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State of Florida v. Johnny Diaz

MARSHAL: PLEASE RISE. PLEASE BE SEATED.

CHIEF JUSTICE: STATE VERSUS DIAZ. IS COUNSEL READY?

COUNSEL IS READY, YOUR HONOR.

CHIEF JUSTICE: VERY GOOD.

CHIEF JUSTICE ANSTEAD AND MAY IT PLEASE THE COURT. GOOD MORNING. I AM ROBERT KRAUSS WITH THE ATTORNEY GENERAL'S OFFICE IN TAMPA, AND I AM REPRESENTING THE PETITIONER IN THIS CAUSE FOR THE STATE OF FLORIDA. I SUBMIT THAT WE ARE HERE TODAY, BECAUSE OF THE CONFLICT CREATED BY THE SECOND DCA IN HOLDING THAT IT WAS IMPERMISSIBLE, UNDER THE FACTS OF THIS CASE, TO EVEN TALK TO THE DRIVER OF THE CAR. THE SECOND DISTRICT, UNFORTUNATELY, HAS EXTENDED THE LANGUAGE THAT THEY FIRST EMPLOYED IN PALMER, AND THEY HAVE EXTENDED IT TO A SITUATION IN WHICH IT SHOULD NOT APPLY. IN THE PAUPER CASE, THE OFFICER, AS HERE, COULD NOT SEE THE EXPIRATION DATE OF A TEMPORARY TAG. AS THE OFFICER APPROACHED THE CAR IN PALMER AND HERE, HE WAS ABLE --

WAS THE VEHICLE -- HE WAS ABLE --

WAS THE VEHICLE, WAS THE DRIVER OPERATING THE MOTOR VEHICLE AT THE TIME? WAS IT NIGHT? I GUESS WHAT I AM TRYING TO THINK ABOUT, IS THERE ANY CASE WHERE A POLICE OFFICER COULDN'T SAY, WITH A TEMPORARY TAG, BECAUSE YOU CAN'T SEE THOSE NUMBERS VERY WELL, THAT SOMEONE IS DRIVING ALONG, I COULDN'T TELL WHETHER IT WAS EXPIRED OR NOT.

I WOULDN'T, I WOULD HAVE TO SAY THAT THERE HAVE TO BE CASES WHERE THE OFFICER COULD SEE IT. THOSE NUMBERS ARE MUCH LARGER THAN THE NUMBERS THAT ARE EMPLOYED UNDER 316, ON THE REGULAR TAGS. THEY ARE MUCH BIGGER, AND IF THEY ARE DARK ENOUGH, I THINK THERE ARE CIRCUMSTANCES WHERE THEY COULD BE SEEN. I THINK WHAT WE HAVE TO REMEMBER ABOUT CHAPTER 320, WHICH IS THE TEMPORARY TAG STATUTE, IS THAT NOT ONLY MUST TAG BE DISPLAYED PROPERLY, AND THAT IS EITHER IN THE REAR BRACKET OR IN THE REAR OF THE CAR, BUT IT HAS GOT TO BE VISIBLE. NOW, UNLIKE SECTION 316, WHICH DOES HAVE A PARTICULAR 100-FOOT VISIBILITY NUMBER, THERE IS NONE BUT WE HAVE TO SAY THAT IT WOULD HAVE TO BE VISIBLE FOR A REASONABLE DISTANCE. HERE, IN OUR CASE, HE WAS 50 FEET FROM THE CAR, AND HE STILL COULD NOT READ THE EXPIRATION TAG.

THIS IS 50 FEET FROM THE CAR WHILE HE WAS IN HIS CAR?

WHILE --

AND THE OTHER CAR WAS MOVE SOMETHING.

CORRECT, YOUR HONOR.

SO, BUT WHAT, WHY, ONCE THE CAR IS STOPPED, AND THE OFFICER CAN CLEARLY SEE THAT THIS IS A VALID TAG, WHY ISN'T IT GOOD POLICY TO SIMPLY SAY, SIMPLY GO ABOUT YOUR WAY, ONCE

THAT HAPPENS?

BUT THAT PRESUPPOSES THAT THE OFFICER WOULD HAVE THE ABILITY TO AT LEAST GO AND TALK TO THE DRIVER OF THE CAR. AND I SUBMIT --

TALK TO HIM AND SAY YOU ARE FREE TO GO. I SEE WHAT I NEEDED TO SEE, OR TALK TO HIM AND END UP SAYING, OKAY, I HAVE STOPPED YOU. GIVE ME YOUR LICENSE.

I WOULD SUBMIT THAT, UNDER PENNSYLVANIA, MIMS, AND OTHER CASES, THAT IT WOULD BE REASONABLE, TO IN FACT IN THE FOURTH AND FIFTH DISTRICTS, IN BASS, THEY SPECIFICALLY HOLD THAT, IF YOU HAVE A VALID STOP, IT IS PERMISSIBLE TO ASK THE DRIVER FOR HIS LICENSE AND HIS REGISTRATION.

BUT WASN'T THERE A LITTLE MORE, AT LEAST IN ONE OF THOSE CASES, WASN'T THERE KIND OF FURTIVE MOVEMENT OR SOMETHING THAT KIND OF, EVEN ONCE HE APPROACHED THE CAR, ASSUMING HE WAS JUST APPROACHING THEM TO SAY YOU ARE FREE TO GO, IT WAS SOMETHING ELSE THAT TRIGGERED SOMETHING.

I THINK THAT MAY VERY WELL BE TRUE, BUT I DON'T THINK THAT THAT WAS THE LEGAL JUSTIFICATION THE LEGAL HOLDING IN THE CASE. I BELIEVE THE LEGAL HOLDING IN THE CASE IS THAT THE SECOND DISTRICT HAS APPLIED IT IN THIS CASE. PALMER WAS A DOG SNIFF CASE H IN PALMER, WHAT HAPPENED WAS THE OFFICER, AS HE WAS APPROACHING THE VEHICLE, AS HE GOT NEAR THE CAR, HE WAS ABLE TO CLEARLY SEE THAT THE TAG WAS FINE. THERE WAS NO PROBLEM. SO HE WENT TO GO AND ADVISE, PROBABLY ADVISE, I AM GOING TO SPECULATE NOW, ADVISE THE DRIVER THIS IS WHY I STOPPED YOU. YOU ARE FREE TO LEAVE. IT COULD BE AS SIMPLE AS THAT. AT THAT TIME, IF YOU SEE FURTIVE MOVEMENTS, WELL, THAT IS GOING TO BE AN INDEPENDENT BASIS FOR AT LEAST AT TERRY-TYPE STOP, A REASONABLE SUSPICION TYPE STOP, AND THAT MAY WELL DEVELOP INTO A PROBABLE CAUSE ENOUGH FOR AN ARREST, BUT I THINK IT DOES NOT COMPORT WITH COMMON NOTIONS OF REALITY, TO THINK THAT JUST BECAUSE THE OFFICER WAS ABLE TO SEE THAT, ALTHOUGH HE HAD A VALID REASON AT THE TIME HE AFFECTED THE STOP, THAT THAT REASON, HIS STOP, BECAUSE HE NOW SEES THAT IT IS A VALID TAG, THAT THE SCENARIO ENDS.

DID HE ASK THE GUY, THE DRIVER IN THIS SITUATION, FOR HIS LICENSE?

THIS RECORD IS PRETTY BEREFT OF FACTS THAT WE CAN REALLY PIN DOWN. WHAT THE RECORD DOES REVEAL, AT PAGE T-6, IS THAT, WHEN, THAT THE OFFICER INTENDED TO MAKE CONTACT, AND AT THAT TIME, MR. DIAZ HANDED HIM AN I.D.. NOW, THE AFFIDAVIT, WHICH IS LOCATED IN THE RECORD AT R-10, SPECIFICALLY SAYS THAT THE DEFENDANT, THAT MR. DIAZ STATED AT THAT TIME, HERE IS MY ID. I AM DRIVING WITH A SUSPENDED LICENSE.

