HEARSAY ISSUE, THE CHAIN OF CUSTODY ISSUE, AND THE UNDER SENTENCE OF IMPRISONMENT AGGRAVATOR ISSUE. I WILL ONLY, I DO BELIEVE THOSE THREE ISSUES ARE ADEQUATELY BRIEFED, SO I WILL ONLY COME TO THOSE ISSUES, TODAY, IF TIME PERMITS. TURNING TO THE SEARCH AND SEIZURE ISSUE, I WOULD LIKE TO FOCUS THE COURT'S ATTENTION ON THREE JUNCTURES IN THE UNFOLDING ENCOUNTER BETWEEN MR. TAYLOR AND THE POLICE ON THE DAY OF HIS ARREST, AND WITH REGARD TO EACH OF THOSE THREE JUNCTURES, THE COURT MUST DETERMINE THE FOLLOW FOLLOWING. FIRST, WHETHER THERE WAS AN INTRUSION OR SEIZURE UNDER THE FOURTH AMENDMENT. SECOND, IF SO, WHETHER THE INTRUSION THAT CONSTITUTIONAL SAFEGUARD, AND IF THERE WAS AN ILLEGAL DETENTION OR INTRUSION, UNDER THE FOURTH AMENDMENT, WHETHER ANY EVIDENCE SEIZED WAS THE PRODUCT OF THAT ILLEGALITY.

COULD YOU GIVE US A BRIEF THUMBNAIL SKETCH OF THE UNLYING FACTS. - OF THE UNDERLYING FACTS. THAT IS THE CIRCUMSTANCES. AS I RECALL AT THAT TIME, THE VICTIM HAD BEEN REPORTED MISSING WITH A SUBSTANTIAL AMOUNT OF MONEY THAT SHE HAD TO DEPOSIT FOR THE BUSINESS, AND THE CIRCUMSTANCES OF THE POLICE BEING AT THE DEFENDANT'S TRAILER HOME AT THAT TIME. IN OTHER WORDS CAN YOU FLESH THAT OUT A LITTLE BIT, SO THAT WE CAN SEE HOW USUAL ISSUES RELATE TO THAT.

YES, YOUR HONOR. THE VICTIM WAS REPORTED MISSING THAT MORNING, THE MORNING THAT THE POLICE WENT TO MR. TAYLOR'S TRAILER. THEY HAD DISCOVERED THAT SHE HAD NOT BEEN SEEN SINCE THE DAY BEFORE, AROUND NOON. SHE WAS LAST SEEN LEAVING HER FAMILY STORE, TO MAKE A DEPOSIT AT THE BANK IN GREEN COVE SPRINGS.

WITH TAYLOR, IS THAT CORRECT?

YES. SHE, TAYLOR WAS IN THE FRONT SEAT OF HER CAR. SHE MENTIONED TO SEVERAL WITNESSES THAT SHE WAS GIVING HIM A RIDE.

AND SHE HAD A SUBSTANTIAL AMOUNT OF CASH?

THAT'S CORRECT. SEVERAL THOUSAND DOLLARS. SO THAT IS WHAT THE POLICE KNEW, WHEN THEY WENT TO TAYLOR'S TRAILER.

HAD THE POLICE ALREADY SPOKEN TO THE WITNESSES THAT HAD TOLD THEM WHAT SHE TOLD THEM?

THEY HAD SPOKEN TO AT LEAST ONE OF THEM. SO WHEN THEY ARRIVED AT THE TRAILER, THEY KNEW THAT A WOMAN WAS MISSING, THAT SHE HAD FAILED TO MAKE THE BANK DEPOSIT, AND THAT TAYLOR WAS THE LAST PERSON, AS FAR AS THEY KNEW, THAT HAD BEEN SEEN WITH HER.

HOW ABOUT THEIR ENTRY INTO THE TRAILER? WAS THAT WITH THE CONSENT OF THE OTHER OCCUPANT OF THE TRAILER?

ACCORDING, APPARENTLY, TO THE POLICE TESTIMONY, MR. JUNK I KNOW INVITED THEM -- MR. JUNKIN INVITED THEM HIM OR LET THEM IN. HE TOLD THEM THAT MR. TAYLOR WAS NOT THERE.

THE POLICE INSIDE THE TRAILER HOME IS NOT IN CONTROVERSY.

THAT'S CORRECT. THEY WERE INVITED IN. IT IS OUR CONTENTION THAT THEIR ACTIONS WERE SUCH THAT, A REASONABLE PERSON IN MR. TAYLOR'S POSITION WOULD HAVE FELT THAT HIS FREEDOM OF MOVEMENT WAS RESTRICTED AND THAT HE WAS THERE FOR SEIZED OR DETAINED, ACTUALLY, INSIDE HIS HOME. THE CRITICAL FACTS ARE MR. TAYLOR APPARENTLY WAS IN THE SHOWER, WHEN THE POLICE WERE ALLOWED INTO THE TRAILER. HE GOT OUT OF THE SHOWER AND WALKED INTO THE LIVING ROOM, WHERE HE WAS CONFRONTED WITH TWO OFFICERS AT THAT TIME. THERE WAS ALSO A CIVILIAN WHO ACCOMPANIED ONE OF THOSE OFFICERS, WHO APPARENTLY DID NOT GO INSIDE THE TRAILER BUT STOOD AT THE THRESHOLD OF THE DOOR THE ENTIRE TIME THAT HE WAS THERE.

WHAT DOOR ARE WE TALKING ABOUT? I THOUGHT HE WAS AT THE DOOR OF THE ROOM WHERE THE DEFENDANT WAS ACTUALLY GETTING DRESSED. HE WAS NOT THERE? HE WAS ON THE OUTSIDE DOOR?

THE CIVILIAN WAS THE DOOR BETWEEN THE TRAILER AND THE OUTSIDE. NOW, ANOTHER OFFICER FOLLOWED MR. TAYLOR AT THAT POINT. BACK THROUGH THE TRAILER, THROUGH THE LIVING ROOM TO THE BATHROOM, TO WATCH HIM WHILE HE GOT DRESSED. THE OFFICER APPARENTLY SAID WE ARE POLICE. WHY DON'T YOU GET DRESSED, OR WE DON'T KNOW EXACTLY WHAT WORD TO USE, BUT HE SUGGESTED TO MR. TAYLOR THAT HE GOT DRESSED. HE FLOWED MR. TAYLOR BACK TO HIS BATHROOM AND STOOD AT THE THRESHOLD OF THE BATHROOM DOOR, TO OBSERVE HIM WHILE HE GOT DRESSED, TO MAKE SURE, ACCORDING TO THE OFFICER, THAT HE DID NOT GET A WEAPON.

AND THAT WAS PART OF YOUR DETENTION, YOU ARE SAYING.

YES. THAT, WE CONTEND, IS ONE OF THE CRITICAL FACTS THAT WOULD HAVE LED ANYBODY, UNDER THESE CIRCUMSTANCES, TO BELIEVE THAT, NUMBER ONE, THE POLICE HAD AUTHORITY TO BE THERE, AND THAT HE DID NOT HAVE THE RIGHT TO REFUSE TO COOPERATE, AND THAT HIS FREEDOM OF MOVEMENT WAS RESTRICTED: THE OTHER CRITICAL FACTS INCLUDE THEY WALKED BACK INTO THE LIVING ROOM AT THAT POINT, AND THE OFFICERS INFORMED TAYLOR WE ARE

INVESTIGATING A MISSING PERSON. SHE WAS LAST SEEN WITH YOU.

DID TAYLOR DO ANYTHING THAT WE COULD INTERPRET AS WANTING THE POLICE TO LEAVE THE PREMISES OR HIM WANTING TO LEAVE THE PREMISES, WITHOUT THE POLICE?

THERE IS NO EVIDENCE THAT HE ASKED THEM TO LEAVE OR THAT HE INDICATED HE WANTED THEM TO LEAVE. HOWEVER, THAT IS NOT THE ISSUE. THE QUESTION IS NOT WHETHER HE WAS ACTUALLY DETAINED, AND I THINK THE EVIDENCE SHOWS THAT HE WAS ACTUALLY DETAINED, BUT THE ISSUE IS WHETHER, IN LOOKING AT IT FROM HIS POINT OF VIEW, AS A REASONABLE PERSON, HE WOULD HAVE FELT THAT HE WAS BEING RESTRICTED.

WHAT DOES THE RECORD SHOW ABOUT WHO GAVE THE PERMISSION FOR THE POLICE TO COME IN AND WHAT THAT PERSON WAS DOING THERE IN THE MOBILE HOME?

THE PERSON WAS MICHAEL MacJUNKIN WHO, AT THAT TIME BOTH MR. TAYLOR AND MR. MacJUNKIN BELIEVED THAT THEY WERE FATHER AND SON. IT WAS LATER REVEALED --

HOW OLD WAS MacJUNKIN?

HE WAS 19 YEARS OLD. THE EVIDENCE IS THAT THE OFFICERS KNOCKED ON THE DOOR. HE ANSWERED THE DOOR. THEY ASKED IF MR. TAYLOR WAS PRESENT, AND MR. MacJUNKIN MOTIONED THEM IN.

HE LIVED THERE?

HE WAS LIVING THERE. YES.

WHAT IS, IF HE, WHAT IS THE SIGNIFICANCE, IF HE IS DETAINED AT THAT POINT, WHERE THEY FOLLOW HIM BACK, BUT AT THAT POINT THERE IS NOTHING THAT, HE SAYS THAT IS INCRIMINATING, BUT THEN THIS, AND I KNOW YOU ARE GOING TO GET TO THE NEXT ENCOUNTER AND THE NEXT LEVEL, BUT THAT REASONABLE SUSPICION IS DEVELOPED, WHEN HE MAKES A FURTIVE MOVEMENT ON THE COUCH, AND, ARE YOU GOING TO SEPARATE EACH ONE, OR ARE WE SUPPOSED TO LOOK AT THIS WHOLE THING AS A CONTINUUM, AND THEN TRY TO PIECE TOGETHER

--

I THINK YOU DO HAVE TO LOOK AT EACH SPECIFIC JUNCTURE OF WHAT HAPPENED, AND THEN DETERMINE WHETHER ANY ILLEGALITY CAUSED OR WHETHER ANY SEARCH THAT OCCURRED THERE AFTER WAS THE RESULT OF THE PRIOR ILLEGALITY.

