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State of Florida v. Kellen Lee Betz

NEXT CASE ON THE COURT'S CALENDAR IS STATE VERSUS BETS. -- BETZ. MR. FISHKIN.

IF IT PLEASE THE COURT. RICHARD M FISHKIN ON BEHALF OF THE STATE OF FLORIDA, YOUR HONORS. THE FACTS IN THIS CASE ARE NOT COMPLEX AROUND NOT PARTICULARLY IN DISPUTE, AS FAR AS I KNOW. THERE WAS A VALID TRAFFIC STOP OF AN AUTOMOBILE AT ABOUT 7:45 IN THE EVENING OF MARCH 9, 1998.

COULD YOU SPEAK UP A LITTLE BIT? I THINK IT IS WHERE THE MIKE GOES. YOU MIGHT NEED TO ADJUST IT.

I AM HEIGHT-IMPAIRED. THE --

A HEADLIGHT OUT?

A HEADLIGHT WAS OUT. IT WAS A VALID TRAFFIC STOP, YOUR HONOR. THERE WAS NO CONTEST ABOUT THAT. AS THE OFFICER APPROACHED THE CAR, THE DEFENDANT BELOW, THE RESPONDENT IN THIS CASE, JUMPED OUT OF THE CAR, STOOD NEXT TO IT WITH HIS DRIVER'S LICENSE OUT. UNFORTUNATELY FOR HIM HE DIDN'T CLOSE THE WINDOW TO THE CAR. AS THE OFFICER APPROACHED THE CAR, IT WAS AN OVERWHELMING ODOR OF MARIJUANA EMANATING FROM INSIDE THE CAR. THE OFFICER THEN ADVISED THE DEFENDANT OR THE RESPONDENT THAT HE WAS GOING TO SEARCH THE VEHICLE. THE RESPONDENT SAID I DON'T GIVE YOU PERMISSION TO SEARCH. THE OFFICER INDICATED I DON'T NEED PERMISSION TO SEARCH. I HAVE PRAUBL -- I HAVE PROBABLE CAUSE.

THIS WAS A SMALL AUTOMOBILE. IS THAT CORRECT? IT WAS A SPORTS CAR, A TWO-SEATER?

IT WAS A SPORTS CAR. A PONTIAC FIERO.

A LITTLE TWO-SEATER.

THAT'S CORRECT, YOUR HONOR, ALTHOUGH THE RECORD DOESN'T REFLECT THAT, THAT IS WHAT IT WAS. THE OFFICER WAS A TRAINING OFFICER FOR THE CLEARWATER POLICE DEPARTMENT, HAD DONE 700 OR 800 DRUG CASES IN HIS CAREER AND HAD, WITH HIM, A TRAINEE, AND HE INSTRUCTED THE TRAINEE, WHILE HE TOOK, I AM SORRY, HE, THEN, PATTED DOWN THE DEFENDANT, BECAUSE THE DEFENDANT WAS GETTING NERVOUS, AND HE CAME UP WITH A BAGGY OF MARIJUANA THAT THE DEFENDANT HAD SECRETED IN HIS CROTCH. THE OFFICER THEN ESCORTED THE DEFENDANT OR THE RESPONDENT, IN THIS CASE, BACK TO HIS CAR, AND INSTRUCTED HIS TRAINEE TO SEARCH THE INTERIOR OF THE CAR, WHICH THE TRAINEE DID. IN THE INTERIOR OF THE CAR, THEY FOUND SOME CONTRABAND, ALTHOUGH DURING THE STATE'S CASE, AND THE SUPPRESSION HEARING, THE JUDGE SUSTAINED AN OBJECTION ON HEARSAY. THE DEFENDANT'S TRIAL COUNSEL REVISITED THE ISSUE ON CROSS-EXAMINATION, AND THE OFFICER INDICATED THAT CONTRABAND WAS FOUND INSIDE THE CAR AND THAT THE TRAINING OFFICER HAD SHOWN IT TO HIM.

DO WE KNOW WHAT IT WAS?

WELL, THE TRAINING -- DURING THE -- IN THE PORTION THAT WAS SUBJECTED TO, IT WAS MARIJUANA. AT THE CROSS-EXAMINATION, HE WAS ASKED, WELL, WAS CONTRABAND FOUND IN

THE CAR? YES, IT WAS. DID YOU SEE IT? YES, I DID.

BUT WE DON'T KNOW WHAT IT WAS.

WE DON'T KNOW WHAT IT WAS. AND WE DO KNOW FROM THE RECORD THAT, WHATEVER IT WAS, IT WAS DIMINIMIOUS, BECAUSE IT WAS NOT USED TO AGGRAVATE THE CHARGE OF MARIJUANA THAT WAS USED TO CHARGE THE DEFENDANT BELOW. THE OFFICER SEARCHED THE TRUNK OF THE CAR AND FOUND A BRIEFCASE IN THE TRUNK AND IN THE SMALL METAL BOX, HE FOUND ANOTHER BAGGY OF MARIJUANA, AND THE DEFENDANT WAS CHARGED, PURSUANT TO THE TWO AMOUNTS.

IS THE STATE ARGUING FOR SORT OF A BRIGHT-LINE RULE TAKE -- RULE THAT, IF AT THAT POINT THERE IS A PROBABLE CAUSE TO ARREST FOR THE MARIJUANA AND SEARCH THE INSIDE OF THE CAR, THAT IT IS ALWAYS, UNDER GENERALIZEED PROBABLE CAUSE, THAT IT IS ALWAYS APPROPRIATE TO SEARCH THE TRUNK?

NO, YOUR HONOR. QUITE THE CONTRARY. IN THIS CASE, THIS IS A ROSS SEARCH. THIS IS NOT A BELTIN SEARCH. IN THIS CASE, THE OFFICER HAD PROBABLE CAUSE TO SEARCH THE VEHICLE, PRIOR TO DETERMINING THAT THE RESPONDENT HAD ANY MARIJUANA ON IT, AND THAT WAS BASED UPON THE ODOR OF MARIJUANA COMING OUT OF THE CAR.

AT THAT POINT YOU WOULDN'T ARGUE THAT THEY WOULD HAVE PROBABLE CAUSE TO SEARCH THE TRUNK?

YES, THEY WOULD, YOUR HONOR.

THEY WOULD?

YES, BASED UPON THE ODOR OF MARIJUANA, NOT BASED UPON THE ARREST OF THE INDIVIDUAL.

SO WHAT YOU ARE SAYING IS IT IS ALWAYS REASONABLE THAT, IF THERE IS MARIJUANA COMING FROM INSIDE A VEHICLE, TO, THEN, ALSO -- WHAT -- TO SEARCH THE TRUNK?

YES.

AND WHAT IS THE CONNECTION?