ARE THOSE FACTS IN DISPUTE?

I DON'T BELIEVE THAT THEY ARE AND I DON'T BELIEVE WHAT IS IN DISPUTE IS WHETHER OR NOT THERE WAS A VALID JUSTIFICATION FOR THE STOP. AT PAGE 10 OF APPELLEE'S BRIEF, THERE IS A STATEMENT THAT THE SECOND DISTRICT FOUND THAT THE INITIAL STOP WAS NOT JUSTIFIED. I RESPECTFULLY DISAGREE WITH THAT ASSERTION. THERE IS NO HINT IN THE OPINION OF THE SECOND DCA THAT, THE INITIAL STOP WAS NOT VALID.

COUNSEL, IF WE HAD A SITUATION, IF WE WOULD, WHAT LAW WHAT THEORY, WHAT POLICY THAT, IF YOU WOULD COME UP WITH THE HYPOTHESIS THAT, WHEN THE PURPORTED REASON FOR THE STOP IS OVER, AS CONCLUDED, THERE IS NO REASON TO GO ANY FURTHER, THAT THAT SHOULD BE AS FAR AS THIS GOES?

I THINK THAT, IN A SITUATION LIKE THAT, IT MAY BE IMPROPER, CONSTITUTIONALLY, AND IT

MAY BE AN UNREASONABLE SEARCH, IF YOU HAVE A PROLONGED, CONTINUED DETENTION. THAT IS NOT WHAT WE HAD HERE.

WHAT DOES IT TAKE TO BECOME PROLONGED?

I WOULD THINK THAT NEEDS TO BE SOMETHING DETERMINED ON A CASE-BY-CASE BASIS, BUT IF WE SAY THE RULE OF LAW I WOULD PROPOSE TO THE COURT IS THAT, IN THIS TYPE OF SITUATION, IT IS CERTAINLY REASONABLE AT THE VERY LEAST, FOR THE OFFICER TO GO UP TO THE DRIVER, TELL THE DRIVER THIS IS WHY I STOPPED YOU, AND YOU ARE NOW FREE TO GO. IF, IN THAT VERY BRIEF TIME, SOMETHING DOES DEVELOP, REASONABLE SUSPICION, OR HERE THE DEFENDANT GAVE HIM SELF UP, BASICALLY. HE HANDED HIM AN I.D.. I WOULD SUBMIT THAT, IN THIS PARTICULAR CASE, THE FACTS OF THIS CASE WARRANT A FINDING THAT THAT WOULD BE REASONABLE SUSPICION, IN AND OF ITSELF, THAT HE HAD BEEN STOPPED NO A TRAFFIC OFFENSE, AND YOU ARE HANDING THE OFFICER AN I.D. WRATH HE THAN A DRIVERS LICENSE.

SO TO THE EXTENT THAT THE OFFICER WOULD CONTINUE TO ASK FOR IDENTIFICATION, A DIFFERENT FACTUAL SCENARIO THAN YOU ARE ARGUING, BUT --

I WOULD SAY IN THE FOURTH AND THE FIFTH THAT IT D ONCE YOU HAVE AFFECTED A VALID STOP, AND I DON'T THINK THERE CAN BE ANY QUESTION HERE, I HAVE NEVER FOUND THE CASE THAT AN INABILITY TO READ A TEMPORARY TAG IS AN IMPROPER MOTIVE TO STOP. ONCE YOU HAVE THE STOP, I THINK THAT YOU CAN ASK THEM, BECAUSE, AS THEY DISCUSSED IN PENNSYLVANIA VERSUS MIMS, IT IS SUCH A DIM I KNOW MUST INTRUSION UPON THE LIBERTY INTERESTS, WHEN WE ARE BALANCING BOTH THE SAFETY TO THE OFFICER AND THE INTRUSION TO THE PARTICULAR CITIZEN.

BUT WHAT IS THE JUSTIFICATION FOR THAT? NOW, YOU KNOW, YOU POSTULATE WITH WHAT SOUNDS IMMINENTLY REASONABLE, THAT IS THAT IF THE OFFICER, IN GOOD FAITH TO BEGIN WITH, HAD A GOOD REASON TO STOP THE VEHICLE, AND THAT AFTER STOPPING THE VEHICLE, DISCOVERS, AS IN THIS INSTANCE, THAT, NO, IT IS CLEARLY A VALID TEMPORARY TAG AND, YOU KNOW, EVERYTHING IS ALL RIGHT, YOU KNOW, BUT, AND, THAT SURELY THE OFFICER NOW, AFTER STOPPING THE VEHICLE ISN'T GOING TO JUST GET BACK IN HIS OWN VEHICLE AND DRIVE AWAY, THAT JUST SORT OF SOUNDS WEIRD, SO ALMOST COMMON COURTESY WOULD CALL FOR, YOU KNOW, SORRY, IN THIS INSTANCE, I SAW, YOU KNOW, WHAT APPEARED TO BE A TEMPORARY TAG BUT COULDN'T MAKE IT OUT, AND THAT IS WHY I STOPPED YOU. SORRY FOR THE IN ADVANCE.

EXACTLY -- FOR THE INCONVENIENCE.

EXACTLY.

BUT THE DIFFICULTY IS, NOW, GOING BEYOND THAT, AND AT LEAST ONE OF THESE CASES, IN THE STRING, SEEMS TO SUGGEST THAT, NOT ONLY CAN YOU GO AND ASK FOR THE LEDGE STATION AND -- THE REGISTRATION AND THE DRIVERS LICENSE, BUT YOU CAN ALSO ORDER THE PEOPLE OUT OF THE CAR, SO, NOW, WE HAVE GOT A SITUATION WHERE, YEAH, THERE WAS IN REASON YOU KNOW, TO BEGIN WITH -- THERE WAS SOME REASON, YOU KNOW, TO BEGIN WITH, BUT IT IS AS IF THE WHOLE PANOPLY OF THINGS BEYOND THAT. HELP ME WITH COULD WE ESTABLISH A BRIGHT-LINE RULE THAT YOU INITIALLY APPARENTLY ADVOCATED, WHICH SOUNDS IMMINENTLY REASONABLE, AND THAT IS THAT, YES, IF YOU STOP IT, AND THAT IS IN GOOD FAITH, AND LEGISLATE HAT -- AND LEGITIMATE, YOU CERTAINLY CAN APPROACH THE DRIVER AND HAVE A CONSIDERATION, YOU KNOW. THE TROUBLING THING IS WHETHER THERE IS, ORDINARILY, IF THERE WAS A VALID REASON TO STOP THAT HASN'T BEEN DISSIPATED, THAT THAT IS WHY YOU ASK FOR THE DRIVERS LICENSE AND THE CAR REGISTRATION, BECAUSE NOW YOU ARE ANTICIPATED EITHER WRITING THE TICKET AND THAT THESE ARE THINGS THAT YOU HAVE TO DO, YOU KNOW, IN ORDER TO DO THAT, BUT CAN WE, IS THAT A BRIGHT LINE THAT THE STATE WOULD

ADVOCATE WHAT ANNOUNCED INITIALLY, OR ARE YOU ASKING FOR MORE?

I AM NOT ASKING FOR ANYTHING MORE THAN THE FOURTH AND THE FIFTH HAVE ALREADY STATED.