FOR EXAMPLE IF, WHEN WE GET TO THE COUCH AND THE FURTIVE MOVEMENT, WITH WHAT THEY KNEW ABOUT THE CIRCUMSTANCES OF THE DISAPPEARANCE, TOGETHER, RISE TO REASONABLE SUSPICION, WOULD THAT BE -- WOULD IT MATTER WHETHER HE HAD FOLLOWED THEM BACK OR NOT, IF THEY HAD DEVELOPED REASONABLE SUSPICION?

YES, YOUR HONOR, IT WOULD MATTER, BECAUSE AT THE TIME THAT HE MADE THE FURTIVE MOVEMENT, HE WAS BEING ILLEGALLY DETAINED, AND IF THE OFFICERS HAD PROBABLE CAUSE OR REASONABLE REASON TO FEAR FOR THEIR SAFETY AT THAT POINT, THEY ONLY HAD, AND WE DON'T CONTEND THAT THEY DID, BUT EVEN IF THEY DID, THEY ONLY HAD THAT FEAR BECAUSE THEY WERE IN A PLACE WHERE THEY SHOULD NOT HAVE BEEN. IT WAS A PRODUCT OF THEM HAVING ILLEGALLY -- ILLEGALLY DETAINED MR. TAYLOR IN THE FIRST PLACE. IT WAS A NUMBER OF CIRCUMSTANCES THAT ESTABLISHED THAT.

THEY WERE IN THE TRAILER WITH THE PERMISSION OF THE SON, SO THEY ARE WHERE THEY ARE ALLOWED TO BE, BY THE SON HAVING LET THEM IN.

THEY WERE UNUSUALLY THERE LEGALLY, BUT IT IS OUR CONTENTION THAT, ONCE THEY HAD DETAINED MR. TAYLOR INSIDE THAT TRAILER, AN ILLEGAL DETENTION BEGAN AND CONTINUED.

WHAT CONVERSATION, RELATIVE TO YOU KEEP SAYING THEY HAD DETAINED HIM AT THAT POINT. WHAT CONVERSATION WOULD LEAD HIM TO BELIEVE THAT HE WAS BEING RESTRAINED AT THAT POINT?

IT WASN'T THE CONVERSATION, YOUR HONOR. IT WAS THE POLICE ACTIONS. TWO OFFICERS, TWO ARMED OFFICERS IN HIS LIVING ROOM, ONE OF THEM HAD FOLLOWED HIM BACK TO THE BATHROOM TO WATCH HIM, AS HE -- HE HAD A TOWEL ON. TO WATCH HIM GET DRESSED. I THINK THAT --

THEIR EXPLANATION WAS THAT THEY FOLLOWED HIM BACK, TO SEE THAT HE DIDN'T GET A WEAPON OF SOME SORT.

THAT'S CORRECT. THAT THEY DON'T, THEY ARE NOT ENTITLED TO DO THAT, YOUR HONOR, UNDER THE FOURTH AMENDMENT, UNLESS THEY HAVE PROBABLE CAUSE TO BELIEVE HE IS ARMED AND DANGEROUS.

SO THE OFFICER --

THE ISSUE HERE IS NOT WHETHER WHAT THEY DID WAS REASONABLE. OR WHETHER IT MADE SENSE. THE ISSUE IS WHETHER WHAT THEY DID GAVE HIM REASON TO BELIEVE HE WAS RESTRICTED.

IF THEY HAD STAYED IN THE LIVING ROOM OR FIRST ROOM OF THE TRAILER AND LET HIM GO BACK TO THE BEDROOM BY HIMSELF, WOULD YOU STILL ARGUE THAT HE WAS BEING ILLEGALLY DETAINED? IS IT THE FACT THAT HE FOLLOWED HIM TO THE BEDROOM, THE DETENTION?

I THINK IT WOULD BE A MUCH CLOSER CASE. HOWEVER, THERE ARE OTHER ACTIONS THAT OCCURRED AFTER THAT, THAT I THINK CONTRIBUTED TO THE AURA OF OFFICIAL AUTHORITY THAT EXISTED AT THIS TIME. FOR EXAMPLE, AT THAT, AFTER HE TOLD THEM HE ANSWERED THE QUESTION, TWO MORE POLICE PATROL CARS ARRIVED. TWO MORE OFFICERS ARRIVED. THEY WENT INSIDE THE TRAILER. THEY DIDN'T KNOCK. THEY DIDN'T REQUEST PERMISSION TO ENTER. YOU HAVE THIS ONGOING SITUATION, WHERE OFFICERS, THERE IS FIVE PEOPLE THERE AT ONE POINT. FOUR OFFICERS GOING IN AND OUT OF THE TRAILER AT WILL, NOT ASKING PERMISSION TO DO ANYTHING WHATSOEVER. THERE IS ALSO --

SO IT IS A SHOW OF FORCE. IS THAT YOUR ARGUMENT?

IT IS A SHOW OF OFFICIAL AUTHORITY. THEY ASSERTED CONTROL IMMEDIATELY, AS SOON AS THEY WERE INSIDE THE TRAILER, OVER TAYLOR, AND I THINK THE UNAMBIGUOUS MESSAGE FROM ALL OF THEIR ACTIONS, WAS THAT HIS COOPERATION WAS REQUIRED. IT WAS NEVER REQUESTED. NO REQUEST WAS EVER MADE OF MR. TAYLOR. WE WOULD LIKE TO TALK TO YOU. WOULD YOU AGREE TO TALK TO US. THROUGHOUT THIS ENTIRE ENCOUNTER ALL THE WAY TO THE POINT WHERE HE TRANSPORTED DOWN TO THE POLICE STATION, HE IS NEVER ASKED IS HE WILLING TO DO ANY OF THIS.

SO NOTHING WAS SAID BY THE POLICE TO HIM. THEY JUST FOLLOWED HIM INTO THE BEDROOM.

THAT'S CORRECT.

NO. THEY SAID SOMETHING FIRST. THEY SAID -- DID THEY SAY WE WANT TO TALK TO YOU? WE WANT YOU TO COME DOWN TO THE STATION TO TALK ABOUT THE DISAPPEARANCE? WHAT WAS THE --

MY RECOLLECTION IS THAT INITIALLY, THE OFFICER IDENTIFIED HIMSELF AS POLICE AND SUGGESTED, TO MR. TAYLOR, THAT HE GOT DRESSED. THAT WAS THE ONLY CONVERSATION BEFORE HE WAS FOLLOWED TO THE BATHROOM. WHEN HE CAME OUT OF THE BATHROOM THEY INFORMED HIM ABOUT THE MISSING WOMAN. HE WAS LAST SEEN WITH HER.

HELP US, TOO, WITH THIS PHYSICAL SETTING, THAT IS THAT OBVIOUSLY WE ARE NOT TALKING ABOUT A MULTISTORIED HOUSE, WHERE PEOPLE GO UP THE STAIRS AND INTO A BEDROOM OR WHATEVER. TO THE EXTENT IT WAS DESCRIBED IN THE RECORD, CAN YOU HELP US WITH, IF I UNDERSTAND IT CORRECTLY, THIS WAS A VERY SMALL TRAILER.

YES, SIR.

YOU ARE TALKING ABOUT VERY SMALL DISTANCES. IS THAT CORRECT?

IT IS VERY TINY, AND YOUR HONORS CAN LOOK, THERE ARE PICTURES IN THE RECORD, AT LEAST FROM THE OUTSIDE. IT LOOKS LIKE A TWO-ROOM TRAILER. YOU CAN SEE RIGHT INSIDE THE DOOR. THERE IS A CHAIR RIGHT INSIDE THE DOOR THAT WAS THE CHAIR HE WAS SITTING IN, WHEN HE ALLEGEDLY TOOK SOMETHING OUT OF HIS POCKET AND PUT IT UNDER THE CHAIR CUSHION, BUT A VERY TINY TRAILER, AND AT ONE POINT, THERE WERE THREE OR FOUR OFFICERS IN THERE WITH HIM, AND WITH HIM THROUGHOUT THIS ENCOUNTER.

IS IT SAFE TO ASSUME THAT YOU WOULD HAVE A VIEW INTO THESE BEDROOMS, ASSUMING THAT THE DOORS ARE NOT CLOSED, EVEN FROM THE ORIGINAL ENTRY AREA OF THE TRAILER?

I DON'T KNOW THAT WE CAN ASSUME THAT. APPARENTLY HE HAD TO WALK THROUGH A LIVING ROOM AND THEN INTO A BEDROOM THAT WAS OFF THE LIVING ROOM, AND THEN INTO A BATHROOM, SO I DON'T THINK YOU CAN ASSUME THAT YOU COULD SEE EVERYTHING IN THE TRAILER FROM THE LIVING ROOM. MR. CHIEF JUSTICE

MS. CAREY, I THINK YOU HAVE SOME OTHER POINTS.

OKAY. I WOULD LIKE TO JUST TURN TO THE SECOND JUNCTURE OF AND THIS IS WHEN THE OFFICERS HANDCUFFED HIM AND FRISKED HIM AND REMOVED HIM FROM THE TRAILER AND PLACED HIM IN THE BACK OF THE PATROL CAR. AND --

THIS IS AFTER THE FURTIVE MOVEMENT. THIS IS AFTER THE MOVEMENT THAT THEY OBSERVED?