THE CONNECTION IS THAT THE UNITED STATES SUPREME COURT, UNDER ROSS, INDICATED QUITE CLEARLY, AND ROSS IS A 1982 CASE IF PROBABLE CAUSE JUSTIFIES THE SEARCH OF A LAWFULLY-STOPPED VEHICLE, IT JUSTIFIES THE SEARCH OF EVERY PART OF THE VEHICLE AND ITS CONTENTS THAT MAY CONCEAL THE OBJECT OF THE SEARCH. HERE, THERE WAS THE ODOR OF MARIJUANA. THE OFFICER HAD PROBABLE CAUSE TO BELIEVE THAT THERE WAS CONTRABAND SECRETED IN THE CAR, AND BASED UPON THAT, HE HAD PROBABLE CAUSE TO SEARCH THE ENTIRE CAR FOR, IN ANY AREAS THAT WERE LIKELY TO CONTAIN THE OBJECT OF THE SEARCH, WHICH IN THIS CASE WAS MARIJUANA.

SO IF THEY HAD SEEN A VILE OF COCAINE ON THE FRONT SEAT OF THE VEHICLE, THAT, ALSO, WOULD GIVE PROBABLE CAUSE TO SEARCH EVERY PART, INCLUDING THE TRUNK OF A VEHICLE?

ONCE THEY HAVE PROBABLE CAUSE TO BELIEVE THAT THE VEHICLE CONTAINS CONTRABAND, THEN THAT PROBABLE CAUSE EXTENDS TO THE ENTIRE VEHICLE.

GAIN, IF 2 IS A GUN ON -- IF IT IS A GUN THAT IS FOUND ON THE FRONT SEAT, THE SAME THING? YOU CAN SEARCH EVERY PART OF THE VEHICLE.

THERE ARE FEDERAL CASES --

NO. I JUST WANT -- SO IT IS A BRIGHT-LINE RULE THEN.

THERE ARE FEDERAL CASES THAT HAVE HELD THAT, ONCE YOU HAVE PROBABLE CAUSE TO BELIEVE, YOU CAN SEARCH THE CAR. YOU CAN SEARCH THE WHOLE THING.

WAS IT THE STATE'S POSITION THAT AVOCADO?

ALCAVEDO?

I WILL GO WITH YOUR PRONUNCIATION. IT HAS NO BEARING ON THIS?

ALCAVEDO IS A RESULT OF A LINE OF CASES THAT CAME DOWN, STARTING WITH CHADWICK. IN THOSE CASES AND IN ALCAVEDO, THE POLICE HAD FOLLOWED CONTRABAND FROM POINT A TO POINT B, AND ALCAVEDO WAS COMING FROM HAWAII TO CALIFORNIA, AND THEY WERE FOLLOWING CONTRABAND AND IT GRATUITOUSLY ENDED UP IN THE TRUNK OF THE VEHICLE. THE CONTROVERSY WAS NOT WHETHER THEY COULD SEIZE THE MARIJUANA BUT WHETHER, ONCE THEY GOT CONTROL OF IT WHETHER THEY COULD OPEN THE BAG. ALCAVEDO CAME DOWN AND SAID IF YOU HAD A LARGENER TRUINGS IN THE TRUNK, IT IS RIDICULOUS TO GO AND -- A LARGER INTRUSION IN THE TRUNK, THEN IT IS RIDICULOUS TO GO TO THE COURT FOR THAT SMALLER POINT.

AND IT HAS --

ALCAVEDO HAS BEEN CITED BY THE SUPREME COURT, TWICE IN 1991 IN HOW THE ENAND DISON, IT -- DISON, IT WAS CITED BY THE SUPREME COURT.

WHAT ABOUT THESE CASES THAT DO SPECIFICALLY REFER TO, JUST BECAUSE YOU HAVE CAUSE TO SEARCH THE TRUNK, FOR INSTANCE, DOESN'T MEAN THAT YOU HAVE PROBABLE CAUSE TO SEARCH THE PASSENGER COMPARTMENT, AND IN ANOTHER TWIST ON THAT SCENARIO, BECAUSE I AM HAVING DIFFICULTY UNDERSTANDING THAT, IF, INDEED, THERE IS A BRIGHT-LINE RULE HERE.

WELL --

IN OTHER WORDS TELL ME WHAT YOUR ACCOUNT OF THAT LANGUAGE THAT APPEARS IN SEVERAL OF THE OPINIONS.

I THINK THE PROBLEM THAT YOUR HONOR IS ALLUDING TO WAS BEST LAID OUT BY JUSTICE POWELL, IN ROBBINS, WHICH WAS ONE OF THOSE CASES, A 1981 CASE, ALL, BY THE WAY, PREDATING ROSS, AND BASICALLY AT THAT TIME, THERE WERE THREE SEPARATE STANDARDS FOR SEARCHES, INVOLVING AUTOMOBILES. ONE STANDARD WAS THE SCOPE OF THE SEARCH, INCIDENT TO THE ARREST ON A PUBLIC HIGHWAY. THAT IS BELTON OR BECAME BELTON. THE SECOND IS WHETHER THE OFFICER MUST OBTAIN A WARRANT, WHEN THEY HAVE PROBABLE CAUSE TO SEARCH A PARTICULAR CONTAINER IN WHICH THE SUBJECT IS EXPECTED TO HAVE A REASONABLE EXPECTATION OF PRIVACY. THAT IS THE EXPECTATION CREATED IN ALCAVEDO AND CREATED IN CHADWICK AND SANDERS. CHADWICK WAS A STEAMER TRUNK AND SANDERS WAS A SUITCASE. IN ALL OF THOSE CASES, THE CONTRABAND, PROBABLE CAUSE WAS ON THE STEAMER TRUNK OR THE SUITCASE, NOT ON THE CAR, AND THEY JUST GRATTUIT USLY WENT INTO THE CAR. ONE WAS A TAXICAB, AND THE COURTS RECOGNIZE THAT, BECAUSE YOU HAVE PROBABLE CAUSE TO SEARCH THAT TRUNK OR THAT SUITCASE THAT WENT INTO THE TAXICAB, THAT DOESN'T MEAN YOU HAVE PROBABLE CAUSE TO SEARCH THE TAXICAB.

OKAY. SO YOU WOULD SAY, FOR INSTANCE, IF THIS FELLOW STOPPED AT A GAS STATION, AND THE GAS STATION ATTENDANT SAW HIM PUT WHAT HE THOUGHT WAS MARIJUANA IN THE TRUNK

OF THE CAR, AND REPORTED HAT TO THE POLICE, AND LATER THE POLICE STOPPED HIM, THAT THEY WOULD HAVE PROBABLE CAUSE TO SEARCH THE TRUNK, BUT THEY WOULDN'T HAVE PROBABLE CAUSE TO SEARCH THE REST OF THE CAR?