IT SEEMS TO ME THE FOURTH AND THE FIFTH, I HIM HAVING DIFFICULTY SEEING WHAT BASIS AN OFFICER HAS --

I THINK THE BASIS --

-- TO ASK FOR RIDGE STATION OF THE CAR OR EVEN THE -- FOR THE REGISTRATION OF THE CAR OR EVEN THE DRIVERS LICENSE.

BUT I WOULD POSIT THAT, UNDER THAT SITUATION, IT WOULD BE PERMISSIBLE, UNDER MIMS, TO ASK THE DRIVER TO STEP OUT, JUST FOR OFFICER SAFETY PURPOSES.

BUT WHY WOULD THERE BE ANY, NOW, THAT THE OFFICER KNOWS ABSOLUTELY, THAT THE ONLY REASON THAT THAT VEHICLE WAS STOPPED WAS AN ERROR, THAT IS IT WAS INCORRECT, AND SO WHY SHOULD THE OFFICER, BEYOND GOING AND INFORMING --

I THINK, SURE, BECAUSE THE INITIAL STOP WAS VALID, THE SCENARIO HAS BEEN CREATED, AND THE OFFICER IS IN A POSITION WHERE HE IS NOT GOING TO KNOW HOW THIS SCENARIO IS GOING TO END, MERELY BECAUSE HE COMES UPON THE VEHICLE, THE LICENSE PLATE AND DISCOVERS IT IS CORRECT, IT DOESN'T MEAN THAT YOU DON'T HAVE A DING REDUCE PERSON. IT DOES NOT MEAN THAT YOU DO HAVE A DANGEROUS PERSON, BUT THE UNITED STATES SUPREME COURT HAS SEEN FIT TO GIVE THE OFFICER AT LEAST THE ABILITY TO PROTECT HIMSELF FROM THE UNKNOWN, AND THAT IS WHAT WE HAVE HERE.

THAT IS NOT IN THE FACE OF KNOWING THAT THE REASON, THE PENNSYLVANIA VERSUS MIMS --

THAT IS KNOWING THE REASON, THE JUSTIFICATION FOR THE STOP MAY NO LONGER EXIST, BUT THE SCENARIO IS STILL THERE. THE OFFICER IS STILL AT THE SCENE. THE OFFICER STILL WILL BE CONFRONTING, EVEN IF IT IS JUST FOR REASONS OF COMMON COURTESY I HE -- OF COMMON COURTESY, HE STILL WILL BE CONFRONTING THE DRIVER, AND THE LAW SAYS IT IS APPROPRIATE TO ASK THE DRIVER TO STEP OUT OF THE CAR AND TO ASK FOR ICHT D.

IS IT OKAY TO HAVE A VOLUNTARY ENCOUNTER?

YES, IT IS.

TO STOP SOMEBODY ON THE STREET. YOU HAVE A CONVERSATION AND IT IS VOLUNTARY. HELLO. WOULD YOU MIND SPEAKING TO ME FOR A MINUTE. BUT NOW, AFTER WE HAVE DONE THAT ARE YOU GOING TO SAY WOULD YOU MIND SHOWING ME YOUR IDENTIFICATION?

I THINK THAT, UNDER MIMS, YOU HAVE THE, YOU DO HAVE THE ABILITY TO HAVE THE PERSON PRODUCE. I THINK THESE CASES GET INTO A PROBLEM, WHERE, AND PALMER IS A VERY GOOD EXAMPLE, WHERE IT IS ALMOST A RUSE THAT THE OFFICER IS USING THE TIME TO DELAY, IN ORDER TO TRY AND DEVELOP SOMETHING THAT DOESN'T ORDINARILY EXIST.

SO TELL ME AGAIN, ARTICULATE WHAT IS THE JUSTIFICATION BY THE TIME YOU HAVE THE VEHICLE STOPPED AND YOU KNOW THAT THERE IS NOT A PROBLEM, WHAT IS THE JUSTIFICATION FOR, NOW, WHEN WE HAVE HELD THAT, IF YOU HOLD THE DRIVERS LICENSE OR WHAT, THAT YOU ARE DETAINING SOMEBODY. HAVE WE NOT?

BUT I BELIEVE YOU HAVE, AND I DON'T KNOW THAT I WOULD CHARACTERIZE IT.

SO WHAT IS --

I WOULD THINK THAT IS A DIM I KNOW MUST INTRUSION UPON HIS LIBERTY INTERESTS. -- A DIMINIMOUS INTRUSION UPON HIS LIBERTY INTERESTS. I DON'T BELIEVE THAT WE HAVE A CONFLICT AT THAT POINT IN TIME.

YOU HAVE THAT SOMEBODY IS HOLDING -- SO WHAT IS THE JUSTIFICATION NOW?

OFFICER SAFETY. HE IS NOW IN A SCENARIO, AND HE IS GOING TO HAVE TO MAKE SURE THAT HE GETS OUT OF IT SAFELY. I AM NOT SUGGESTING THAT A MAJORITY OF OUR CITIZENS ARE GOING TO DO HARM TO AN OFFICER, BUT THE OFFICER DOESN'T KNOW THAT AT THE TIME.

IF WE ARE TALKING ABOUT OFFICER SAFETY, THEN WHY DOESN'T THE OFFICER JUST GET BACK IN HIS VEHICLE AND LEAVE.

AND THEN THE DRIVER WILL JUST SIT THERE, NOT KNOWING WHETHER HE IS FREE TO LEAVE OR AM I BEING WATCHED.

IF YOU ARE TALKING ABOUT OFFICER SAFETY, THOUGH, THE OFFICER IS COMPLETELY SAFE.

I DON'T KNOW THAT I AGREE WITH THAT. WE HAVE HAD SOME CAPITAL CASES HERE WHERE THAT HAS NOT HAPPENED.

IT SEEMS THE OFFICER WOULD BE ENDANGERING HIMSELF MORE BY CONTINUING THE ENGAGEMENT. THAT IS WHAT THE CONCERN IS.

I THINK THE REASON AND THE BASIS THAT WAS PRESENTED TO THE U.S. SUPREME COURT IN MIMS WAS THAT THE ABILITY TO HAVE A FACE-TO-FACE CONFRONTATION WITH A DRIVER, LESSENS THE DEGREE TO WHICH THERE MAY BE HARM TO THE OFFICER. THANK IS ONE OF THE VERY MAJOR PREDICATES FOR THAT DECISION. AS WE SAID, THE WHOLE KEY TO THIS ISSUE IS REASONABLENESS. WHAT IS REASONABLE IN THIS SCENARIO, AND THE STATE IS SUBMITTING THAT WHAT IS REASONABLE IS YOU HAD A VALID STOP. THERE IS NO, THIS IS NOT A SITUATION THAT RUNS AFOUL OF REN. THIS IS NOT A PREDETECTURAL STOP AT ALL. THE JUSTIFICATION -- A PRETEXT PRETEXTURAL STOP AT ALL. AS THE OFFICER GETS CLOSER TO THE CAR --

WHY DO I HAVE TO STAY HERE AND SHOW YOU MY DRIVERS LICENSE, GET OUT MY REGISTRATION, AND HAVE YOU CONTINUE THIS DETENTION OF ME, PRESUMABLY UNTIL YOU ARE GOING TO DECIDE WHEN I CAN LEAVE LEAVE.

IF THIS COURT DETERMINES THAT SUCH ACTIVITY IS A DETENTION, THEN I HAVE NO RESPONSE TO THAT. I AM SUBMITTING THAT IT IS NOT A DETENTION AT THAT TIME. IT IS AN INTRUSION, AND WHICH IS SANCTIONED UNDER THE FOURTH AMENDMENT AS A REASONABLE ACTIVITY.