YES. YES. AND WE HAVE ARGUED THAT THE POLICE DID NOT HAVE REASONABLE SUSPICION TO SEARCH UNDER THE CHAIR CUSHION. OF COURSE IF THE PRIOR INTRUSION WAS ILLEGAL, THEN THAT WOULD HAVE TAINTED THE SEARCH AT THAT POINT, AND ANYTHING THAT WAS RETRIEVED FROM THAT SEARCH WOULD NOT BE ADMISSIBLE, BUT EVEN IF THAT SEARCH WERE PERMISSIBLE, EVEN IF THEY HAD REASONABLE SUSPICION AT THAT POINT, THE HANDCUFFING AND THE FRISK AND THE REMOVAL OF MR. TAYLOR FROM HIS TRAILER EXCEEDED THE SCOPE OF ANY PERMISSIBLE DETENTION AT THAT POINT.

WELL, WHAT WAS, WHAT WOULD BE THE EFFECT, THEN, OF THE MOVEMENT THAT THE OFFICER OBSERVED, HIM PUTTING SOMETHING OR IT LOOKED LIKE HE WAS PUTTING SOMETHING UNDER THE CUSHION OF THE SEAT? WHAT EFFECT WOULD THAT HAVE ON THE WHOLE REASONABLE SUSPICION AND PROBABLE CAUSE THAT THE POLICE OFFICER MAY HAVE DEVELOPED?

I AM NOT QUITE SURE.

THEIR MOVEMENT MADE THE ARGUMENT. THEIR ARGUMENT IS THAT THEY COULD NOT HAVE DONE ANYTHING AS A RESULT, IF THEY HAD NOT OBSERVED THAT MOVEMENT?

THAT IS ESSENTIAL. IF THIS ENCOUNTER IS MR. TAYLOR MERELY TAKING SOMETHING OUT OF HIS BACK POCKET AND PUTTING IT UNDER THE CHAIR CUSHION, THE OFFICERS HAD NO REASON TO BELIEVE THAT IT WAS A GUN R THAT HE WAS ARMED OR THAT HE WAS DANGEROUS OR A THREAT TO THEIR SAFETY IN ANY WAY. HE HAS BEEN COOPERATIVE THROUGHOUT THE ENTIRE ENCOUNTER. IN FACT THEY HAD ALREADY FOLLOWED HIM TO THE BATHROOM TO MAE SURE HE WASN'T ARMED.

WHAT ABOUT THE KNOWLEDGE, THOUGH, THAT THE POLICE HAD, THAT THERE WAS A SUBSTANTIAL AMOUNT OF CASH WITH THE VICTIM, WHEN SHE WAS MISSING, OKAY, AND SHE MISSING AT THAT POINT, AND THAT TAYLOR WAS THE LAST PERSON TO BE SEEN WITH HER. OBVIOUSLY THAT IS WHY THEY ARE THERE. WHY WOULDN'T A REASONABLE POLICE OR EXPERIENCED POLICE OFFICER THINK THAT SOMEBODY THAT WAS APPARENTLY TRYING TO HIDE SOMETHING THERE, THAT IT WAS CONNECTED TO THE POLICE VISIT ABOUT THE MISSING WOMAN THAT HAD THE CASH AND THAT TAYLOR WAS THE LAST ONE TO BE WITH HER? WHY WOULDN'T THAT BE A LOGICAL CONCLUSION FOR AN OFFICER TO DRAW, IF THAT IS THE PERSON THEY ARE THERE TO SEE THAT WAS LAST SEEN WITH HER, AND HE IS TRYING TO HIDE SOMETHING FROM THEM?

I THINK ANY TIME A CITIZEN, YOU KNOW, PUTS HIS HANDS IN HIS POCKETS OR BEHIND HIS BACK OR ATTEMPTS TO CONCEAL SOMETHING, THE POLICE ARE GOING TO SUSPECT, BUT I DON'T THINK IT GOES FAR ENOUGH. I THINK IT IS A SUSPICION, BUT I DON'T THINK IT ESTABLISHES EITHER REASONABLE SUSPICION THAT HE WAS INVOLVED IN THE CRIME.

BUT WE ARE NOT TALKING ABOUT ANY CITIZEN HERE, ARE WE? AREN'T WE NOW TALKING ABOUT SOMETHING FAR MORE SPECIFIC? WE ARE TALKING ABOUT THE PERSON WHO WAS LAST SEEN WITH A WOMAN WHO HAD A SUBSTANTIAL AMOUNT OF CASH AND HAS NOW GONE MISSING, SO THIS ISN'T, YOU KNOW, SORT OF A TRAFFIC STOP, WHERE SOMEBODY REACHES OVER TO THE OTHER SEAT OR THOSE KINDS OF THINGS LIKE THAT, WHERE THERE IS REALLY NO -- AREN'T THE POLICE ENTITLED TO PLUG INTO THEIR CALCULATION, ABOUT WHAT MIGHT BE GOING ON WITH THIS FURTIVE MOVEMENT OR HIDING SOMETHING, THE OTHER INFORMATION THAT THEY KNOW, ALREADY, IN TERMS OF TAYLOR'S POSSIBLE CONNECTION TO THIS MISSING WOMAN WITH THE SUBSTANTIAL AMOUNT OF CASH?

I DON'T THINK IT ESTABLISHES REASONABLE SUSPICION, YOUR HONOR.

OKAY. BUT DO YOU AGREE THEY ARE ENTITLED TO PLUG THAT INTO THE CIRCUMSTANCE?

ABSOLUTELY. BUT AT THIS POINT, THEY DON'T EVEN KNOW THAT A CRIME HAS BEEN COMMITTED. SHE IS MISSING, BUT SHE COULD BE ANYWHERE. SHE COULD HAVE GONE ON HER OWN ACCOUNT. IT IS SUSPICIOUS, GRANTED. I CAN SEE T IS SUSPICIOUS. BUT I DON'T THINK IT ESTABLISHES -- POLICE HAVE TO HAVE REASONABLE SUSPICION THAT A CRIME HAS BEEN COMMITTED, AND THAT HE WAS INVOLVED IN THE CRIME. AT THIS POINT, I DON'T THINK THEY HAVE THAT. AND INsofar AS SEARCHING, MAKING A SEARCH AT THIS POINT, THEY HAVE TO HAVE PROBABLE CAUSE --

WHAT DID THEY DO, AFTER THEY SAW HIM APPARENTLY TRY -- IN OTHER WORDS AN OFFICER TESTIFIED THAT HE SAW THEM PLACE SOMETHING UNDER THE CUSHION OF WHAT? A CHAIR OR A COUCH?

CHAIR CUSHION. HE WAS APPARENTLY SITTING IN A CHAIR, AND HE TOOK SOMETHING OUT OF HIS PANTS POCKET, IT LOOKED LIKE, AND PUT IT UNDER THE CUSHION.

AND WHAT HAPPENED NEXT?

THE OFFICER, THEN, ASKED MR. TAYLOR TO WALK INTO THE KITCHEN, SO THERE WAS NO DETENTION BEFORE, THERE CERTAINLY WAS AT THAT POINT, AND THEN ASKED HIM WHAT DID

YOU PUT UNDER THE CUSHION, AND HE SAID NOTHING. MAY I LOOK? GO AHEAD.

SO HE GAVE THEM PERMISSION TO LOOK UNDER THE CUSHION. BUT WHY IS THERE AN ISSUE ABOUT THEM BEING ABLE TO LOOK UNDER THE CUSHION?

HE GAVE CONSENT, BUT IT IS OUR CONTENTION, YOUR HONOR, THAT THE CONSENT WAS NOT VOLUNTARY, BECAUSE IT WAS A PRODUCT OF THE PRIOR ILLEGALITY, THE ILLEGAL DETENTION IN THE FIRST PLACE.

WELL, IF THEY DIDN'T HAVE DETENTION OR REASONABLE SUSPICION OR ARTICULABLE SUSPICION BEFORE, IF YOU CAN RESPOND TO THE REST OF THE QUESTION I ASKED YOU, WHY DIDN'T THEY HAVE IT AT THAT TIME THAT, IS AT THE TIME THAT HE HID SOMETHING UNDER THE CUSHION, COMBINED WITH WHAT THEY KNEW BEFORE THAT?

BECAUSE THEY DIDN'T HAVE SUFFICIENT EVIDENCE TO BELIEVE THAT A CRIME HAD BEEN COMMITTED AT THAT POINT. ALL THEY HAD WAS SUSPICION.

ISN'T THAT ALL THEY NEED, AS LONG AS IT IS BASED ON ARTICULABLE CIRCUMSTANCES?

THEY NEED REASONABLE SUSPICION THAT A CRIME HAS BEEN COMMITTED. ALL THEY HAVE IS A MISSING PERSON. I DON'T THINK, WITH THE MISSING PERSON, THEY CAN MAKE THE LEAP THAT A CRIME HAS ACTUALLY BEEN COMMITTED.

WE ARE NOT TALKING ABOUT PROBABLE CAUSE. GO AHEAD.

HOW ABOUT THE FAILURE TO DEPOSIT THE MONEY? WAS THAT ANY, IS THAT A CRIME? HOW DOES THAT FIT INTO --

THE WOMAN HAD NOT MADE THE DEPOSIT. THEY WERE AWARE THAT SHE HAD NOT MADE THE DEPOSIT.

SO WE HAVE MISSING MONEY, ALSO, IN ADDITION TO A MISSING PERSON.

ABSOLUTELY. THAT'S CORRECT.

WASN'T A PARTIAL DEPOSIT MADE MADE? YOU SAY A DEPOSIT WAS NOT MADE. IT WAS MY UNDERSTANDING THAT A PARTIAL DEPOSIT WAS MADE.