WELL, THAT, AGAIN, IS EXACTLY THE SITUATION IN ALCAVEDO, EXCEPT THERE IT WAS A TIP, IF YOU WILL, FROM POLICE IN HAWAII.

BUT I AM TRYING TO GET AN ANSWER TO MY SCENARIO THERE.

YES. THEY WOULD HAVE PROBABLE CAUSE TO SEARCH THE ITEM.

SO IN THE SCENARIO, THE HYPOTHETICAL THAT I HAVE GIVEN, THE PROBABLE CAUSE WOULD BE LIMITED TO THE TRUNK?

I THINK IT WOULD DEPEND. I THINK, IF WHAT YOU ARE TALKING ABOUT IS A PARTICULAR ITEM, AS OPPOSED TO SEEING DRUGS. FOR INSTANCE, IN --

IT IS JUST WHAT I SAID. IN OTHER WORDS THAT THE GAS STATION ATTENDANT SAW THE DRIVER PUT A BAGGY OF MARIJUANA INTO THE TRUNK OF THE LITTLE CAR. AND LATER HE STOPPED. NOW, DOES, DO THE POLICE, UNDER THAT, HAVE PROBABLE CAUSE TO SEARCH THE WHOLE VEHICLE, OR JUST TRUNK? UNDER YOUR ANALYSIS OF THESE US SUPREME COURT DECISIONS.

I THINK THERE IS A CASE RIGHT ON THE POINT THAT, IF --

WHAT DOES THAT CASE, WHAT IS THE ANSWER?

I THINK THE CASE IS ROSS, AND IN ROSS THERE WAS AN INFORMANT WHO SAW SOMEONE DEALING DRUGS OUT OF THE TRUNK OF A CAR.

SO THE ANSWER IS YOU WOULD ONLY HAVE PROBABLE CAUSE TO SEARCH THE TRUNK?

NO. THEY HAVE PROBABLE CAUSE TO SEARCH THE WHOLE CAR.

YOU HAVE PROBABLE CAUSE TO SEARCH THE WHOLE -- SO IT DOESN'T MATTER, WHERE IN THE VEHICLE, TERE MY BE THE DETECTION OF SOME EVIDENCE OF CONTRABAND, THAT ONCE THERE IS THAT, THAT YOU CAN SEARCH THE ENTIRE VEHICLE, NO MATTER WHAT.

IF YOU HAVE PROBABLE CAUSE TO BELIEVE THAT THERE IS DRUGS IN THE CAR --

ANYWHERE IN THE CAR.

ANYWHERE IN THE CAR. NOW, I THINK THE PROBLEM IS THERE STILL HASN'T BEEN A RESOLUTION OF THE ALCAVEDO SITUATION AND THE ROSS SITUATION WHERE, AND THEY HAVE NOT YET COMBINED COMPLETELY, SO THE LAW STILL SAYS, IF YOU HAVE PROBABLE CAUSE ON AN ITEM, AND THAT ITEM IS GRATTUITLY PUT IN THE TRUNK, YOU DON'T HAVE PROBABLE CAUSE ON THE CAR. YOU ONLY HAVE PROBABLE CAUSE ON THE ITEM. IF YOU SEE DRUGS BEING DEALT OUT OF THE TRUNK OF THE CAR AS IN ROSS, THEY GIVES YOU PROBABLE CAUSE TO SEARCH THE ENTIRE CAR.

HERE, IF I UNDERSTAND IT CORRECTLY, IN ADDITION TO THE ODOR THAT WAS EMANATING FROM THE PASSENGER COMPARTMENT, THERE, ALSO, WAS WHAT, SOME, A CLOUD IN THE AIR?

THERE WAS SMOKE. WHERE THERE IS SMOKE, THERE IS FIRE.

OKAY. WHY WOULDN'T THAT, WHILE IT DOES GIVE PROBABLE CAUSE, ALSO LIMIT THE PROBABLE CAUSE? A THAT IS THAT SMOKE AND ODOR COMBINED, CERTAINLY WOULD INDICATE, TO A

REASONABLE PERSON THAT SOME SMOKING HAS BEEN GOING ON, AND SMOKING HAS TO COME FROM SOMEPLACE, AND THAT THAT WOULD, ALSO, BE A LIMITATION, THAT IS THAT THE LOGICAL CONCLUSION WOULD BE THAT THERE IS MARIJUANA IN THAT PASSENGER COMPARTMENT THAT HAS BEEN SMOKED, AND THEREFORE I HAVE GOT A RIGHT TO GO LOOK FOR THAT, BUT NOT PROBABLE CAUSE THAT THERE IS A LOCKED BOX IN THE TRUNK THAT, ALSO, HAS CONTRABAND.

BECAUSE I THINK THE REASONABLE IMPLICATION TO A TRAINED NARCOTICS OFFICER IS, IF SOMEBODY IS SMOKING MARIJUANA IN THE CAR, THEY HAVE A STASH OF MARIJUANA SITTING IN THAT CAR SOMEPLACE, AND HE HAS A REASONABLE GROUNDS TO GO FIND IT.

I THOUGHT HE FOUND THE STASH IN HIS CROTCH.

HE FOUND ONE. THAT DOESN'T MEAN THAT THE GENTLEMAN DID NOT HAVE MORE THAN ONE.

SO LET ME ASK YOU THIS. IF THEY HAD FOUND NO DRUGS ON THE DEFENDANT HIMSELF, AND A MINISCULE AMOUNT, ACTUALLY, IN THE PASSENGER COMPARTMENT OF THE CAR, YOU ARE TELLING US THAT THEY COULD STILL GO TO THE TRUNK OF THE CAR AND SEARCH IT.

THAT IS WHAT ROSS SAYS. THAT IS WHAT THE UNITED STATES SUPREME COURT SAYS THEIR AUTHORITY IS.

AND IT DOESN'T MATTER, YOU KNOW, THERE IS A WHOLE LINE OF CASES THAT TALK ABOUT WHETHER IT IS THE SMELL OF BURNING MARIJUANA OR WHETHER IT IS JUST ODOR OF MARIJUANA, WHICH MAY NOT BE BURNING. IT DOESN'T MATTER, UNDER WHICH SITUATION WE ARE TALKING ABOUT?