IS THERE ANY OFFICER SAFETY ISSUE IN THIS CASE? I DIDN'T RECALL THAT WE HAD AN OFFICER SAFETY ISSUE HERE. I THOUGHT YOUR WHOLE ARGUMENT IN THIS CASE WAS THAT THE GUY VOLUNTARILY GAVE THE INFORMATION ABOUT NOT HAVING A LICENSE.

HE DID. HE DID. THE OFFICER SAFETY ISSUE WAS ONE SPECIFICALLY IN THIS CASE. I THINK THERE ALWAYS IS AN ISSUE OF OFFICER SAFETY, WHENEVER YOU AFFECT A TRAFFIC STOP, AND THAT IS THE CONTEXT IN WHICH I AM SPEAKING. CERTAINLY NOT IN THIS CASE, WE CERTAINLY SUBMIT THE FACTS SHOW THAT HE GAVE HIM THE I.D. CARD. NO IFS, ANDS OR BUTS.

IF THAT WERE THE FACTS OF THIS CASE, THE OFFICER WOULD BE SATISFIED TO GO UP TO THE MOTORIST AND TELL HIM, BECAUSE THE STATE'S POSITION THAT WHATEVER OCCURRED --

SINCE EVERY FOURTH AMENDMENT CASE IS FACT-SPECIFIC, SURE, IN THIS CASE I WOULD ACCEPT THAT, BUT I STILL STAND BY MY STATEMENT THAT IT IS CONSTITUTIONALLY PERMISSIBLE AND REASONABLE, JUST FOR THE MINIMUM INTRUSION, AND IF THERE ARE NO FURTHER QUESTIONS, I WILL RELINQUISH THE LECTERN. THANK YOU.

MAY IT PLEASE THE COURT. MY NILE NAME IS CAROL WILSON, AND -- MY NAME IS CAROL WILSON, AND I REPRESENT MR. DIAZ, THE RESPONDENT IN THIS CASE, AND I WOULD LIKE TO CLEARLY STATE FOR THE COURT THIS MORNING THAT THERE IS A DISPUTE. MR. DIAZ DID NOT SPONTANEOUSLY ON THIS RECORD, HAND OVER HIS DRIVERS LICENSE TO THE OFFICER, MR. CRUMPLER. IF YOU WILL SEE ON PAGE 6 THAT THE ONLY QUESTION OF THE STATE HAVING THE BURDEN OF PROOF IN REGARD TO ANY KIND OF HANDING OVER OF THE DRIVERS LICENSE OR ANY KIND OF CONSENT, ONLY ASKED THE QUESTION "AND WHAT HAPPENED AT THAT POINT?" HE HANDED ME, HE HANDED ME AN I.D. CARD, AND RIGHT IMMEDIATELY PRIOR TO THAT THE OFFICER SAID HE MADE CONTACT WITH MR. DIAZ. THERE ARE NO FACTUAL QUESTIONS WHICH WERE DEVELOPED AT THE HEARING, IN EVIDENCE. THE PROBABLE CAUSE AFFIDAVIT THAT IS REFERRED TO BY THE STATE IN THE BRIEF AND HERE BEFORE THIS COURT, IS NOT IN EVIDENCE AND IS ONLY A HEARSAY DOCUMENT THAT IS IN THIS RECORD, BECAUSE IT WAS FILED IN THE COURT. BUT IT WAS NEVER IN EVIDENCE, AND THAT, THE FACTS OF ANY STATEMENTS BY MR. DIAZ WERE NEVER MADE PART OF THE EVIDENTIARY HEARING IN THE TRIAL COURT.

WHAT WE ARE BEING, WHAT THE COURT WAS BEING ASKED TO DO WAS TO BE, ASKED TO SUPPRESS THE INFORMATION THAT WAS IN THE I.D. CARD, CORRECT?

YES, YOUR HONOR. I JUST DON'T WANT THIS --

THE RECORD DOES REFLECT THAT THE I.D. CARD WAS JUST HANDED OVER.

BUT IT DOESN'T SHOW EXACTLY WHAT HAPPENED, AND THE REASONABLE INFERENCE FROM THIS RECORD IS THAT THE OFFICER WENT UP TO MR. DIAZ AND SAID, LET ME HAVE YOUR DRIVERS LICENSE. THAT IS AS REASONABLE AN INFERENCE AS I MADE CONTACT, AS AN INFERENCE THAT THE STATE IS TRYING TO USE FROM THIS BARREN RECORD, THAT MR. DIAZ, UPON SEEING THE OFFICER, IMMEDIATELY THRUST OUT HIS IDENTIFICATION CARD AND SAID I HAVE A SUSPENDED LICENSE.

LET ME SEE IF WE CAN, THE STATE IS BEING VERY CANNED I HAD HERE WITH THE -- VERY CANDID HERE WITH THE COURT, THAT SHOULD WE HOLD THAT ASKING FOR THE DRIVERS LICENSE AND REGISTRATION CONSTITUTES A DETENTION, THAT HE WOULD AGREE THAT THE POLICE OFFICER HAS NO BASIS TO DO THAT, IF IT CONSTITUTES A DETENTION. ON THE OTHER END OF IT, ARE YOU CONTENDING THAT AN OFFICER THAT IN GOOD FAITH STOPS A VEHICLE IN THIS MANNER, CANNOT EVEN WALK UP TO THE DRIVER AND SAY I AM SORRY. I STOPPED YOU INITIALLY BECAUSE I COULDN'T READ THE TEMPORARY TAG, BUT I SEE IT NOW, AND THAT IT IS ALL IN ORDER. YOU ARE FREE TO GO ON YOUR WAY. ARE YOU SAYING THE OFFICER CANNOT APPROACH THE DRIVER AFTER DOING THAT?

NO. I AM NOT SAYING THAT, BUT IN THIS CASE, YOUR HONOR, I DON'T THINK --

I JUST WANT TO BE SURE. SO YOU ARE NOT ARGUING FOR A RULE THAT SAYS THAT AN OFFICER CANNOT APPROACH THE DRIVER, AFTER DISCOVERING THAT EVERYTHING IS ALL RIGHT, YOU KNOW, THAT THE BASIS FOR THE STOP TO BEGIN WITH, WAS MISTAKEN THAT HE CAN, YOU ARE SAYING, I ASSUME, THAT THE OFFICER CANNOT ASK, THEN, CANNOT FURTHER DETAIN THE MOTORIST AND, FOR INSTANCE, ASK FOR THE DRIVERS LICENSE AND REGISTRATION, ONCE THE BASIS FOR THE STOP HAS BEEN DISCOVERED TO BE A MISTAKE. IS THAT WHAT YOU ARE ADVOCATING?

THAT IS WHAT I AM SAYING, AND I AM ALSO SAYING THAT THERE WAS NO BASIS FOR THIS

OFFICER TO STOP MR. DIAZ TO BEGIN WITH. SO --

YOU HAVEN'T MADE THAT PART OF THE ARGUMENT.

I KNOW. I WILL MAKE IT YOUR HONOR. I WANT TO SET THE FACTS FOR THE RECORD STRAIGHT.

THIS LEGAL ISSUE THAT WE HAVE HERE, THE SECOND DISTRICT REALLY ASSUMED THAT THERE WAS A PROPER BASIS TO MAKE THE INITIAL STOP. DID THEY NOT? THEY JUST SAID THAT, ONCE THAT CAUSE IS DISSIPATED, AND THAT THERE IS A DISCOVERY THAT EVERYTHING IS ALL RIGHT, THAT THE OFFICER CANNOT CONTINUE THE DETENTION. IS THAT --

THAT WAS THE HOLD SOMETHING IN THE DISTRICT COURT, YOUR HONOR, BUT WE STILL CONTEND THAT THERE WAS NO BASIS FOR THE STOP INITIALLY.