SHE DID MAKE ANOTHER DEPOSIT FOR A NEIGHBOR OF HERS, BUT THE POLICE WEREN'T AWARE OF THAT, I DON'T BELIEVE, AT THE TIME THAT THEY WENT TO MR. TAYLOR'S TRAILER. LET ME JUST MOVE ON, IF I CAN. JUST ASSUMING THEY HAD REASONABLE SUSPICION TO MAKE THE SEARCH AT THAT POINT AND TO DETAIN MR. TAYLOR AT THE POINT THAT HE MADE THE FURTIVE GESTURE WE WOULD STILL CONTEND THAT THEIR ACTIONS THEREAFTER EXCEEDED THE SCOPE OF ANY DETENTION, UNDER A TERRY ANALYSIS.

THEY FOUND CASH. IS THAT CORRECT?

THEY FOUND CASH. SO NOW THEY KNOW THAT HE HAS CASH. THEY KNOW THAT A WOMAN IS MISSING AND THAT MONEY IS MISSING AND THAT HE HAS CASH.

AND THAT HE HAS HIDDEN THE CASH BENEATH THE CUSHION.

THAT'S CORRECT. SO AT THAT POINT, WHAT THEY DO IS THEY PULL THEIR GUN. THEY HANDCUFF IM. THEY FRISK HIM. THEY FIND NO WEAPON. AND THEY REMOVE HIM FROM HIS TRAILER AND PLACE HIM IN THE BACKSEAT OF THE PATROL CAR. NOW, UNDER TERRY, WHAT IS ALLOWED IS A BRIEF DETENTION TO QUESTION THE INDIVIDUAL, AND IF THE QUESTIONING DOES NOT RESULT IN

PROBABLE CAUSE, WITHIN A REASONABLE TIME, THE PERSON MUST BE RELEASED. THAT IS THE WHOLE POINT OF TERRY. TERRY DOES NOT ALLOW THE POLICE TO DETAIN SOMEONE AND INTERROGATE HIM. ALL THEY CAN DO IS HOLD HIM BRIEFLY, TO VERIFY OR DISPEL THEIR SUSPICIONS.

ADD A LITTLE MORE TO THIS MIX. HE HAD A NEGATIVE BALANCE IN HIS ACCOUNT, IMMEDIATELY BEFORE THIS.

THE POLICE WERE NOT AWARE OF THAT, YOUR HONOR.

AND IMMEDIATELY AFTER, HE MADE A DEPOSIT, A CASH DEPOSIT, IS THAT CORRECT?

THE POLICE WERE NOT AWARE OF THOSE FACTS, AT THE TIME OF THE ARREST.

BUT THAT IS A FACT, IS IT NOT NOT?

HE DEPOSITED SOME CASH IN HIS ACCOUNT THAT, THE DAY BEFORE. I AM NOT SURE IF THAT IS WHAT YOU ARE REFERRING TO. BUT I WOULD ALSO POINT OUT TO THE COURT THAT MR. TAYLOR, WHEN HE WAS TAKEN DOWN TO THE POLICE STATION, CONFESSED TO HAVING COMMITTED A BURGLARY A WEEK BEFORE, OF A SUM OF \$5,000, AND WITNESSES WERE THE PERSON WHOSE MONEY WAS STOLEN TESTIFIED AT TRIAL THAT, IN DEED, THAT IS WHAT HAPPENED.

BUT THIS IS AFTER THE FACT.

THAT'S RIGHT.

LET ME ASK YOU WHY, IN THIS COUNT, THE INFORMATION ABOUT THE DEPOSIT, WHY WOULDN'T THERE ACTUALLY BE PROBABLE CAUSE TO ARREST, ONCE THE POLICE KNEW SHE WAS MISSING, KNEW THE MONEY WAS MISSING, KNEW THAT HE WAS THE LAST PERSON TO BE SEEN WITH HER, AND THEN KNEW THAT HE WAS TRYING TO HIDE A LARGE AMOUNT OF CASH FROM THEM.

YOUR HONOR, I DON'T KNOW OF ANY CASE OR -- THAT HAS HELD THAT THAT WOULD BE SUFFICIENT FOR PROBABLE CAUSE. PROBABLE CAUSE, ALTHOUGH IT IS LESS THAN ENOUGH EVIDENCE TO CONVICT, IT CERTAINLY IS MORE THAN A STRONG REASON TO SUSPECT. AT THIS POINT, AGAIN, THEY DON'T EVEN KNOW A CRIME HAS BEEN COMMITTED. I MEAN, WE ARE LOOKING AT IT FROM HINDSIGHT, BUT HERE WE HAVE SOMEONE MISSING. WE DON'T EVEN KNOW. SHE COULD BE IN ARKANSAS WITH THE MONEY. MR. CHIEF JUSTICE

YOU ARE WELL INTO YOUR REBUTTAL TIME.

OKAY. THANK YOU, YOUR HONOR.

YOUR HONOR, MAY IT PLEASE THE COURT MY NAME IS CHARMAINE MILLSAPS REPRESENTING THE STATE OF FLORIDA. I WOULD LIKE TO TALK ABOUT THE SEARCH AND SEIZURE ISSUE AS WELL BUT I WOULD LIKE TO RESPOND TO A COUPLE OF THE OTHER ISSUES. OPPOSING COUNSEL SAID REASONABLENESS IS NOT THE TEST. THAT IS EXACTLY THE TEST. THAT IS WHAT THE FOURTH AMENDMENT REQUIRES. IT IS ONLY UNREASONABLE SEARCHES AND SEIZURES THAT ARE NOT PERMITTED, PURSUANT TO OUR CONSTITUTION. REASONABLE SEARCH AND SEIZURES ARE PERMITTED. THAT IS EXACTLY WHAT YOU NEED LOOK AT. WAS THE POLICE, AT THE MOMENT THEY TOOK THE ACTION, WHATEVER ACTION IS IN QUESTION, WAS THAT ACTION REASONABLE? THAT IS EXACTLY WHAT --

WHAT ABOUT THE IDEA, JUST SO WE UNDERSTAND, WHEN WE ARE LOOKING AT WHETHER MR. TAYLOR WAS DETAINED, WHEN -- DID THE STATE TAKE THE POSITION THAT, WHEN THEY CAME INTO THE TRAILER, THEY HAD PROBABLE CAUSE TO ARREST MR. TAYLOR?

NO, YOUR HONOR. NOT UNTIL WHAT THEY SEE UNDERNEATH THE COUCH BEING A LARGE SUM OF MONEY. THAT IS WHEN THEY GET PROBABLE CAUSE.

BUT IT WAS ARGUED THAT THAT IS WHEN THEY GOT PROBABLE CAUSE AND NOTHING ELSE MATTERS.

THEY HAVE PROBABLE CAUSE FOR WHAT?

THEY HAVE PROBABLE CAUSE TO ARREST HIM FOR GRAND THEFT. SHE WAS SUPPOSED TO TAKE THE MONEY TO THE BANK AT TWO O'CLOCK AT 2:01 THERE IS GRAND THEFT. THAT MONEY MUST BE IN THE BANK AT TWO O'CLOCK, OR ELSE GRAND THEFT HAS OCCURRED. WE KNOW EXACTLY --

WHAT ARE THE FACTORS THAT WE WOULD LOOK AT, TO SAY THERE IS PROBABLE CAUSE THAT HE COMMITTED A GRAND THEFT?

OKAY. THE, NUMBER ONE, EVERYBODY SEES HIM. HE IS NOT JUST LAST PERSON SEEN WITH HER. HE IS THE LAST PERSON SEEN WITH HER AT 1:10, WHEN THE BANK DEPOSIT WAS SUPPOSED TO BE MADE AT TWO O'CLOCK. WITHIN THE HOUR OF HER DISAPPEARANCE, HE IS THE LAST PERSON SEEN WITH HER. MOREOVER, THE POLICE HERE KNOW HER. THEY KNOW SHE HAS LIVED IN THIS COMMUNITY ALL HER LIFE. ONE OF THESE POLICEMEN WENT TO HIGH SCHOOL WITH HER. SHE HAS ROUTINELY MADE THESE DEPOSITS. NO TROUBLE. THE ONLY TIME THERE WAS ANY TROUBLE IS WHEN SHE TOOK TAYLOR WITH HER. MOREOVER, SHE COULD NOT HAVE TAKEN THIS MONEY, YOUR HONOR. THIS MONEY, SHE DOESN'T, SHE IS NOT MERELY AN EMPLOYEE FOR BUDDY BOY'S COUNTRY CORNER. SHE IS THE DAUGHTER OF THE OWNER SO THEY KNOW THERE HAS NEVER BEEN ANY PROBLEM. SHE ROUTINELY DOES THIS, AND THE POLICE OFFICERS KNOW THAT. THEY HAVE ALL THIS INFORMATION AND TESTIFIED THAT THEY ARE FAMILIAR WITH THE OPERATION OF THIS STORE. THEY KNOW ALL THIS INFORMATION BEFORE THEY ENTER THE DOOR. BUT IT IS HIS CONDUCT IN THE FACE -- HE DOESN'T JUST HIDE MONEY. IN THE FACE OF QUESTIONING ABOUT MISSING, A MISSING PERSON, AND A MISSING, AND THE MISSING MONEY, THAT HE HIDES MONEY, AND WHAT'S MORE IS HE DOES IT WHEN THE OFFICERS, WHAT HAPPENS IS THE OFF-DUTY OFFICER LEAVES WHILE THE TWO ON-DUTY OFFICERS ARE COMING IN, SO THEY ARE SORT OF SWITCHING PLACES, SO THEY ARE NOT LOOKING AT HIM, AND HE DOESN'T REALIZE THAT DEPUTY LINDSEY, SITTING OUT IN THE CAR, HAS A CLEAR VIEW INTO THE TRAILER.