THAT'S CORRECT. AND I THINK THAT HAS BEEN CONSISTENTLY THE HOLDING THROUGHOUT THE COUNTRY, AND IT HAS BEEN THE HOLDING IN FLORIDA. UNTIL THIS CASE. THE THIRD, FOURTH AND FIFTH DCA DCA'S HAVE CONSISTENTLY HELD, AND THE FIFTH DCA CASE THAT IS RIGHT ON POINT, IS JARRETT, A 1988 CASE, THAT SAYS THE ODOR OF MARIJUANA EMANATING FROM THE INSIDE OF A CAR IS PROBABLE CAUSE TO SEARCH THE ENTIRE CAR. NOW, THE SECOND DCA, IN ITS REVISED OPINION, IN A FOOTNOTE, CLAIMS THAT ALCAVEDO ESSENTIALLY OVERRULED JARRETT, BUT ALCAVEDO, AS WE MENTIONED BEFORE, HAS NOTHING TO DO WITH THIS CASE, AND ALL OF THESE CASES ARE LIMITED BY THE FACTS THAT WERE PRESENTED TO THE COURTS AT THE TIME. FOR INSTANCE, ROSS SPECIFICALLY SAYS THAT THE COPY OF THE AUTOMOBILE -- THAT THE SCOPE OF THE AUTOMOBILE EXCEPTION HAD NEVER BEEN DECIDED AND CITES CHADWICK AND CITES SANDERS, AND THAT THE VEHICLE FOR DECIDING THAT WAS FINALLY BEFORE THEM, AND THAT WAS ROSS, AND THEN THEY DECIDED.

BUT YOU, I GUESS MY CONCERN IS THAT YOU ARE PROPOSING, HERE, WHAT SEEMS TO BE A VERY EASY, WORKABLE BRIGHT-LINE RULE, AND WHEN I ASKED YOU, IT DIDN'T MATTER WHETHER IT WAS MARIJUANA, THE AMOUNT OF MARIJUANA, COCAINE THE AMOUNT OF COCAINE, WHETHER IT WAS A GUN. ONCE YOU FIND IT IN THE VEHICLE, YOU CAN SEARCH THE WHOLE VEHICLE AND THAT THAT IS CLEARLY DECIDED BY ROSS, AND I GUESS MY QUESTION IS, IF IT IS SO CLEAR, IT DOES SEEM OUT IN THE, AMONGST JURISDICTIONS THAT THERE ISN'T A CLEAR UNDERSTANDING THAT THAT IS WHAT THE BRIGHT-LINE RULE OF ROSS, BUT YOU ARE TELLING US, IF WE READ ROSS AGAIN, WE WILL KNOW THAT IS THE ANSWER.

THAT'S CORRECT. AND I THINK WHAT HAPPENED HERE IS THAT THE SECOND DCA MISS APPLIED BELTIN, AND BECAUSE THE RESPONDENT WAS ARRESTED AT THE SIDE OF THE CAR, THE DCA SAID, OKAY, O'CLOCK NOW DO A SEARCH -- OKAY, YOU CAN NOW DO A SEARCH CONTEMPORANEOUS WITH THE CAR, AND THAT INCLUDES THE INTERIOR OF THE CAR, AND THAT IS WHAT WAS DONE HERE.

DO YOU DISAGREE THAT THE MAJORITY OF JURISDICTIONS, INCLUDING BOTH STATE AND

FEDERAL HAVE REQUIRED, WITH REGARD TO JUST SMELL OF BURNT MARIJUANA, HAVE REQUIRED SOMETHING MORE?

WELL, IT WOULD DEPEND ON THE STATE, AND IT WOULD DEPEND ON THE STATE CONSTITUTION. FOR INSTANCE, THERE IS NOTHING SAYING THAT A STATE CAN'T HAVE MORE STRINGENT RULES THAN THE FOURTH AMENDMENT. THE FLORIDA CONSTITUTION, HOWEVER, REQUIRES THAT FLORIDA FOLLOW US SUPREME COURT LAW.

LET ME ASK YOU IN A DIFFERENT WAY THEN. DO YOU DISAGREE THAT A MAJORITY OF JURISDICTIONS, BOTH STATE AND FEDERAL, FROM THE CIRCUIT COURTS BASED UPON THE INTERPRETATION OF A FOURTH AMENDMENT, ACCORDING TO THE UNITED STATES SUPREME COURT, IN CAROL AND ROSS, HAVE HELD THAT YOU NEED SOMETHING MORE THAN JUST SMELL OF BURNT MARIJUANA TO EXPAND THE SEARCH BEYOND THE PASSENGER COMPARTMENT COMPARTMENT?

NO, I DON'T.

YOU DON'T DISAGREE WITH THAT?

IN FACT, THE THREE CASES CITED BY THE RESPONDENT, BELTIN'S SEARCH FOUND CONTRABAND INSIDE THE CAR. WATSON CITES ROSS. COPS SAW DEFENDANT INHALING FROM WHAT HE THOUGHT TO BE A MARIJUANA CIGARETTE. OFFICERS SMELLED MARIJUANA FROM INSIDE CAR. THAT JUSTIFIES A SEARCH OF THE ENTIRE CAR. AND THEN RANDALL IS A BELTIN SEARCH, THOUGH, AND IT SAID THAT ONCE MARIJUANA WAS FOUND IN THE INTERIOR OF THE CAR, IT JUSTIFIED A SEARCH OF THE TRUNK, SO THE FEDERAL CASES ARE CONSISTENT.

THAT IS SOMETHING PLUS. THAT IS SOMETHING MORE THAN JUST SMELL OF BURNT MARIJUANA. THE FINDING OF --

BUT THAT WAS A BELTIN SEARCH. IN THE BELTIN SEARCH, YOU ONLY HAVE THE AUTHORITY TO SEARCHES ESSENTIALLY THE WING SPAN, THE INTERIOR OF THE CAR, BUT ONCE YOU FIND SOMETHING IN THE INTERIOR, THAT, THEN, BOOT STRAPS INTO AUTHORITY TO SEARCH THE REST OF THE CAR.

AGAIN, THOUGH, THAT IS SOMETHING, THE SMELL OF BURNT MARIJUANA PLUS SOMETHING ELSE. YOU HAVE FOUND SOMETHING ELSE.

THAT IS BELTIN NOT ROSS. IN ROSS, THEY HAD PC ON THE CAR FROM THE GHETTO GO. THAT IS THE GIVE -- FROM THE GET-GO. THAT IS THE DIFFERENCE. MR. CHIEF JUSTICE

YOU ARE WELL INTO YOUR REBUTTAL. MR. ROSEN.

MAY IT PLEASE THE COURT. IT IS ROBERT ROSEN, REPRESENTING RESPONDENT, MR. KELLEN BETZ. FIRST OF ALL, THE RESPONDENT ASSERTS THAT THIS COURT DOESN'T HAVE DISCRETIONARY JURISDICTION TO EVEN HEAR THIS CASE. THIS CASE DOES NOT EXPRESSLY DIRECTLY CONFLICT WITH THE DECISION OF THE DISTRICT COURT. IT IS OUR POSITION THAT THE JARRETT CASE, THE FIFTH DISTRICT CASE, SAID IT BY THE STATE, WAS DECIDED BEFORE CALIFORNIA DECIDED ALCAVEDO. THAT WAS ALREADY DISCUSSED. IT CAME OUT IN 1991 AND IT OVERRULED THE FIRST DISTRICT CASE, AND IT WAS NOTED IN THE FOOTNOTE, THE BETZ DECISION.