WE ARE NOT USUALLY HERE TO TRY TO RESOLVE THE SPECIFIC FACTS AND CASES, SO MUCH AS WE ARE TO ADDRESS THE ISSUE OF LAW THAT THE DISTRICT COURT HAS CERTIFIED CONFLICT.

THIS IS, ISN'T JUST A FACTUAL ISSUE, YOUR HONOR. IT IS A LEGAL QUESTION. BECAUSE WE BELIEVE THAT THESE TEMPORARY TAGS, AND THEY ARE ALL ISSUED BY THE STATE OF FLORIDA, IT IS NO MYSTERY THEY ARE NOT INDIVIDUALIZED OR MANUFACTURED ANY OTHER WAY. THAT THE NUMBERS ON THE TAGS CANNOT, THE EXPIRATION DATE IS SOMETHING THAT, REALLY, CANNOT BE READ FROM A DISTANCE.

YOU ARE SAYING THAT THE MOTORIST HAS NO CONTROL OF THAT, THAT THEY ARE REQUIRED TO PUT THESE TAGS IN A CERTAIN PLACE, AND THAT THAT, THE STATE DOES ALL OF THAT, AND SO THE MOTORIST CAN'T BE HELD RESPONSIBLE FOR SOMETHING THAT HE HAS NO CONTROL OVER. IS THAT WHAT ESSENTIALLY YOU ARE SAY SOMETHING.

EXACTLY, YOUR HONOR. THAT IS WHAT I AM SAYING, AND ALSO, ONCE YOU COMPLY WITH WHAT THE LEGISLATURE HAS REQUIRED OF A CITIZENS, WHICH IS THAT YOU DISPLAY THE TAG IN A CERTAIN WAY AND IT IS REALLY VERY COMMON SENSE. IF YOU LOOK AT ANY LICENSE TAG, WHETHER IT IS TEMPORARY OR NOT, THE LARGEST THINGS ARE THE LETTERS, AND THE REASON THAT THEY ARE THE LARGEST THING IS THAT IS WHAT THE POLICE REALLY NEED TO, TO BE ABLE TO IDENTIFY WHETHER WHO HAS THE TAG, WHO HAS THE CAR, AND WHETHER THE TAG IS EXPIRED. THOSE LITTLE EXPIRATION NUMBERS ARE MUCH SMALLER, AND CERTAINLY THAT COULD BE A BASIS FOR ISSUING --

SO THE LOGICAL EXTENSION TO THAT IS THAT THEY DO NOT HAVE TO BE, THE EXPIRATION DOES NOT HAVE TO BE VISIBLE.

WELL, IT IS VISIBLE, BUT IT DOESN'T HAVE TO BE VISIBLE IN THE SAME REQUIREMENTS UNDER THE STATUTE THAT THE LETTERS ARE. OOH WELL, IF IT HAS TO BE --

WELL, IF IT HAS TO BE VISIBLE, THEN, ISN'T THE STATE CORRECT THAT, IF YOU GO INTO THIS MATTER OF WHAT IS REASONABLE VISIBILITY, AND THE TRIAL --

REASONABLE VISIBILITY UNDER THE STATUTE, FOR TEMPORARY TAGS, IT CLEARLY SAYS VISIBILITY FROM THE REAR OF THE CAR, AND THAT IS WHAT WE HAD IN THIS CASE. WHEN HE GOT TO THE REAR OF THE CAR, HE COULD READ THE NUMBERS. WHICH ARE SMALLER THAN THE VERY LARGE BLACK NUMBERS THAT ARE ON THE TAG. THE OFFICER CAN RUN THOSE NUMBERS, IF HE IS CONCERNED ABOUT THE EXPIRATION.

THE ONLY WAY THAT HE CAN GET IN THAT POSITION WOULD BE TO STOP THE VEHICLE, CORRECT?

TO RUN THE NUMBERS? NO.

WELL, BUT TO SEE IF IT FROM WALKING UP BEHIND IT. HE WILL HAVE TO HAVE THE VEHICLE STOPPED.

WHAT I AM SAYING, YOUR HONOR, THAT, IF THIS COURT FINDS THAT A POLICE OFFICER CAN STOP A CAR BECAUSE IT CAN'T READ THE EXPIRATION TAG, THEN IT CAN STOP MY CAR, BECAUSE YOU CANNOT READ THOSE NUMBERS. THEY ARE TOO SMALL, AND YOU CAN'T READ THEM ON A TEMPORARY TAG, EITHER.

WHO FILLS THOSE OUT?

THE STATE OF FLORIDA. IT IS, THE REQUIREMENT IS THAT YOU DISPLAY IT IN THE PROPER WAY AND THE REASON FOR THAT IS THE INFORMATION THE POLICE NEED IS, REALLY, THE IDENTIFYING NEWSPAPERS ON THE TAG. MR. DIAZ DID WHAT WAS REQUIRED UNDER THE STATUTE FOR TEMPORARY TAGS. HE HAD THE TAG THAT WAS GIVEN TO HIM. I DON'T KNOW HOW HE GOT IT. IT IS NOT IN THE RECORD. BUT HE PUT IT IN THE REAR OF THE CAR. AND THE OFFICER, HIMSELF, IT IS A SUBJECTIVE THING THAT HE COULDN'T READ IT. BUT ONCE HE GOT TO THE REAR OF THE CAR --

I THOUGHT ONE OF YOUR ARGUMENTS WAS THAT THERE REALLY IS NO READABILITY REQUIREMENT, UNDER 320, EVEN THOUGH, I BELIEVE THERE IS A READABILITY REQUIREMENT UNDER 316 THAT SAYS WITHIN 100 FEET OR SO, SO THAT IS NOT THE ARGUMENT THAT YOU ARE MAKING?

THE ARGUMENT THAT I AM MAKING IS THERE IS NO READABILITY REQUIREMENT FOR THE TEMPORARY TAG. I DON'T THINK THERE IS A READABILITY REQUIREMENT FOR THE PERMANENT TAG, EITHER, BUT THAT IS NOT THIS CASE.

WHAT YOU ARE REALLY SAYING IS IF THE STATE IS GIVING OUT THESE TAGS, WHETHER THEY ARE PERMANENT OR NOT, AND SOMEONE GETS A STATE-ISSUED TAG AND THE OFFICER, IN ONE INSTANCE IS SAYING THEY CAN'T READ IT, THEN THAT IS THE OFFICER'S PROBLEM NOT THE PERSON WHO IS DRIVING THE VEHICLE.

AS LONG AS THEY HAVEN'T DONE ANYTHING TO MAKE IT NOT VISIBLE, LIKE PUT, YOU KNOW, THINGS IN FRONT OF THE TAG OR PUT ANY KIND OF TAPE OVER IT. AS LONG AS THEY ARE COMPLYING WITH THE STATUTE, SO THAT THE OFFICERS CAN DO THEIR JOB, THEN THEY DO NOT, THEN HAVE, LEGAL GROUNDS TO PULL SOMEONE OVER. SO THAT IS MY ARGUMENT WITH RESPECT TO WHY THE STOP REALLY HAD NO LEGAL JUSTIFICATION TO BEGIN WITH.

WAS IT THAT THE OFFICER COULDN'T READ THE EXPIRATION OR COULDN'T READ THE NUMBERS? COULDN'T READ THE EXPIRATION DATE. THAT IS WHAT HE SAID ON THE RECORD.

WHICH IS THE SMALLER: IS THAT DIFFERENT FROM THE PERMANENT TAG?

WHAT HAPPENS, THE TEMPORARY TAG, THEY GIVE YOU A NUMBER WHICH IS PRINTED OUT, AND IT IS IN MUCH LARGER BLACK LETTERS AGAINST THE WHITE, AND THEN THE BUREAUCRAT, WHEREVER THEY GET IT WRITES IN THE EXPIRATION DATE, WHICH IS FOR 30 DAYS AT A TIME.