I WAS TRYING TO FOLLOW-UP ON WHAT YOU FIRST SAID, WHICH IS WE DON'T LOOK AT WHAT MR. TAYLOR WOULD HAVE THOUGHT, AND I THOUGHT THAT, AS FAR AS WHETHER HE WAS, WHEN THEY COME IN THE TRAILER, YOU SAID THEY DIDN'T HAVE PROBABLE CAUSE TO BELIEVE THAT HE HAD COMMITTED A CRIME. WHEN -- WHAT IS THE SIGNIFICANCE TO A REASONABLE PERSON, OF POLICE OFFICERS FOLLOWING A PERSON BACK INTO THEIR BEDROOM WATCHING THEM, WHILE THEY GET DRESSED. WOULD A REASONABLE PERSON IN MR. TAYLOR'S POSITION BELIEVE THAT HE WAS FREE TO TELL THEM TO GET OUT OF HIS BEDROOM, OR CAN WE LOOK OBJECTIVELY THAT MOST PEOPLE WOULD THINK THAT THEY WERE NOT FREE TO LEAVE UNDER THAT CIRCUMSTANCE?

YOUR HONOR, I DO AGREE THE TEST IS HIS PERCEPTION. ABSOLUTELY. I DIDN'T MEAN TO IMPLY. ABSOLUTELY IT IS HIS PERCEPTION. THE STATE'S POSITION IS FOLLOW FOLLOWING YOU. A POLICE OFFICER FOLLOWING SOMEBODY IS ABSOLUTELY NOTHING. THEY FOLLOW YOU WHEN YOU ARE DRIVING ON THE STREET EVERYDAY. IS THAT A DETENTION? YOUR HONOR, A POLICE OFFICER FOLLOWING YOU AROUND. REMEMBER WHAT HE HAD DONE. IS HE THE ONE WHO HAS LEFT. HOW COULD THAT POSSIBLY BE A DETENTION? HE IS LEAVING THE ROOM, YES, AT THEIR SUGGESTION, BUT IS HE THE ONE THAT HAS LEFT. THIS IS THE FURTHEST THING FROM THE WORLD FROM BEING DETAINED.

BUT THE ARGUMENT SEEMS TO BE THAT IT IS THE OBSERVATION, IN THE PRIVACY OF THE

UNCLOTHED CONDITION AND THE DRESSING. IT IS NOT THE FOLLOWING. WHAT IS THE STATE'S RESPONSE TO THAT AND WHAT IS THE LAW IN THAT AREA?

WELL, I STILL DON'T THINK ONE MAN WATCHING ANOTHER MAN DRESS, THAT IS NOT DETENTION. I MEAN, WHAT WE MEAN BY DETAINED IS YOU ARE NOT FREE TO DOENINGS. -- TO DO THINGS. THERE IS NOTHING ABOUT WATCHING SOMEBODY -- COPS, POLICE OFFICERS SEE YOU ON THE STREET EVERYDAY. IS THAT A DETENTION? THE MERE FACT OF OBSERVATION THAT POLICE SEE THINGS MEANS NOTHING. NOW, YOUR HONOR, I DON'T WANT TO GO TOO FAR. I THINK MAYBE A MALE POLICE OFFICER WATCHING A WOMAN DRESS, THERE IS THAT, THAT WOULD BE DIFFERENT, BUT THESE ARE TWO OFFICERS, AND FOLLOWING HIM BACK MEANS ABSOLUTELY NOTHING. THERE IS NOTHING HERE.

WHAT IS YOUR STRONGEST AUTHORITY, UNDER CIRCUMSTANCES SUCH AS THIS, WHERE ONE, A POLICE OFFICER FOLLOWS SOMEONE IN THE PRIVACY OF THEIR HOME, INT A MORE OF A PRIVATE AREA THAN THE LIVING ROOM, WHERE THERE WAS A CONSENTUAL CONTACT, THAT DESCRIBES WHAT THAT IS, IN TERMS OF THE LEGAL PERCEPTION OF THAT? WHAT IS THE CASE THAT YOU WOULD DIRECT US TO? DESCRIBE THAT SITUATION.

YOUR HONOR, I DON'T HAVE A PARTICULAR CASE. I WILL ATTEMPT TO GET ONE FOR YOU. BUT HOWEVER, REMEMBER HE DIDN'T EVEN, REMEMBER WHAT HAPPENED HERE. THE POLICE OFFICER SUGGESTED HE GETS DRESSED. THE EASIEST RESPONSE WAS, NO, THANK YOU, I WILL STAY IN MY TOWEL. THAT WAS COMPLETELY WITHIN HIS CONTROL. IF HE WANTED TO STAY IN HIS TOWEL, HE COULD HAVE! THEY THOUGHT HE WAS COLD. THEY THOUGHT THEY WERE, YOU KNOW BEING NICE. LET'S TALK WHERE YOU WILL BE MORE COMFORTABLE, BUT I WILL SEE IF I CAN FIND A CASE ABOUT FOLLOWING SOMEBODY, BUT OKAY. NOW, WHAT HAPPENS NEXT IS THEY START QUESTIONING HIM. BECAUSE THEY KNOW, REMEMBER WHAT POLICE OFFICERS KNOW IS NOT JUST PROBABLE CAUSE AND REASONABLE SUSPICION. YOU ALSO HAVE TO TAKE INTO ACCOUNT THAT POLICE OFFICERS KNOW SOMETHING THAT NORMAL PEOPLE DON'T KNOW. PERSONS MISSING WITH A LARGE SUM OF MONEY IS, IN THEIR EXPERIENCE NOT A GOOD SIGN, SO WHILE THEY HAVE TO KNOW THAT SHE WAS A TARGET. POLICE OFFICERS WILL KNOW WHAT ANYBODY WITH THAT KIND OF MONEY IS A TARGET AND A ROUTINE VICTIM OF CRIME, SO AFTER THEY QUESTION HIM, IN RESPONSE TO THAT QUESTIONING, WHEN HE THINKS NONE OF THE OFFICERS ARE LOOKING, HE TAKES MONEY OUT OF HIS BACK POCKET AND HIDES IT. NOW, AN OFFICER CANNOT SEE HIS MONEY. THEY ARE WORRIED EVEN WORSE, THAT IT IS A WEAPON, SO THE OFFICER WHO SAW THEM COMES IN AND TELLS DETECTIVE NOBLE AND DETECTIVE LEE HE PUT SOMETHING UNDER THERE. HE MIGHT HAVE A GUN. THAT IS WHEN THEY ASKED HIM TO LEAVE.

I THOUGHT THEY WATCHED HIM GET DRESSED.

YES, THEY DID. DEPUTY STRICKLAND WATCHES HIM GET DRESSED. DEPUTY STRICKLAND IS OFF DUTY. TAKES HIM BACK IN THE LIVING ROOM AFTER THEY GET HIM DRESSED. OKAY. DEPUTY STRICKLAND LEAES BECAUSE HE IS OFF DUTY. THE ON-DUTY OFFICERS COME. WHEN THIS EXCHANGE IS TAKING PLACE, THAT IS WHEN HE HIDES THE MONEY, WHEN HE THINKS NO OFFICER IS LOOKING AT HIM. UNFORTUNATELY FOR HIM BUT FORTUNATELY FOR US, DEPUTY LINDSEY IS OUT IN HIS PATROL CAR AND HAS A DIRECT VIEW THROUGH THE DOOR AND CAN SEE ALL OF THIS GOING ON. HE SAW HIM. THE DEFENDANT DID NOT REALIZE THAT A POLICE OFFICER COULD SEE HIM, AND THAT IS WHEN HE HID THE MONEY, AND THAT IS WHEN WE THINK A, HE HAD PROBABLE CAUSE, ONCE THEY LIFTED THE CUSHION AND SAW IT WAS MINIAND DESCRIBED AS A ROLL AND IT HAD HUNDRED DOLLAR BILLS. THEY ALSO KNOW THAT, BEFORE THEY WENT TO THE TRAILER THEY WENT TO TALK TO HIS STEPMOTHER. THEY KNOW HE IS UNEMPLOYED. THEY KNOW HIS CURRENT EMPLOYMENT STATUS AS WELL. UNEMPLOYED BUT THEY KNOW HE HAS A ROLL OF MONEY THAT HE IS HIDING, IN RESPONSE TO A MISSING PERSON AND MISSING MONEY QUESTIONS.

AT THAT POINT, THOUGH, WHEN YOU SAY THEY HAVE PROBABLE CAUSE TO ARREST HIM, THEY

DON'T ARREST HIM.

NO, THEY DON'T. BUT THAT IS JUST IN THE ALTERNATIVE, YOUR HONOR.

I THOUGHT THE STATE, BECAUSE THE STATE'S ARGUMENT BE LOW -- BELOW WAS HE WASN'T ARRESTED UNTIL AFTER HE WAS HANDCUFFED AND THAT THIS IS ALL SOME VOLUNTARY EXTENSIVE POLICE ACTION.

BOTH THE TRIAL COURT AND THE STATE DOWN BELOW, YOUR HONOR, THEY FOUND THAT TO BE TERRY. REFER, WE ARE NOT ARGUING THAT BEING TAKEN -- REMEMBER, WE ARE NOT ARGUING THAT BEING TAKEN IN HANDCUFFS AND TAKEN OUT OF YOUR HOUSE IS ESSENTIAL. THAT IS AT LEAST THE TERRY STUFF. BUT I AM SAYING IF YOU CONSIDER THE ARREST, WE HAD PROBABLE CAUSE, AND THAT IS WHAT YOU NEED. PROBABLE CAUSE IS A VERY LOW STANDARD. IT IS NOT EVEN MORE LIKELY THAN NOT. IT IS JUST A SHADE UNDER PREPONDERANCE, AND GIVEN THIS, O AND HE LIES TO THEM AS WELL. HE LIES TO THEM TWICE, AND THE OFFICERS KNOW THAT BOTH OF THOSE THINGS ARE A LIE DURING THIS QUESTIONING, SO HE IS ALSO LYING TO THE OFFICERS.