WHAT IF WE HAD A STOP LIKE THIS, AND THIS PARTICULAR POLICE OFFICER HAD A DRUG DOG IN HIS CAR, AND THE DOG ALERTED ON THE CAR? WOULD THE OFFICER, AS A RESULT OF THAT ALERT, HAVE THE RIGHT TO SEARCH THE ENTIRE CAR?

I DON'T BELIEVE SO. I THINK THE DOG ALERT WOULD HAVE TO BE SPECIFIC TO THE TRUNK. I

MEAN, TAKING --

WHAT OTHER CASES TELL US ABOUT THAT?

WELL, I HAVEN'T REALLY FOUND AN EXACT CASE WITH THAT EXACT SAME FACT SITUATION. THE -- AS WE HAVE ALREADY HEARD, THERE WAS A CONFLICT WITH VARIOUS FEDERAL AND STATE CASES ALL OVER THE COUNTRY ON WHAT IS ENOUGH TO GO AHEAD AND SEARCH A TRUNK, ONCE YOU HAVE PROBABLE CAUSE TO SEARCH THE PASSENGER COMPARTMENT.

WHAT IS YOUR UNDERSTANDING OF ROSS? WHAT DO YOU UNDERSTAND THAT CASE TO SAY?

I DON'T BELIEVE ROSS IS NECESSARILY INCONSISTENT WITH ALCAVEDO, ALTHOUGH THERE IS LISTENING IN THERE WHICH -- THERE IS LANGUAGE IN THERE WHICH CAN BE TAKEN TO MEAN THAT UP HOADES THE ATTORNEY GENERAL'S DECISION THAT YOU COULD HAVE A SEARCH OF A TRUNK, ONCE YOU HAVE PROBABLE CAUSE TO SEARCH ANY OTHER PART OF THE CAR, BUT A CAREFUL READING OF ROSS SHOWS THAT THE ISSUE OF PROBABLE CAUSE TO SEARCH THE CAR WAS NOT THERE IN THE FIRST PLACE.

WHY DOESN'T THAT SHOW DISPOSITIVE OF THE CASE?

BECAUSE IF IT DIDN'T OVERRULE ROSS, IT CLARIFIED IT AND REDEFINED THE TERMS. YOU EVEN HAVE THE ROSS OPINION, JUSTICE STEPHENS, IN WRITING THE DISSENT IN THE ALCAVEDO CASE, SO I THINK CERTAINLY IT WAS A CHANGE OF LAW, CONCERNING CONTAINERS, THAT THE ROSS CASE SPECIFICALLY WAS THE SEARCH OF A CONTAINER AND THEN THE TRUNK AREA AS WELL BUT NEVER ADDRESSED THE ISSUE OF PROBABLE CAUSE TO SEARCH THE ENTIRE CAR, BECAUSE THAT WAS NEVER CHALLENGED, SINCE IN THAT CASE THE SEARCH WAS ONLY THE CONTAINER IN THE TRUNK. WE ARE NOT ARGUING THE CONTAINER HAD, IN THIS CASE A BRIEFCASE, COULD NOT BE SEARCHED, IF THERE WAS PROBABLE CAUSE TO SEARCH THE TRUNK, BUT WE ARGUE THAT THERE WAS NEVER PROBABLE CAUSE TO SEARCH THE TRUNK IN THE FIRST PLACE.

WOULD YOU SHARE WITH US WHAT ADDITIONAL FACTOR WOULD YOU SAY IS NECESSARY, UNDER THIS FACTUAL SITUATION WE HAVE. THE STOP WAS OKAY, WHICH AGREE.

YES.

AND WE HAVE AN EXPERIENCEED POLICE OFFICER, AND THERE IS NO QUESTION THAT THE DETECTION OF THE SMELL OF MARIJUANA IS ACCEPTABLE AS A FACT. WE HAVE THE DISTINCT SMELL OF MARIJUANA IN THE CAR. WE HAVE THE FINDING OF ADDITIONAL PACKAGES HIDDEN WITH THE OFFICER, AND THEN WE HAVE THE DESCRIPTIONS OF THE NERVOUSNESS AND TRYING TO DRAW THE POLICE AWAY FROM THE VEHICLE. WHAT IS THE ADDITIONAL THING THAT WOULD BE NECESSARY TO, IN YOUR VIEW OF READING THESE CASES BEFORE THIS SEARCH WOULD HAVE BEEN A PROPER SEARCH IN THE TRUNK?

SOME OTHER CASES INDICATE THAT FINDING ANY CONTRABAND WITHIN THE PASSENGER COMPARTMENT ANY KIND OF CRIMINAL ACTIVITY WOULD BE ENOUGH TO EXTEND THE SEARCH OF THE ENTIRE TRUNK.

BUT, NOW, THE HIDDEN PACKAGE ON HIM WOULD NOT COME WITHIN THAT THEN, EVEN THOUGH HE SAW IT COME FROM WITHIN THE CAR?

RIGHT. BUT IT WAS FOUND ON HIS PERSON. IT WAS NOT IN THE CAR, BUT IN ANY EVENT, WHETHER IT WAS ON HIS PERSON OR NOT, THERE IS STILL NO LINK FROM THAT TO THE TRUNK.

THAT IS WHAT I AM SAYING. WHAT IS THAT NECESSARY LINK? WHAT IS THE FACTOR OR THE KIND OF EVIDENCE THAT YOU NEED, TO GET TO THE TRUNK?

ONE, LIKE IN ALCAVEDO IS DIRECT OBSERVATION, IN THAT CASE THE POLICE SAW DON'TRA BANNED BEING -- SAW CONTRABAND BEING PLACED INTO THE TRUNK OF THE CAR. WE DON'T HAVE THAT HERE. THE DOG SMELLING MARIJUANA IN THERE. WE DON'T HAVE THAT HERE. OR PERHAPS A MAJOR QUANTITY FOUND IN THE PASSENGER COMPARTMENT, INDICATING THAT PERHAPS THE DEFENDANT IS A DRUG TRAFFICKER, A DRUG TRAFFICKING APARTMENT OF CONTRABAND. WE DON'T HAVE THAT IN THIS CASE -- A DRUG TRAFFICKING ACT OF CONTRABAND. IT MAY HAVE BEEN THE MARIJUANA CIGARETTE REMNANT WHICH PROVIDED THE SMOKE AND IN THAT CASE PROBABLE CAUSE ISN'T EXTENDED, WHICH IS WHAT HE WAS LOOKING FOR AND IN THIS CASE PERHAPS HE FOUND IT.