THAT CAN NEVER BE READ FROM 100 FEET THAT NIGHT.

BUT THE LEGISLATURE DIDN'T REQUIRE T THEY JUST WANTED YOU TO BE ABLE TO SEE THE EXPIRATION DATE, AND SO YOU -- DIDN'T REQUIRE IT. THEY JUST WANTED YOU TO BE ABLE TO SEE THE EXPIRATION DATE, SO YOU CAN SEE IT, AND ON CLOSER INSPECTION, YOU HAVE A

TEMPORARY TAG, AND YOU CAN RUN THE NUMBERS TO FIND OUT WHO IT BELONGS TO AND AND THE EXPIRATION DATE, SO IT IS THERE FOR THAT PURPOSE.

ARE WE HERE WHETHER THE OFFICER CAN MAKE A STOP OR FURTHER INQUIRY?

I BELIEVE THAT IS THE CONFLICT BEFORE THIS COURT. I DON'T REALLY THINK THAT THERE IS A CONFLICT BETWEEN THE CASES. I DON'T THINK THAT WHISCO AND BASS HOLD THAT YOU CAN FIND ANY REASON TO STOP SOMEONE, AND THEN ONCE YOU HAVE FOUND YOUR LITTLE REASON, THAT YOU CAN, THEN, GO UP AND ASK FOR DRIVERS LICENSE AND REGISTRATION. AND IF THE CASES ARE SUPPOSED TO SAY THAT, THEN THERE IS NO CONSTITUTIONAL BASIS FOR SUCH A HOLDING.

WHAT DO YOU SEE THIS AS? A DETENTION? AN ENCOUNTER? A TERROR STOP? WHAT CATEGORY DO YOU SEE IT FALLING IN, ONCE THE OFFICER SEES THE TAG AND KNOWS THAT THERE IS NO PROBLEM?

ONCE HE SEES THE TAG AND KNOWS THAT THERE IS NO PROBLEM, HE HAS NO LEGAL JUSTIFICATION FOR KEEPING MR. DIAZ THERE. AT THAT POINT --

AT THAT POINT BS HE HE ASKS FOR -- AT THAT POINT HE ASKS FOR HIS DRIVERS LICENSE --

THEN HE IS DETAINING HIM WITHOUT LEGAL JUSTIFICATION, WITHOUT REASONABLE SUSPICION.

AND THAT MAKES IT A CLEAR CONFLICT WITH BASS, DOESN'T IT? I MEAN, YOU CAN'T AGREE THAT, UNDER THE FACTS OF THIS CASE WHICH ARE VERY SIMILAR TO THE FACTS OF THE BASS CASE, THE DISTRICT COURT, THE FIFTH DISTRICT IN BASS, SAYS ONCE YOU HAVE EFFECTUATED THIS STOP, YOU CAN, IN FACT, ASK THE DRIVER FOR HIS LICENSE AND REGISTRATION, AND IN THIS CASE, THE SECOND DISTRICT IS SAYING ONCE YOU HAVE MADE THE STOP AND YOU HAVE DETERMINED THAT THAT STOP IS NO LONGER VALID, THE SAME THING IN BASS, THAT YOU CANNOT ASK FOR THE LICENSE AND REGISTRATION, SO AREN'T THERE CLEARLY CON FLIBT FLIBTING -- CONFLICTING SITUATIONS HERE, BASS AND THIS CASE?

BASS SAYS THAT THE REASON FOR THE STOP WAS THE VISIBILITY OF THE TAG. AND THAT DOESN'T GIVE ANY SPECIFIC FACTS AS TO UNDERLYING WHY THERE WAS A VISIBILITY PROBLEM. THE STATUTE REQUIRES VISIBILITY, SO I DON'T READ IT SO NARROWLY. I THINK YOU CAN READ BASS --

BUT IT SAYS CLEARLY THAT, ONCE THE OFFICER COULD SEE, ONCE THE OFFICER APPROACHED THE CAR, THE OFFICER COULD SEE THAT THE TEMPORARY TAG WAS VALID. HERE SAME THING. ONCE THE OFFICER STOPPED THE CAR AND APPROACHED THE CAR, HE COULD SEE THAT IT WAS VALID. I MEAN, I DON'T SEE HOW YOU GET AROUND THE FACT THAT THERE IS A CONFLICT BETWEEN WHAT WAS DONE IN BASS AND WHAT WAS DONE IN DIAZ.

WELL, YOU KNOW, I DON'T THINK THAT NECESSARILY THE TEMPORARY TAG BEING, IT SAYS VISIBILITY AND IMPROPER TAG DISPLAY. THOSE ARE THE WORDS, AND I AM NOT TRYING TO BE TOO TECHNICAL HERE, JUSTICE QUINCE. IF THERE IS A CONFLICT BETWEEN THE TWO, I THINK THE SECOND HOLDS PROBABLE, BUT I DON'T THINK THAT BASS HAS TO BE READ NECESSARILY SO EXPANSIVELY. YOU SEE, WHEN I SEE A CONFLICT, I WOULD SEE THINK THAT THE OPINIONS WOULD SPECIFICALLY COME OUT AND SAY WE HAVE A STOP. THERE WERE VALID GROUNDS. THE GROUNDS WERE CURED, BUT WE STILL THINK THAT IT IS PROPER TO ASK FOR DRIVERS LICENSE AND REGISTRATION. BECAUSE IT IS NOT THAT SPECIFIC IN BASS, I AM RELUCTANT TO SAY THAT THERE IS A CONFLICT. ANOTHER OFFICER STOPPED. ONCE HE STOPPED, THE TEMPORARY TAG WAS DETERMINED TO BE VALID. NEVERTHELESS HE ASKED TO SEE BASS'S DRIVERS LICENSE AND REGISTRATION. WHAT COULD BE MORE FACTUALLY-IDENTICAL THAN THIS, THOSE TWO CASES?

WELL, BASED ON THE FACTS THAT YOU HAVE JUST SAID TO ME, THEY ARE VERY SIMILAR, BUT BECAUSE OF THE LANGUAGE OF IMPROPER TAG DISPLAY, I DON'T KNOW IF THERE WAS SOMETHING ELSE IN THE CASE, BECAUSE I KNOW OPINIONS DON'T ALWAYS WRITE ALL OF THE FACTS THAT ARE UNDERLYING THE OPINION, BUT TO THE EXTENT THAT THERE IS DEEMED A CONFLICT BETWEEN THE TWO CASES, I DON'T BELIEVE I DON'T WANT TO BELABOR THAT -- I DON'T WANT TO BELABOR THAT POINT. I DON'T SEE ANY JUSTIFICATION FOR THAT HOLDING, SHOULD YOU FIND THAT THERE IS A THAT CONFLICT, SHOULD YOU FIND THAT HOLDING IN BASS, WHAT IS THE LEGAL JUSTIFICATION FOR THE OFFICER BEING ABLE TO ASK FOR DRIVERS LICENSE AND REGISTRATION REGISTRATION.

SOMEONE ASKED THE QUESTION IF THE OFFICER SAW THE TAG WAS OKAY OFFICER GOES BACK, GETS IN HIS OR HER CAR, AND TAKES OFF. IS THAT ALL RIGHT?

THAT IS FINE. THAT REMOVES ANY SAFETY PROBLEMS. THE OFFICER WHO CONTROLS IN THIS SITUATION, HIS OWN SAFETY CONCERNS, IF HE SEES, I MEAN, THIS IS SOMETHING THAT IS NOT THAT UNUSUAL. I AM SORRY, JUSTICE.