WHAT DID HE SAY TO THE OFFICERS?

NUMBER ONE HE ASKED THEM, ONE OF THE OFFICERS SAID WHAT DID YOU PUT UNDER THERE? AND HE SAID "NOTHING", REFERRING TO THE THING, AND THEN WHEN THEY LIFT THE CUSHION, THEY CLEARLY SEE THAT HE IS HIDING MONEY, SO THAT IS ONE LIE. THE OTHER LIE IS THAT HE SAYS THAT THE VICTIM, SHANNON, ONLY TOOK HIM TO HIS TRAILER. WELL, THE REPORT THAT THEY HEARD WAS HE, SHANNON HAD SAID SHE WAS GOING TO TAKE HIM TO GREEN COVE SPRINGS.

DID ANY OF THE POLICE OFFICERS TESTIFY THAT, REALLY, WHEN THEY WENT THERE, DESPITE, THAT IN FACT, THEY REALLY DID ASSUME THAT HE WAS INVOLVED IN THIS CRIME AGAINST THIS WOMAN, AND THAT IS REALLY EXPLAINING WHY THEY TOOK, YOU KNOW, WENT BACK, THAT THERE WAS SOMETHING MORE, WHEN THEY WENT TO THE TRAILER, THAN JUST SORT OF QUESTIONING HIM AS ONE MORE WITNESS.

WELL, YOUR HONOR, LIKE ANY DETENTION, POLICE THAT ARE SUSPICIOUS, IF YOU ALLAY THEIR SUSPICIONS, THAT WOULD HAVE BEEN DIFFERENT. FOR INSTANCE, IF HE HAD BEEN ABLE TO ANSWER THEIR QUESTIONS ABOUT WHERE SHE WAS, WHERE THIS MISSING WAS. YOUR HONOR, EVERY MINUTE THEY STAYED THERE, THEY GOT MORE SUSPICION, YES, AND THEY GOT MORE SUSPICIOUS, BASED ON ARTICULABLE FACTS, TO THE POINT THAT ALSO, YOUR HONOR, THEY ARE CONCERNED ABOUT THEIR SAFETY. THEY DON'T KNOW WHETHER HE HAS HIDDEN A GUN. THE OFFICER WHO SAW THIS SPECIFICALLY TESTIFIED I COULD NOT TELL WHAT HE HAD.

DO THEY KNOW WHAT HIS HISTORY WAS, HIS CONVICTION AN ARREST HISTORY?

YOUR HONOR, THAT DOES NOT SEEM TO BE AT THAT POINT. THERE WAS NO TESTIMONY. I LOOKED SPECIFICALLY TO WHETHER THEY HAD PULLED A NCIC. THERE IS NO TESTIMONY. HOWEVER, THEY DO KNOW THE OFFICER. THEY KNOW THE VICTIM'S HISTORY. THEY KNOW, VERY MUCH, PART OF THE COMMUNITY, THIS WAS HER FATHER'S MONEY, THAT SHE ROUTINELY DID THIS, SO IT IS MORE THE OTHER WAY THAT, THEY KNOW THIS VICTIM DID NOT TAKE THIS MONEY.

IS IT CORRECT, ALSO, THAT THEY DID NOT KNOW OF ANY CONNECTION OF TAYLOR TO THIS OTHER THEFT? THAT IS THE THEFT OF THIS PERSON'S BRIEFCASE OR WHATEVER THAT, IN OTHER WORDS THAT CAME OUT LATER, THAT TAYLOR SAID THAT HE HAD STOLEN THE MONEY?

NO, YOUR HONOR, THEY DID NOT KNOW THAT AT THAT POINT.

THEY DID NOT KNOW ABOUT THAT AT THAT POINT.

WHEN THEY GET TO THE STATION, TAYLOR CONFESSES TO THE YELTIN BURGLARY.

SO THE ONLY THING THAT THE POLICE KNEW, IN TERMS OF CASH MISSING, WAS WITH RELATIONSHIP TO THE VICTIM THAT WAS MISSING, THE VICTIM THAT ENDED UP BEING FOUND DEAD.

YES. BUT REMEMBER TWO OFFICERS, AND REMEMBER THEY KNOW APPROXIMATELY AN AMOUNT. THE FATHER HAS TOLD THEM, BY THAT TIME, IT IS APPROXIMATELY \$4,000. TURNS OUT IT IS \$666. HE IS DOING A ROUGH -- IT IS \$6666. SO IT IS A RELATIVELY LARGE SUM. THEY KNOW SHE IS A TARGET. POLICE OFFICERS, IN THEIR EXPERIENCE, KNOW SHE A TARGET.

HOW MUCH MONEY WAS ACTUALLY IN THE ROLL OR WHATEVER, UNDER THE CHAIR CUSHION?

\$1672. OKAY. NOW, THE OFFICERS DON'T COUNT IT RIGHT THEN, BECAUSE THEY DON'T WANT -- FOR EVIDENTIARY PURPOSES. HOWEVER, WHEN THEY TAKE HIM OUT, THEY DO, THEY HANDCUFF HIM, FRISK HIM, TAKE HIM OUT OF HIS HOUSE. BUT PUT HIM IN THE BACKSEAT OF THE CAR. BUT THEN THEY READ HIM MIRANDA. THEN THEY UNHANDCUFF HIM AND GET CONSENT TO SEARCH HIS CAR. INSIDE THE CAR IS A CROWN ROYAL BAG WITH \$2,000 IN TILL MONEY. WHAT IS REFERRED TO IN THE RECORD AS TILL MONEY. IN OTHER WORDS LINED UP. THE ONES ARE WITH THE ONES AND THE FIVES ARE WITH THE FIVES AND IN OTHER WORDS THAT WAY.

WAS THERE SOME POINT THEY TOLD HIM YOU ARE NOT UNDER ARREST?

YES.

WHERE IN THIS SEQUENCE?

OKAY. SO NOW THEY HAVE BOTH LARGE, BOTH A WHAT HAD OF MONEY UNDER THE CHAIR AND MONEY IN THE CROWN ROYAL BAG. THEY, THEN, TELL HIM THAT DETECTIVE LESTER, THE LEAD INVESTIGATOR, WANTS TO SPEAK WITH HIM DOWN AT THE STATION ABOUT THIS. HE SLUGS HIS SHOULDERS, SO THEY THINK THAT HUMAN BEINGS TALK TO EACH OTHER INGESTTURES, AND THEY TAKE THAT TO BE CONSENT, BECAUSE HE DOES NOT SAY NO, AND SO THEY TAKE HIM DOWN TO THE STATION. ALSO, YOUR HONOR, THEY ASK HIM FOR CONSENT TO SEARCH HIS CAR, SO THEY ARE WAITING FOR THE EVIDENCE TECHNICIAN TO SHOW UP TO SEARCH THE CAR, SO THAT IS THE OTHER REASON THEY WANT TO TAKE HIM IN, IN THE PATROL CAR.

WAS HE IN HANDCUFFS, WHEN HE WAS ASKED TO GIVE HIS PERMISSION TO SEARCH THE CAR?

NO, YOUR HONOR. HE SEEMS TO HAVE BEEN UNHANDCUFFED. NOW, YOUR HONOR, THE TESTIMONY IS NOT THAT TIME SPECIFIC, BUT MY IMPRESSION WAS HE WAS UNHANDCUFFED AT THE TIME HE WAS ASKED CONSENT, BOTH TO SEARCH HIS CAR AND TO GO DOWN TO THE STATION.

DON'T WE HAVE TO ASSUME THAT HE WAS IN CUSTODY DURING ALL THAT TIME? THAT IS CAN YOU REALLY BREAK THAT BY THIS THING OF HANDCUFFING HIM AND MARCHING HIM OUT, PUTTING HIM IN THE BACKSEAT AND THEN TAKING THE HANDCUFFS OFF AND ASKING TO SEARCH HIS CAR AND THEN TAKING HIM DOWN TO THE STATION. CAN WE REALLY HAVE THIS MANY SORT OF BREAKS IN WHETHER HE WAS IN CUSTODY OR NOT? ISN'T THIS SORT OF AN ARTIFICIAL -- NOW I AM HAVING DIFFICULTY WITH ISN'T THIS SORT OF AN ARTIFICIAL CONSTRUCT, BY THE STATE, OF WHEN HE IS IN CUSTODY AND WHEN HE IS NOT? WOULD AN ORDINARY CITIZEN EVER UNDERSTAND, YEAH, NOW I AM IN CUSTODY AND NOW I AM NOT AND NOW I AM AND NOW I AM NOT?

OKAY. BUT REMEMBER, YOUR HONOR, REALLY I AM NOT ARGUING THAT HE WASN'T DETAINED

UNDER A TERRY DETENTION DETENTION. REALLY, FROM, I MEAN FROM -- THE POLICE, WHEN HE HIDES THE MONEY, FROM THAT POINT ON, IS HE IN A TERRY DETENTION.

HOW DOES THAT AFFECT HIS CONSENT THEN?