DO YOU HAVE ANY CASES FROM OUTSIDE OF THIS STATE THAT SUPPORT YOUR POSITION, THAT IS THAT ONCE THERE IS PROBABLE CAUSE TO SEARCH THE INTERIOR OF THE VEHICLE, THAT THERE, THIS, THAT IT DOES NOT EXTEND TO THE TRUNK?

WELL, THERE IS, THE ENTIRE LINE OF CASES FROM THE TENTH CIRCUIT COURT OF APPEALS, I CITED TO US VERSUS NEILSON -- TO THE U.S. VERSUS NEILSON IN MY BRIEF, AND THEY ALL SAY THAT THE SMELL OF MARIJUANA ALONE IS NOT ENOUGH FOR A TRUNK SEARCH.

IN THOSE CASES, THOUGH, DID THEY, DO THEY FIND ANYTHING INSIDE THE VEHICLE?

THOSE SPECIFIC CASES, NO.

IS THAT A DIFFERENCE, IF THEY -- ISLAND SAY NO. IT DEPENDS. IT MATTERS WHAT IS FOUND. IF IT IS JUST, YOU KNOW, LIKE THIS MARIJUANA CIGARETTE, ROLLING PAPERS, SEEDS, SOMETHING OF THAT NATURE. THERE IS NOTHING, OR A SYRINGE OR SOMETHING UNRELATED TO MARIJUANA, THERE IS NO CONNECTION.

IS THAT -- WHAT I AM ASKING, ARE THERE TENTH CIRCUIT CASES THAT MAKE THE DISTINCTION? I NOTICE YOU ARE MAKING, THE LOGICAL THING, I MEAN, FROM MY POINT OF VIEW, I DON'T KNOW THAT I WOULD SAY THAT ANYTHING IN THE VEHICLE IS GOING TO MEAN YOU SEARCH THE TRUNK, BUT IT DOES SEEM THAT ROSS SETS UP A PRETTY BROAD RULE THAT, ONCE THE TRUNK IS PART OF THE VEHICLE AND THAT IS THE END OF THE STORY, ONCE THERE IS PROBABLE CAUSE TO SEARCH THE VEHICLE.

THERE ARE A FEW CASES WHICH ARE CORE LAERS TO THE -- WHICH ARE CORRELARIES TO THE BURNT MARIJUANA SMOKE. IN DOWNS AND IN STATE VERSUS WRIGHT, AN UTAH CASE, WHICH SAYS THAT THE RAW MARIJUANA IS ENOUGH FOR A SEARCH. I THINK THE DISTINCTION OF RAW MARIJUANA BEING STRONG ENOUGH TO BE SMELLED OUTSIDE THERE, IS AN INDICATION, I WOULD SAY, THAT THERE IS SOMETHING IN THERE, AND THAT THE DEFENDANT MIGHT BE TRAFFICKING IN LARGE AMOUNTS OF CONTRABAND.

WHAT ABOUT THE ALTERNATIVE ARGUMENT, I GUESS, THE DCA REJECTED, THAT ONCE HE IS ARRESTED FOR THE MARIJUANA, THAT THEY HAD, WOULD HAVE, YOU KNOW, THEY WOULD HAVE ARRESTED HIM, AND THEY WOULD BE ABLE TO TAKE AND SEARCH THE VEHICLE FOR, AS AN INVENTORY SEARCH.

WELL, THAT COULD BE THE CORRECT INTERPRETATION OF THE LAW, BUT THE STATE NEVER ESTABLISHED ANY FACTS TO SUPPORT THAT THERE WOULD HAVE BEEN INVENTORY, SO WITHOUT THAT, THERE IS NO WAY TO DRESS THE ISSUE AT THIS POINT, WITHOUT THE FINDING OF THOSE FACTS BELOW, THERE IS JUST NO WAY TO ARGUE IT. I THINK, IF THE STATE'S POSITION HERE IS FOLLOWED THROUGH, THAT THE CLEAR LANGUAGE IN ALCAVEDO IS BEING DIRECTLY OVERTURNED. I MEAN, THAT COURT SPECIFICALLY SEPARATED OUT PARTS OF AN AUTOMOBILE AUTOMOBILE AND SAID YOU MUST HAVE PROBABLE CAUSE TO SEARCH A SPECIFIC AREA OF THE VEHICLE THAT YOU WANT TO SEARCH. YOU DON'T HAVE PROBABLE CAUSE TO SEARCH THE

TRUNK IN THIS CASE.

BUT WASN'T THE FOCUS OF ALCAVEDO REALLY ON A CONTAINER CONTAINERIZED APPROACH, MORE SO THAN THE HOLDING BEING THE ANALYSIS OF THE CAR UNDER THE CIRCUMSTANCES THAT WE ARE DEALING WITH HERE? WHY COULD WE NOT READ IT IN THAT FASHION, DO YOU THINK?

BECAUSE THAT CASE HAS A LENGTHY DISCUSSION OF THE CONFUSION CONCERNING CONTAINER SEARCHES, AND I THINK THAT THE LANGUAGE THAT WE ARE TALKING ABOUT HERE HAS TO BE ADHERED TO, TO, AND THE COURT WANTED TO AVOID THE CONFUSION WITH ALL OF THE PREVIOUS CASES. CHADWICK, SANDERS AND THEN ROSS, AND WANTED TO END THE ISSUE AND PROVIDE A CLEAR RULE, AND THAT LANGUAGE IS A PART OF THAT RULE THAT YOU MUST HAVE PROBABLE CAUSE TO SEARCH THE SPECIFIC AREA WE ARE TALKING ABOUT. IN THAT CASE, PROBABLE CAUSE TO SEARCH THE TRUNK AND NONE TO SEARCH THE PASSENGER COMPARTMENT AND REVERSED.

BUT IT SEEMS THE COURT WAS REALLY STRUGGLING WITH THE CHADWICK LINE OF CASES. WHICH I HIM HAVING TROUBLE IN WORKING WITH THESE, IS THAT BEING A CONTAINERIZED ISSUE AS OPPOSED TO A VEHICLE ISSUE. I AM EXPRESSING MY TROUBLE OR MY CONCERN, ACTUALLY.

I THINK ALCAVEDO ADDRESSED THE CONTAINER ISSUE. YOU CAN SEARCH ANY CONTAINER NOW AS PROBABLE CAUSE TO SEARCH THE CAR. IF YOU HAVE PROBABLE CAUSE TO SEARCH THE CAR, YOU HAVE PROBABLE CAUSE TO SEARCH THE CONTAINER IN THAT CAR.