YOU DON'T THINK THAT AN OFFICER GOING UP TO THE WINDOW TO SAY I THOUGHT YOUR TAG IS EXPIRED. I SEE THAT IT IS NOT. AND THE DRIVER HANDING HIM AN I.D., THAT IS WRONG IN YOUR -
-

WELL, THAT IS NOT THE THIS CASE -- THAT IS NOT THIS CASE. THAT IS NOT WHAT HAPPENED IN THIS CASE.

WHAT WOULD BE YOUR ASSERTION OF WHAT HAPPENED IN IN CASE?

WHAT -- IN THIS CASE?

WHAT THE RECORD SHOWS IS THAT THE OFFICER SAW THAT HE HAD NO GROUNDS FOR ISSUING A TICKET, AND THERE WAS NO TICKET ISSUED IN THIS CASE. HE, NEVERTHELESS, WENT UP TO MR. DIAZ, AND IN THE RECORD IT SAYS THAT HE MADE CONTACT. NOW, THE FACT, THE STATE HAS THE BURDEN OF SHOWING WHAT KIND OF CONTACT THAT WAS.

THIS WAS OUT ON A MOTION TO SUPPRESS?

YES.

WERE THE WITNESSES CALLED?

JUST OFFICER CRUMP LER.

DID THE DEFENSE HAVE AN OPPORTUNITY TO EXPLORE THAT?

UNDER CROSS-EXAMINATION, BUT THE STATE HAS THE BURDEN. IF THEY WANT TO SAY THAT IT IS A SPONTANEOUS HANDING OVER OF THE DRIVERS LICENSE, WHEN THERE IS NO OTHER LEGAL BASIS TO KEEP MR. DIAZ, THEN THEY NEED TO SET FORTH THOSE FACTS ON THE RECORD.

HOW, ALSO, WOULD YOU DESCRIBE WHAT THE OFFICER DID?

WELL, WHEN YOU SEE THE CONTACT, I THINK IT WOULD BE THAT HE WENT OVER AND SAID MR. DIAZ OR SIR, I STOPPED YOU BECAUSE I COULDN'T SEE YOUR TAG. CAN I SEE YOUR DRIVERS LICENSE AND REGISTRATION?

BUT THAT IS SPECULATING.

IT IS SPECULATING TO SAY THAT HE HANDED IT SPONTANEOUSLY, TOO.

NO. THERE IS DIRECT EVIDENCE THAT HE HANDED IT OVER, ACCORDING TO THE RECORD THAT YOU READ.

NO.

THAT HE MADE CONTACT, AND THE DEFENDANT HANDED HIM THE ID.

THE QUESTION. WHAT DID YOU DO AFTER YOU APPROACHED THE CAR AND YOU SAW THAT YOU COULDN'T SEE THE TAG? ANSWER I JUST CAME IN CONTACT WITH THE DRIVER. QUESTION, AND WHAT HAPPENED AT THAT POINT? HE HANDED ME, MR. DIAZ HANDED ME A FLORIDA I.D. CARD. THE CONTACT IS NOT DESCRIBED.

BUT SO YOU ARE SPECULATING THAT THERE WERE WORDS EXCHANGED, ARE YOU NOT?

I THINK YOU HAVE TO STRAIN THIS RECORD, TO, THEN, SPECULATE THAT MR. DIAZ, UPON SEEING THE OFFICER, SPONSLSY HANDED HIS IDENTIFICATION CARD. -- SPONTANEOUSLY HANDED HIS IDENTIFICATION CARD. I THINK THAT STRAINS THE RECORD JUST AS WELL AS ANY, WHAT WOULD BE A COMMONSENSE CONVERSATION OF THE OFFICER ASKING FOR DRIVERS LICENSE AND REGISTRATION.

LET ME ASK YOU THIS, THAT IF WE DO ASSUME THAT THIS WAS A STOP THAT WAS A LEGITIMATE STOP, AS WAS IN THE FIFTH DISTRICT'S OPINION, SAYING THAT IT WAS A LEGITIMATE STOP, AND ISN'T THERE SOME REASONABLE REASON THAT, ONCE YOU STOP SOMEBODY, LAW ENFORCEMENT STOPS SOMEBODY, THAT THEY CAN FIND OUT WHO THEY HAVE STOPPED AND KEEP A RECORD, AND SO THAT THERE WILL BE SOME RECORD OF THAT EVENT? WHAT IF THE PERSON GOES BACK AND CLAIMS THAT THE OFFICER BEAT ME UP!

I DON'T, I AM NOT AWARE OF ANY RECORDKEEPING EXCEPTION TO THE FOURTH AMENDMENT OF BEING ABLE TO JUST, FOR THE PURPOSES OF KEEPING A RECORD --

THE U.S. SUPREME COURT HAS SAID THAT THERE IS A MINIMAL EXPECTATION OF PRIVACY YAING AN AUTOMOBILE, ISN'T THAT RIGHT? -- PRIVACY, USING AN AUTOMOBILE, ISN'T THAT RIGHT? I BELIEVE THE U.S. SUPREME COURT HAS AN OPINION IN KILO VERSUS THE UNITED STATES THAT HAS ESTABLISHED THAT.

I DON'T BELIEVE THAT A CONTACT, WHETHER YOU CAN STOP THE CAR.

NO. BUT ASSUMING THAT IT HAS BEEN REASONABLY STOPPED. I MEAN, REALLY IT BOILS DOWN TO WHETHER, ONCE YOU STOP A VEHICLE FOR, LAW ENFORCEMENT STOPS A VEHICLE FOR A LEGITIMATE REASON, WE ASSUME THAT, THEN DOESN'T, DOES LAW ENFORCEMENT HAVE OR IS IT UNREASONABLE FOR LAW ENFORCEMENT TO IDENTIFY THE PERSON THAT HAS BEEN STOPPED?

I THINK IT IS, BECAUSE I THINK, UNDER FLORIDA VERSUS ROYER, YOU HAVE TO TAYLOR THE STOP TO THE CIRCUMSTANCES OF IT, AND -- TO TAILOR THE STOP TO THE CIRCUMSTANCES OF IT, AND THAT IS THE --

THAT IS SORT OF A DIFFERENT SETTING. IN PERKINS, THIS COURT HELD THAT THERE COULD NOT BE A REQUIREMENT OF AN IDENTIFICATION OF THE PERSON THAT WAS STOPPED, WHERE IT WAS AN ILLEGAL STOP. THIS IS SORT OF A DIFFERENT SETTING, THOUGH, THAN PERKINS, RIGHT?

WELL --

BECAUSE IF YOU ASSUME --

I DISPUTE THE STOP. THE LEGALITY OF THE STOP IS BEFORE THE COURT, AND IT IS NOT CONCEDED BY ANY PARTY.

WAS THAT ARGUED BEFORE THE TRIAL COURT THAT, THE INITIAL STOP WAS NOT VALID?

YES, IT WAS, BUT WHAT WAS NOT ARGUED BEFORE THE TRIAL COURT WAS THE ASSERTION OF THE SPONTANEOUS HANDING OVER OF THE LICENSE, AND IT WAS NOT ARGUED BEFORE THE DISTRICT COURT. IT IS THE FIRST TIME BEFORE THIS COURT, AND FOR THAT REASON I SUGGEST THAT YOU SHOULD DISCARD THAT ARGUMENT ALL TOGETHER.

YOU ARE TALKING ABOUT THE ISSUE OF WHETHER, AFTER THE STOP IT WAS VOLUNTARY.

EXACTLY.