IT DOESN'T. YOUR HONOR, IF YOU ARE UNDER FULL ARREST, YOU CAN STILL CONSENT TO GO PLACES. OBVIOUSLY IF YOU ARE UNDER ARREST, THEY ARE GOING TO TAKE YOU THERE, BUT BEING UNDER A TERRY DETENTION DOES NOT, AS LONG AS THAT IS A VALID TERRY DETENTION, THAT DOES NOT TAINT HIS CONSENT. THAT DOES NOTHING TO HIS CONSENT. HE IS UNDER, I AGREE WITH YOU, YOUR HONOR, I DON'T THINK -- HE IS NOT FREE TO GO. I MEAN, DON'T MISUNDERSTAND THE STATE'S ARGUMENT HERE. THIS MAN IS NOT FREE TO GO. HE IS NOT GOING. HE IS NOT GOING ANYWHERE, UNTIL HE ALLAYS OUR FEARS ABOUT WHERE THIS WOMAN IS. NOW, THAT IS DIFFERENT FROM ARREST. HE IS UNDER A TERRY DETENTION. BUT THAT DOES NOT TAINT OR HE HAVEISHIATE OR WASH AWAY HIS -- OR EVISCATE OR WASH AWAY HIS CONSENT? HE HAS CONSENT TO --

WAS THERE A WRITTEN CONSENT FORM SIGNED?

YES, YOUR HONOR.

TELL ME ABOUT THAT.

THERE WAS A WRITTEN CONSENT FORM SIGNED AT 12:40.

THAT WAS USED TO SEARCH WHAT?

HIS CAR AND HIS HOUSE.

WAS THERE A STATEMENT IN THE CONSENT FORM THAT HE HAS THE RIGHT TO REFUSE THE CONSENT?

YOUR HONOR, I DON'T REMEMBER LOOKING AT THE CONSENT. I DON'T REMEMBER SEEING THAT IN IT. TYPICALLY THEY DO, YOUR HONOR, BUT I WOULD HAVE TO -- I CANNOT ANSWER THAT, YOUR HONOR'S QUESTION ACCURATELY. I WOULD LIKE TO VERY QUICKLY TALK ABOUT THE HEARSAY ISSUE.

JUST ONE LAST QUESTION ABOUT THE SEARCH OF THE TRUCK. YOUR THEORY, ALTERNATIVE THEORY IS THAT THEY HAD PROBABLE CAUSE TO ARREST HIM FOR GRAND THEFT AT THAT POINT. IF THEY HAD DONE THAT, THE, THE INDEPENDENCE, THEY WOULDN'T HAVE AN AUTOMATIC RIGHT TO DO ANYTHING ELSE, OTHER THAN TAKE HIM DOWN TO THE STATION, SEARCH HIM. THAT WOULDN'T GIVE ANY RISE TO A PROBABLE CAUSE TO SEARCH HIS TRUCK AT THAT POINT. CORRECT?

NO. THEY GOT CONSENT.

THE STATE HAS TO RELY, THOUGH ON WHETHER HE COULD GIVE VOLUNTARY CONSENT AT A POINT WHEN HE IS DETAINED, EITHER UNDER TERRY OR UNDER ARREST.

YES. BUTTHE LAW IS CLEAR YOU MAY CONSENT.

YOU MAY, BUT DOESN'T THE CIRCUMSTANCES PLAY INTO THAT, THAT IS WHETHER A REASONABLE PERSON WOULD FEEL FREE TO BE ABLE TO REFUSE THE POLICE REQUEST, UNDER ALL THE CIRCUMSTANCES OF WHAT HAS HAPPENED UP TO THIS POINT.

ABSOLUTELY, YOUR HONOR. VOLUNTARINESS MUST LOOK. THE TEST FOR VOLUNTARINESS IS

THAT YOU MUST LOOK AT ALL OF THE CIRCUMSTANCES AND HOW THE PERSON WOULD FEEL, SO, YES, BUT SAYING NO, YOU CAN SAY NO, I DON'T WANT YOU TO SEARCH MY HOUSE. OKAY. SO YOU KNOW, I AM NOT SURE THERE IS ANYTHING HERE. REMEMBER, YOUR HONOR, BY THIS TIME THE OFFICERS DRAW THEIR GUNS AT ONE POINT, BUT ONCE THEY FIND OUT HE IS NOT ARMED, THAT ONE OFFICER WHO PULLED HIS GUN, IN FACT -- WHO PULLED HIS GUN, IN FACT PUTS THAT AWAY. SO ALL WE HAVE IS OFFICERS IN UNIFORM WITH GUNS.

DO WE HAVE A HELICOPTER HOVERING OVER THE TRAILER WHILE MUCH OF THIS WAS GOING ON?

YOUR HONOR, YES, THEY ARE OUT LOOKING. YES, THERE IS A HELICOPTER. THEY ARE OUT LOOKING FOR THE VICTIM'S CAR, RED MUSTANG, AND THEY ARE CIRCLING, BUT YOUR HONOR, AS I UNDERSTAND THE TESTIMONY, AND I THINK IT IS PRETTY CLEAR, FROM THE MOTION TO SUPPRESS, YOU COULDN'T HEAR THAT HELICOPTER. THE HELICOPTER SEEMS TO HAVE BEEN MORE TOWARDS SHANDS BRIDGE AND CIRCLING, SO THIS HELICOPTER WAS NOT HOVERING OVER HIS TRAILER.

UNDER THE TESTIMONY THAT WAS PRESENTED, THE TRIAL COURT COULD HAVE CONCLUDED THAT THE HELICOPTER, REALLY, WASN'T A FACTOR IN THIS?

YES. ABSOLUTELY COULD HAVE CONCLUDED AND SEEMS TO HAVE DONE SO. OKAY. NOW, YOUR HONOR, ON THE, AT TRIAL, THE STATE PRESENTED FOUR WITNESSES WHO HEARD THE VICTIM, AS SHE WAS LEAVING THE STORE, SAY I AM GOING TO GIVE TAYLOR A RIDE INTO GREEN COVE SPRINGS. THE STATE BELIEVES THIS IS A STATEMENT PROVING HER SUBSEQUENT CONDUCT. SHE IS THE ONE DRIVING THIS CAR. SO THIS STATEMENT PROVES HER SUBSEQUENT CONDUCT, AND THIS COURT HAS SAID, AND EVERYBODY, THAT THAT IS FINE. YOU MAY INTRODUCE THAT STATEMENT TO PROVE HER SUBSEQUENT CONDUCT. MOREOVER, YOUR HONOR, I WOULD LIKE TO TALK ABOUT THE REHABILITATIVE, DEPUTY NOBLE. I CITED WITH A CASE CALLED MONDAY. IN THE STATE'S BRIEF I RELIED ON FEDERAL CASES BECAUSE FLORIDA HAD NOT REACHED THAT ISSUE. MONDAY IS A FIRST DCA CASE. SINCE I WROTE THE BRIEF, FLORIDA HAS ADOPTED THE FEDERAL POSITION THAT THE STATE CITED. AS TO THE HUSBAND-WIFE PRIVILEGE THIS, HE WAIVED THIS PRIVILEGE BY CALLING HIS WIFE TO TESTIFY. THE WIFE, THE DEFENDANT CALLED HIS WIFE. WHEN YOU CALL YOUR WIFE TO TESTIFY, YOU WAIVE THE HUSBAND HUSBAND-WIFE PRIVILEGE.

IN ORDER TO WAIVE THAT PRIVILEGE, DO YOU HAVE TO HAVE THE PERSON, THE WITNESS ACTUALLY TALK ABOUT THE SUBSTANCE OF THE PRIVILEGE? OF WHAT IS PRIVILEGE?

NO, YOUR HONOR. JUST LIKE A DEFENDANT MAY NOT TAKE THE STAND, AND THEN IN RESPONSE TO THE PROSECUTOR'S CROSS-EXAMINATION, ASSERT A FIFTH AMENDMENT PRIVILEGE. YOU MAY NOT TURN IT ON AND OFF LIKE THAT.

SO YOU ARE TELLING ME THERE WAS NOTHING AT ALL SAID ABOUT THE MONEY THAT WAS GIVEN TO THE YOUNG BOY OR ABOUT HER PURCHASING THE TICKET FOR HIM, THAT THE PROSECUTOR COULD STILL HAVE GONE INTO THE SUBSTANCE OF THE CONVERSATION SHE HAD WITH HE DEFENDANT.

YES, YOUR HONOR. I THINK -- THEY WAIVED -- THE DEFENDANT CHOSE TO PUT HIS WIFE ON THE STAND, JUST AS A DEFENDANT, WHEN HE TAKES THE STAND, COMPLETELY WAIVES THE FIFTH AMENDMENT PRIVILEGE AGAINST SELF INCRIMINATION. ONCE YOU TAKE THE STAND, YOU WAIVE. THIS IS VERY MUCH EQUIVALENT TO THAT. BY PUTTING HIS WIFE ON THE STAND HE WAIVED ANY HUSBAND/WIFE PRIVILEGE.

IS THERE A CASE FROM THIS COURT THAT SAYS THAT?

NO, YOUR HONOR. THERE IS NO CASE FROM THIS COURT THAT SAYS THAT. THERE IS, HOWEVER, A

SECOND CIRCUIT CASE AND A CALIFORNIA SUPREME COURT CASE.

WHAT WAS THE PURPOSE THAT THEY PUT THE WIFE ON THE STAND? WHAT TESTIMONY DID THEY ELICIT FROM HER ON DIRECT?

SHE SUPPORTED THEIR DEFENSE IN SOME WAYS. WHAT SHE WAS -- DO YOU MEAN IN GENERAL?

WAS IT ANYTHING TO DO WITH THE MONEY, THAT THEY PUT HER ON THE STAND, OR WAS IT A PURPOSE UNRELATED TO --

THEY PUT HER ON THE STAND MAINLY TO SUPPORT HIS DEFENSE, WHAT HE WAS WEARING HAT DAY. SHE SAW HIM THAT DAY. THAT NOBODY COULD HAVE HIDDEN MONEY IN HER TRAILER. THEY PUT HER ON FOR OTHER PURPOSES. IT WASN'T REALLY -- THEY DIDN'T PUT HER ON FOR THE PURPOSE OF TALKING ABOUT THIS CONVERSATION.

DID SHE TALK ABOUT THE YOUNG PERSON GOING BACK TO ARKANSAS?

YES.