HERE WE ARE TALKING ABOUT OPENS THE TRUNK AND THEY CAN LOOK IN THE BRIEFCASE AND THE BRIEFCASE HAS THE METAL CONTAINER AND THEY CAN LOOK IN THE METAL CONTAINER, THAT IF THE BRIEFCASE HAD BEEN IN THE BACK COMPARTMENT HERE, I GUESS THERE WASN'T A BACKSEAT, BUT ASSUMING THERE WAS A BACKSEAT, THE BRIEFCASE HAD BEEN SITTING IN THE BACKSEAT, THEY CAN HAVE LOOKED IN THE BRIEFCASE AND THEN LOOKED IN THE METAL CONTAINER. ISN'T THIS A RATHER ARTIFICIAL BARRIER, WHEN WE ARE TALKING ABOUT THE TRUNK, AND NOW THE FACT THAT THE BRIEFCASE IS IN THE TRUNK WITH THE METAL CONTAINER IN THERE, WE OBVIOUSLY THE U.S. SUPREME COURT HAS EMFATCALLY ANSWERED THE CONTAINER ISSUE, BUT ISN'T THAT A RATHER ARTIFICIAL DISTINCTION, ONCE YOU HAVE, AS I POSTED IN THE -- AS I POSITED IN THE OTHER CASE EARLY ON, ABOUT THE DOG SNIFF INSTANCE, ONCE YOU HAVE PROBABLE CAUSE TO BELIEVE THAT CONTRABAND IS IN THAT VEHICLE, WHY SHOULDN'T THAT BE ENOUGH, THEN, TO GOINTO LL OF THE COMPARTMENTS OF THE VEHICLE THAT LOGICALLY WOULD HOLD CONTRABAND?

I DON'T THINK THAT IT WOULD BE A LOGICAL CONCLUSION TO THAT. YOU CAN AE A DIFFERENT FACT SCENARIO. LET'S SAY SOMEONE VIOLATED THE OPEN CONTAINER LAW OR A MINOR DRINKING IN THE CAR, AND THERE IS SUCH A HUGE LEAP FROM THERE TO SAY HERE IS CONTRABAND. HERE IS SOMEONE ENGAGED IN ILLEGAL ACTIVITY. LET'S GO AHEAD AND SEARCH THE TRUNK. IT DOESN'T FOLLOW NATURALLY. THERE IS NO LINK. A BRIEFCASE IN THE BACKSEAT, THERE MAY BE NO LOGICAL CONCLUSION THERE, EITHER, SAYING GO AHEAD AND SEARCH IT, BUT THE LAW IS FAIRLY CLEAR, EVEN UNDER BELTIN.

I AM HAVING TROUBLE WITH THAT BECAUSE WHY WOULDN'T IT BE JUST AS LOGICAL TO LOOK IN THE TRUNK FOR A CASE OF BEER, AS IT WOULD BE TO OPEN THE BRIEFCASE IN THE BACKSEAT?

WE ARE TALKING ABOUT PROBABLE CAUSE, AND PERCENTAGE WEISS, I SUPPOSE SOMEBODY WHO HAS MARIJUANA ON THEM OR SMOKING MARIJUANA IS MORE LIKELY TO HAVE MARIJUANA IN ANY OTHER PART OF THE CAR, BUT IT DOESN'T MEAN -- THAT IS A PERCENTAGE INCREASE. YOU HAVE TO BELIEVE THERE PROBABLE PROBABLY ARE THE -- TO BELIEVE THERE ARE PROBABLY THE FRUITS OF A CRIME, AND THE LAW HAS ALREADY BEEN ESTABLISHED.

HASN'T THE PRESENT US SUPREME COURT, THOUGH, SENT OUT RATHER STRONG SIGNALS THAT IT IS NOT GOING TO BURDEN THE POLICE WITH THIS COMPARTMENTALIZATION OF THESE THINGS HERE? CERTAINLY THAT WAS THE SIGNAL SENT OUT IN THE CONTAINER DECISIONS, BUT EVEN THE CASE OUTSIDE THE DRUG SEARCHES, IT SEEMS TO ME THAT THEY HAVE, THAT THE AUTOMOBILE EXCEPTION IS A VERY, VERY BROAD EXCEPTION. ISN'T THAT THE REAL SNIT.

IT IS BROAD, AND THAT MAY BE THE REALITY, BUT, I MEAN, THIS IS THE U.S. SUPREME COURT CASE, ALCAVEDO, AND THE LANGUAGE IS CLEAR. I MEAN, THE SECOND DISTRICT APPLIED THAT LANGUAGE, IN LIGHT OF THE FACTS OF THIS CASE, AND THEY REACH THE CORRECT CONCLUSION.

WELL, ISN'T THE FOCUS, SHOULDN'T THE FOCUS, HERE, BE WHAT IS THE OBJECT OF THE SEARCH SEARCH?

YES.

AND THEN, IN OTHER AREAS OF FOURTH AMENDMENT LAW, ISN'T IT YOU CAN SEARCH ANY AREA WHERE THE OBJECT OF THE SEARCH COULD BE? AND SO WHY SHOULD THAT BE A DIFFERENT STANDARD, JUST BECAUSE WE ARE TALKING ABOUT A VEHICLE? COULDN'T THE OBJECT OF THE SEARCH, IN THIS CASE, WAS WHAT?

THE SMELL OF MARIJUANA LED THE OFFICER TO BELIEVE THAT THERE WAS SOMETHING CREATING THAT SMELL IN THE PASSENGER COMPARTMENT OF THE CAR.

SO THE OBJECT OF THE SEARCH WAS MARIJUANA, AND COULD NOT LOGICALLY, THE MARIJUANA, HAVE BEEN IN THE TRUNK OF THE CAR?

NO. I DON'T BELIEVE SO. WE ARE TALKING ESPECIALLY IN THIS CASE, YOU HAVE GOT THE SMELL OF BURNT MARIJUANA. THERE IS, IT IS ENTIRELY IMPROBABLE, TO SAY THE LEAST, THAT A BURNING MARIJUANA IN A METAL BOX INSIDE A BRIEFCASE IN A LOCKED TRUNK COULD SOMEHOW BE SMELLED OUT -- A LOCKED TRUNK COULD SOMEHOW BE SMELLED OUTSIDE A WINDOW IN THE OPEN WINDOW OF THE PASSENGER COMPARTMENT, SO THERE IS NO --

IF YOU FOLLOW LOGICALLY, IF YOU HAVE THE SMELL OF BURNT MARIJUANA AND YOU FIND, SAY, A ROACH IN THE CAR, THEN YOU CAN'T LOOK ANY FURTHER, BECAUSE YOU FOUND THE OBJECT OF WHAT CREATED THE SMELL. CORRECT?

YES.

SO YOU COULD NOT EVEN GO THROUGH THE REST OF THE PASSENGER COMPARTMENT.

NO. BUT JUST LIKE, I MEAN, THE SAME THING APPLIES TO SEARCHES OF HOMES OR ANY OTHER AREA. YOU DON'T NECESSARILY HAVE THE RIGHT TO SEARCH AN ENTIRE HOUSE, EVEN IF YOU FIND SOMETHING THAT IS ILLEGAL IN ONE PART OF THE HOUSE.