THAT IS WHAT I WAS GOING TO ASK YOU. THE JUDGE DID NOT MAKE FINDINGS. ANOTHER JUDGE DID NOT MAKE FINDINGS. THE DISTRICT COURT DID NOT HEAR ARGUMENT ON THAT, AND IN MY BRIEF ON THE DISTRICT COURT, I SPECIFICALLY SAID THERE WAS NO CONSENT TO HAND THIS OVER. IT WAS NOT DISPUTED IN THE DISTRICT COURT AND I SET THAT FORTH IN MY BRIEF, AND FOR THOSE REASONS OF NOT PRESERVATION ALONE, THAT ARGUMENT SHOULD BE DISCARDED BY THIS COURT. I DO APPRECIATE YOUR TIME.

CHIEF JUSTICE: THANK YOU. COUNSEM.

> VERY BRIEFLY RESPECT ESPECIALLY WITH RESPECT TO THAT LAST POINT, I HIM GOING TO READ IT, ALSO, WHAT HAPPENED AT THAT POINT. HE HANDED ME, MR. DIAZ HANDED ME A FLORIDA I.D. CARD.

IS SHE RIGHT, THOUGH, THAT THE STATE --

NO. THAT WAS WHAT WAS ADDUCED AT TRIAL.

IS SHE RIGHT, THAT THE STATE DID NOT ARGUE VOLUNTARY ENCOUNTER OR VOLUNTARY TRANSACTION HERE, IN EITHER THE TRIAL COURT OR THE DISTRICT COURT OF APPEAL, BUT THAT YOU ARE ASSERTING THAT FOR THE FIRST TIME HERE?

I DON'T RECALL THAT IT WAS NOT IN THE BRIEFS IN THE SECOND.

THAT IS ONE THING DID NOT RECALL THAT IT WAS NOT. I AM ASKING YOU AFFIRMATIVELY WAS THIS ASSERTED AT THE DISTRICT COURT OF APPEAL LEVEL, THAT THE MOTORIST VOLUNTARILY HANDED THE, THAT SHOULD BE A FAIRLY EASY --

I DON'T RECALL IF THERE WAS AN ISSUE OF CONSENT IT SELF BUT WAS THE FACT THAT THE ID WAS HANDED VOLUNTARILY. YES, THAT WAS DEFINITELY SUBMITTED.

I NOTICE THAT THE DISTRICT COURT DOES NOT SEEM TO ADDRESS IT, SO THEY --

EXACTLY.

-- SEEM TO BE OPERATING ON THE BASIS.

I HAVE GOT TO ASK YOU A QUESTION ABOUT THE INITIAL STOP BECAUSE IT IS SOMETHING THAT IS BOTHERING ME. THE U.S. SUPREME COURT HAS SAID WE ARE NOT GOING TO WORRY ABOUT PRETEXT, IF THE INITIAL STOP WAS VALID, IF THERE WAS A TRAFFIC VIOLATION, BUT IT IS TRUE THAT YOU GOT THESE TEMPORARY TAGS, AND AT NIGHT, THERE WOULD REALLY BE NO WAY FOR AN OFFICER TO BE ABLE TO READ WHETHER IT EXPIRED OR NOT, WHILE THE TWO VEHICLES ARE DRIVING. YOU SEE A TEMPORARY TAG. YOU KNOW, LET'S -- AND THEREFORE SINCE THERE ARE

PEOPLE DRIVING WITH TEMPORARY TAGS ALL OVER THE PLACE, HOW DO WE GUARD AGAINST THE FACT THAT IT IS JUST SORT OF THE POLICE OFFICER'S, SEES THIS VEHICLE, YOU KNOW, IT IS A TEMPORARY TAG, IT IS AT NIGHT. MAYBE IT IS AN AFRICAN AMERICAN. MAYBE IT IS HISPANIC. I THINK I WILL JUST STOP THIS PERSON. ISN'T THAT VERY FACT THAT THIS IS KIND OF A VERY, THERE IS, IT IS A LEGAL THING THAT THIS GUY WAS DOING, AND YET WE ARE SAYING IT IS OKAY TO STOP PEOPLE THAT ARE OTHERWISE COMPLYING WITH THE LAW. ISN'T THAT A PROBLEM?

I THINK WHAT THAT ALMOST SUGGESTS IS THAT YOU GET IMMUNITY IF YOU ARE USING A TEMPORARY TAG, IF THERE IS NO BASIS FOR SOMEBODY TO STOP YOU. FIR OF ALL DISPUTE -- FIRST OF ALL DISPUTE FACTUALLY. IN THE TEMPORARY TAG, EVEN THE LETTERS OF EXPIRATION IS LARGER THAN WHAT WE HAVE ON OUR REGULAR TAGS. IT CAN BE SEEN FROM A CERTAIN EYE DISTANCE, BUT THE POINT IS, YOUR HONOR, IN DIRECT RESPONSE TO YOUR QUESTION, I WILL CITE THE GARCIA CASE THAT WAS CITED IN THE BRIEFS, WHERE THE OFFICER DID NOT BE -- WHERE THE OFFICER DID NOT BELIEVE THAT AND THE DETERMINATION, IN GARCIA, THE TRIAL JUDGE SAID I DON'T BELIEVE YOU, OFFICER. I JUST BELIEVE THAT YOU STOPPED HIM BASICALLY AS A RUSE.

BUT DON'T WE HAVE SOMETHING BEYOND THAT HERE, AND WHAT WE ARE TALKING ABOUT REALLY, IS ALMOST A COLLATERAL ISSUE, BUT YET IT CERTAINLY IS A COLLATERAL ISSUE OF CONCERN, IF THE ISSUING OFFICIAL, I ASSUME A CAR OWNER HAS NO RIGHT TO DO THESE THINGS THEMSELVES, SO IF IT IS DEMONSTRATED THAT THE ISSUING OFFICIAL, AND THAT THIS IS A STANDARD PRACTICE, IS THE ONE THAT DOES THIS, WHAT ARE FLORIDA MOTORISTS TO DO, IF THE MINUTE THEY PUT THAT UP VISIBLY DISPLAYED, AS THE STATUTE REQUIRES, THAT IN EVERY INSTANCE THAT WHEN THEY ARE DRIVING THAT VEHICLE AT NIGHT, THEY, NOW, HAVE JUST BECAUSE OF CIRCUMSTANCES BEYOND THEIR CONTROL, THEY ARE SUBJECT TO BEING STOPPED ON THE HIGHWAY, BECAUSE OF WHAT AN OFFICIAL OF THE STATE OF FLORIDA HAS DONE. ISN'T THERE SOMETHING WRONG WITH THAT SCENARIO?

I DON'T BELIEVE THERE IS, BECAUSE IT IS THE RESPONSIBILITY OF THE MOTORIST TO HAVE A PROPER TAG. IF I HAVE --.

WHAT IS THE MOTORIST TO DO --

HE CAN TAKE A PEN F IT IS TOO LIGHT, IN THIS CASE.

WHAT THE MOTORIST TO DO?

IN THIS CASE IT IS TOO LIGHT. HE COULD HAVE TAKEN A MARKER AND WRITTEN OVER IT.

HE WOULD NOT BE RESPONSIBLE, THEN, FOR DEFACING THE TAG?

I WOULD SUBMIT NO, IF HE WROTE OVER IT AND MADE IT THICKER, I WANT TO DISAGREE WITH THAT, AND ONE THING I WANT TO SAY WITH DUE DEFERENCE TO YOU, CHIEF JUSTICE, THE STATE DID NOT CONCEDE BEFORE THAT IT WOULD BE IMPROPER TO ASK FOR A LICENSE, BECAUSE WE CHARACTERIZE THIS AS A MINIMUM INTRUSION. THE QUESTION THEN BECOMES IF HE REFUSES WHAT HAPPENS. THEN THERE MAY BE A DETENTION THAT IS IMPROPER.

CHIEF JUSTICE: OKAY. I UNDERSTAND. THANK YOU VERY MUCH. THANK YOU, BOTH, VERY MUCH.