SHE DID TALK ABOUT AT LEAST THAT PERSON LEAVING THE AREA AND GOING BACK TO THAT LOCATION.

SHE TALKS ABOUT GIVING HIM MONEY, AND WHY THE STATE WANTED TO GET INTO THIS, BUT SHE DOES THAT ON DIRECT, YOUR HONOR.

SHE DID THAT ON DIRECT.

YES. AND WHAT THAT TESTIMONY IS REALLY GOING FOR IS THIS. IF MICHAEL MacJUNKIN WAS THE ONE WHO COMMITTED THIS CRIME, HE WOULD HAVE \$6666, AND HE WAS BORROWING MONEY FROM HER FOR A BUS TICKET, YOU KNOW, A COUPLE HUNDRED DOLLARS TO GET BACK TO ARKANSAS. THAT WAS THE POINT, BUT THAT POINT CAME OUT ON THE DIRECTION OF THIS WITNESS. HIS CURRENT WIFE.

DO WE HAVE, THE SPECIFIC POINT FROM THE CONVERSATION IS THAT THIS DEFENDANT KNEW THAT MacJUNKIN DIDN'T HAVE ANY MONEY. DO WE HAVE ANY OTHER EVIDENCE IN THE RECORD THAT THE DEFENDANT KNEW MacJUNKIN DIDN'T HAVE ANY MONEY, OTHER THAN THIS STATEMENT FROM THE WIFE?

WELL, YES. TAYLOR GIVES MacJUNKIN \$200, AND WE HAVE MacJUNKIN'S -- WE HAVE, HE KNOWS THAT BY IMPLICATION, BY HIS CONDUCT. HE GAVE MacJUNKIN \$200, THE IMPLICATION THERE BEING THAT HE KNEW MacJUNKIN --

HE GAVE MacJUNKIN \$200 AT WHAT POINT?

FROM THE \$6666. \$200 OF THE STOLEN MONEY.

MacJUNKIN TESTIFIED TO THAT?

YES, YOUR HONOR. IF THERE ARE NO FURTHER QUESTIONS, WE WILL ASK THAT YOU AFFIRM BOTH THE CONVICTION AND THE -- THE CONVICTION AND THE SENTENCE. THANK YOU. MR. CHIEF JUSTICE

THANK YOU, MS. MILLSAPS. REBUTTAL?

THIS WAS BRIEFLY WITH REGARD TO THE HELICOPTER, TWO OFFICERS DID TESTIFY THAT THEY COULD HEAR THE HELICOPTER OVERHEAD, AT THE POINT THAT THEY WERE INVESTIGATING AND

TALKING TO MR. TAYLOR AT HIS TRAILER.

WAS THAT A CONSTANT THING, OR WERE THEY THERE AT ONE POINT AND THEN LEFT? I AM NOT SURE I GOT THAT FROM THE RECORD.

MEANING THE HELICOPTER OR THE OFFICERS?

YES.

WOULD YOU MIND PULLING THE MIKE? IT IS VERY DIFFICULT TO HEAR YOU. THANK YOU.

SORRY, YOUR HONOR. THE TESTIMONY WAS THAT THEY HEARD THE HELICOPTER WHEN THEY ARRIVED, AND THEY HEARD IT OVERHEAD WHILE THEY WERE THERE. I DON'T THINK IT IS CLEAR THAT IT WAS THERE THE ENTIRE TIME OR NOT. IT IS NOT CLEAR. APPARENTLY THE DETECTIVE WHO INTERROGATED MR. TAYLOR AT THE STATION WAS IN THE HELICOPTER, AND ONE OF THE OFFICERS WHO WAS AT THE TRAILER DROVE TO MEET HIM AFTER OR AT THE POINT THAT THEY WERE TRANSPORTING TAYLOR TO THE STATION HOUSE. AND ALSO, BACK TO HIS TRANSPORTATION TO THE STATION HOUSE AND WHETHER HE GAVE CONSENT, THE OFFICERS DID NOT TESTIFY. NO OFFICER TESTIFIED THAT THEY ASKED HIM IF HE WOULD GO OR THAT HE CONSENTED TO GO. THERE IS NO TESTIMONY THAT ANY OFFICER BELIEVED HE AGREED TO GO WITH THEM VOLUNTARILY. THE ONLY INDICATION. THERE IS NO EVIDENCE AT ALL, REALLY, THAT HE ACTUALLY AGREED TO GO WITH HIM, MUCH LESS THAT IT WAS VOLUNTARY. HE WAS IN THE CAR AT THE POINT THAT THE ACTUAL TESTIMONY THAT THEY TOOK, LINDSEY, AT THAT POINT, AS I EXPLAINED TO HIM, WE NEED TO TAKE HIM TO THE STATION TO TALK WITH THE DETECTIVES.

DOES IT MATTER WHETHER OR NOT IF THERE WAS PROBABLE CAUSE, THE MONEY AFTER HE HID IT, TO AT LEAST BELIEVE THAT THERE HAD BEEN THEFT. THEN THE WHOLE ISSUE OF HIM BEING ARRESTED AND THEN BROUGHT TO THE STATION HOUSE WOULD BE MOOTED BY FINDING THAT THERE WAS PROBABLE CAUSE AT THAT POINT.

THAT'S CORRECT, YOUR HONOR.

WHAT WOULD BE YOUR ARGUMENT CONCERNING WHETHER, ALSO, AT THAT POINT, AT LEAST SINCE THERE WAS AN ADMISSION THAT THERE WAS A TERRY DETENTION AT THE POINT, AS TO HIM GIVING CONSENT TO SEARCH THE TRUCK, AND IS THAT SIGNIFICANT TO YOU, YOU KNOW, IF -- THAT WOULD LEAD TO SUPPRESSION JUST OF THAT MONEY, OR DOES IT MATTER?

YES, IT IS, THAT IS SIGNIFICANT, BECAUSE EVEN IF THE OFFICERS HAD REASONABLE SUSPICION FOR A TERRY STOP, THEY EXCEEDED THE SCOPE OF A TERRY STOP. A TERRY STOP IS VERY LIMITED. AND FOR EXAMPLE, IF A FRISK REQUIRES REASONABLE GROUNDS TO BELIEVE THERE IS A THREAT TO OFFICER SAFETY --

WHAT I AM ASKING YOU, LET'S JUST ASSUME THAT HE IS DETAINED, EVEN ILLEGALLY AT THAT TIME, WHY CAN'T HE GIVE CONSENT TO SEARCH THE TRUCK?

IF HE IS BEING ILLEGALLY DETAINED? WELL, THE CONSENT QUESTION DEPENDS ON WHETHER HIS CONSENT IS VOLUNTARY. THAT IS WHETHER THE CONSENT, ITSELF, IS A PRODUCT OF THE ILLEGAL DETENTION, AND WHAT THE COURT HAS TO LOOK AT IS THE TIME BETWEEN THE ILLEGAL ACTION, WHICH WE CONSENT PLACEMENT IN THE POLICE CAR IS ILLEGAL AND EXCEEDED THE SCOPE OF THE TERRY DETENTION, SO HE HAS BEEN ILLEGALLY DETAINED AT THAT POINT.

EVEN IF HE IS PROPERLY DETAINED, THEY STILL HAVE TO ASK HIM FOR CONSENT TO SEARCH THE TRUCK, BECAUSE THEY HAVE NO OTHER REASON TO GET TO THE TRUCK OTHER THAN HIM

GIVING CONSENT. WHETHER HE IS ARRESTED FOR GRAND THEFT, WHETHER HE IS DETAINED UNDER TERRY OR WHETHER HE IS ILLEGALLY DETAINED, HE IS STILL, FOR THEM TO BE ABLE TO SEARCH THE TRUCK, THEY HAVE GOT TO DO IT BASED ON HIS CONSENT.

THERE IS EVIDENCE THAT HE GAVE ACTUAL CONSENT. WE ARE NOT DISPUTING THAT HE DID NOT GIVE ACTUAL CONSENT. HE SIGNED A CONSENT FORM. THERE IS NO TESTIMONY OR EVIDENCE THAT THE CONSENT FORM WAS READ TO HIM OR THAT HE WAS TOLD HE HAD THE RIGHT TO REFUSE CONSENT. BUT HE DID GIVE ACTUAL CONSENT. OUR ARGUMENT WAS WITH REGARD TO THE VOLUNTARINESS OF THE CONSENT. DOES DEPEND ON WHETHER THAT PLACEMENT IN THE VEHICLE AND HIS DETENTION AT THAT POINT WAS LEGAL.

DO YOU KNOW OR CAN YOU ANSWER MY QUESTION ABOUT WHETHER THE CONSENT FORM HAD ANY STATEMENT IN THERE, ABOUT THAT YOU HAVE THE RIGHT TO REFUSE CONSENT?

YOUR HONOR, I CAN'T SAY FOR SURE, BUT I DO BELIEVE IT HAD --

-- LANGUAGE LIKE THAT? -- LANGUAGE LIKE THAT IN IT.

WAS THERE EVIDENCE OR TESTIMONY ABOUT WHETHER -- HE READ THE CONSENT FORM OR DIDN'T READ IT OR HAD ACCESS TO READ IT?

THE TESTIMONY IS THAT HE, I BELIEVE THE TESTIMONY IS THAT HE WAS ASKED FOR VERBAL CONSENT, AND THAT HE GAVE IT, AND THAT AT THAT POINT HE WAS GIVEN THE CONSENT FORM. THE OFFICER DID NOT RECALL READING THE FORM TO HIM, AND THERE WAS NO EVIDENCE THAT HE ACTUALLY READ THE FORM, ALTHOUGH HE DID SIGN THE FORMS. MR. CHIEF JUSTICE

I BELIEVE YOUR TIME IS UP, MS. CAREY. THANK YOU VERY MUCH. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE FORM THE