ALONG THAT LINE, FOLLOWING UP ON WHAT JUSTICE QUINCE IS ASKING YOU, HERE YOU AGREE THAT THEY HAD THE RIGHT TO OR PROBABLE CAUSE TO SEARCH THE INTERIOR OF THE VEHICLE, CORRECT?

YES. EITHER UNDER BELTIN OR THE ROSS CASE.

WHEN ROSS IS UNDER WAY AND ITS PURPOSES AND LIMITS HAVE BEEN DEFINED, A DISTINCTION BETWEEN CLOSETS DRAWERS AND CONTAINERS, IN THE CASE OF A HOME, OR BETWEEN GLOVE COMPARTMENTS, UPHOLSTERED SEATS, TRUNKS AND WRAPPED PACKAGES IN A VEHICLE, MUST GIVE WAY TO THE INTEREST OF THE PROMPT AND EFFICIENT COMPLETION OF THE TASK AT HAND. HOW DO YOU GET AROUND THAT JUSTICE STEPHENS, IN ROSS, SEEMS TO ELIMINATE THE

DISTINCTION THAT YOU ARE TRYING IT TO MAKE IN THE CASE LIKE THIS?

I DON'T READ THAT CASE THAT WAY. I THINK THAT CASE DID MAKE DISTINCTIONS, ALTHOUGH LIKE I SAID EARLIER, SOME OF THE LANGUAGE IS CONFUSING AND COULD BE TAKEN TO MEAN THAT DISTINCTIONS HAVE BEEN ELIMINATED. THE TASK AT HAND HERE WAS THE FINDING THE SOURCE OF THE SMOKE, AND THERE IS NO REASON TO BELIEVE, THERE IS NO PROBABLE CAUSE TO BELIEVE THAT IT WAS IN THE TRUNK.

DO YOU BELIEVE THAT THE POLICE OFFICER COULD NOT HAVE GONE TO AN IMAGE STRAIGHT AND SAID THIS IS WHAT WE FOUND. WE FOUND THIS, AND THAT THE SEARCH WARRANT WOULD NEVER HAVE EXTENDED TO SEARCH THE TRUNK OF THE CAR?

NO. NO SEARCH WARRANT SHOULD HAVE BEEN ISSUED IN THAT CASE FOR THE REST OF THE CAR.

WOULD NOT HAVE BEEN ABLE TO BE ISSUED FOR THE --

NOT THE WAY I READ ALCAVEDO.

THE SAME THING THE GLOVE COMPARTMENT?

NO. I THINK THE GLOVE COMPARTMENT IS DIFFERENT, SINCE THAT IS PART OF THE PASSENGER COMPARTMENT AND IT HAS ALREADY BEEN RULED ON OVER THE YEARS. I DON'T SEE ANY WAY TO KEEP THAT OUT. ALL RIGHT. IN CONCLUSION, THEN, I THINK THE CLEAR READING OF THE ALCAVEDO CASE, THE LOGICAL CONCLUSION FROM THAT IS THAT THE LOWER COURT ERRED IN ALLOWING A SEARCH OF THE CONTAINER IN THE TRUNK. THE SECOND ISSUE PROPERLY FOLLOWED THE UNITED STATES SUPREME COURT. THERE IS NO COMPETENT EVIDENCE OF ANY OTHER DISTRICT COURT IN THIS STATE, AND THEREFORE THIS COURT SHOULD AFFIRM THE POSITION OF THE SECOND DISTRICT. THANK YOU. MR. CHIEF JUSTICE

THANK YOU, MR. FISHKIN. THANK YOU, MR. ROSEN. MR. FISHKIN, YOU ARE UP.

THANK, SIR. TWO THINGS REAL QUICK. IF HIS COUNSEL CLAIMS THE SUPREME COURT IN TOTO OR PARTIALLY OVERRULED ROSS, THE U.S. SUPREME COURT DOESN'T SEEM TO KNOW IT. IN 1999, THE CASE OF WYOMING VERSUS HOW THE EN. THE -- HOUTEN. THE ROSS HOLDING SAID IF IT JUSTIFIES A SEARCH OF THE LAWFULLY-STOPPED VEHICLE, IT JUSTIFIES THE SEARCH OF THE CONTENTS OF THE VEHICLE IN ITS SEARCH. THE LATER CASE OF ROSS HAVING APPLIED IT BROADLY TO ALL OF THE CAR, WITHOUT BEING CITED AS TO OWNERSHIP. ALCAVEDO, AS-IS ROSS, IS VERY LIMITED TO ITS OWN FACTS OF ITS OWN SITUATION. AS FAR AS IF YOU FOUND SOMETHING IN THE PASSENGER COMPARTMENT IT AUTHORIZES THE SEARCH OF THE REST OF THE CAR, I SUBMIT TO YOU THAT THOSE CASES EMANATED OUT OF BELTIN CASES NOT OUT OF ROSS SEARCHES AND THERE IS A DISTINCTION. IN THE BELTIN SEARCH, THERE WAS NO PROBABLE CAUSE TO BELIEVE ANYTHING WAS GOING ON IN THE CAR. THE PROBABLE CAUSE WAS TO ARREST THE DRIVER OF THE CAR OR THE PASSENGER OF THE CAR, AND BASED UPON THAT, YOU COULD SEARCH THE PASSENGER COMPARTMENT OF THE CAR AND THAT STEMS FROM THE OLD WING STAND THEORY OF THE CASES THAT YOU CAN SEARCH THE AREA WITHIN THE IMMEDIATE REACH OF SOMEBODY WHO IS UNDER ARREST FOR WEAPONS OR CONTRABAND THAT COULD BE DESTROYED. AS FAR AS A DOG ALERT IS CONCERNED IN THIS CASE, THE OFFICER TESTIFIED AT THE HEARING THAT HE DIDN'T CALL FOR A DOG, BECAUSE THE DOG WOULD HAVE ALERTED TO EVERYTHING. THERE WAS NO POINT IN CALLING FOR A DOG, AND BASICALLY WHAT WE ARE SAYING IS THAT THIS OFFICER'S NOSE, IN THIS SITUATION, WAS AS GOOD AS A DOG'S NOSE WOULD HAVE BEEN, AND ONCE A DOG WOULD ALERT ON A CAR, IT IS KATIE BAR THE DOOR! I HAVE NOTHING FURTHER. I REQUEST THAT THE DISTRICT COURT'S OPINION BE REVERSED IN SUPPRESSING THE SEARCH. MR. CHIEF JUSTICE

THANK YOU, COUNSEL, FOR YOUR ASSISTANCE. THANK YOU, MR. FISHKIN.