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State of Florida v. Robert Baez

MARSHAL: PLEASE RISE. PLEASE BE SEATED

CHIEF JUSTICE: GOOD MORNING. I APPRECIATE YOU BEING READY TO GO ON STATE VERSUS BAEZ. YOU MAY PROCEED.

GOOD MORNING. I AM AN ASSISTANT ATTORNEY GENERAL REPRESENTING THE PETITIONNER THIS CASE, THE STATE OF FLORIDA. IN THIS CASE, A RESPONDING DEPUTY WAS DISPATCHED TO AN EMPTY WAREHOUSE AREA AT 8:30 IN THE EVENING, BECAUSE OF A REPORT OF A SUSPICIOUS US VEHICLE. WHEN HE ROVED ARRIVED, -- WHEN HE ARRIVED, HE FOUND THE RESPONDENT IN THIS CASE, INSIDE THE VEHICLE, SLUMPED OVER THE WHEEL OF THE VEHICLE. HE WAS CONCERNED THAT THERE SOMETHING WRONG. NOT SURE WHAT IT MIGHT BE, WITH THE DEFENDANT, RESPONDENT IN THIS CASE, SO HE KNOCKED ON THE WINDOW.

HELP US FOR A MINUTE. THERE WAS SOME INDICATION THAT EMERGENCY MEDICAL SERVICES WERE INVOLVED, AND WHAT WAS THEIR INVOLVEMENT?

CORRECT.

UNFORTUNATELY THE RECORD DOES NOT FLESH THAT OUT BUT THE EMS DID RESPOND AT THE EXACT SAME TIME AS THE REPORT.

SO THEY WERE ON THE SCENE AT THE SAME TIME?

CORRECT, YOUR HONOR. AS FAR AS WE CAN DETERMINE. SO DEPUTY SHINER KNOCKED ON THE WINDOW OF THE VEHICLE AND APPARENTLY RESPONDENT WOKE UP IMMEDIATELY. HE WAS ASLEEP BUT COULDN'T QUITE HEAR THE DEPUTY. HE VOLUNTARILY EXITED THE VEHICLE AND THE DEPUTY SAID ARE YOU OKAY AND THE RESPONDENT SAID YES, AND THEN DEPUTY SNYDER TESTIFIED THAT, PURSUANT TO ROUTINE PROCEDURE, HE REQUESTED IDENTIFICATION AND HE TOOK THE IDENTIFICATION TO RUN A ROUTINE CHECK. IMMEDIATELY A WARRANT CAME UP.

THE ROUTINE PROCEDURE, AND HELP US BREAK IT DOWN BETWEEN THE ROUTINE PROCEDURE OF ASKING FOR THE IDENTIFICATION VERSUS RUNNING THE CHECK.

CORRECT.

WAS THERE ANY, AND I GUESS WE HAVE, I THINK WE HAVE GOT THE TRANSCRIPT, BUT WAS IT, WAS THERE EVER ANYTHING EXPLAIN THE DIFFERENCE AS TO WHY THE ROUTINE PROCEDURE, JUST TO SAY, HEY, WHO IS THIS, VERSUS WHY YOU THEN RUN A CHECK, IF, UNDER THESE CIRCUMSTANCES.

JUSTICE PARIENTE, THE ONLY THING THAT DEPUTY CIDER SAID WAS THAT THIS IS ROUTE -- THAT DEPUTY SNYDER SAID WAS THAT THIS WAS ROUTINE. WHENEVER THEY HAVE A DISPATCH, THEY SAID IT IS ROUTINE AND HE SAID HE LIKES TO KNOW WHO HE IS DEALING W UNFORTUNATELY THE FACTS DID NOT FLESH OUT LIKE WE WOULD LIKE TO, BECAUSE THE MOTION TO SUPPRESS WAS NOT PURSUED UNTIL THE MIDDLE OF THE TRIAL, AND AT THAT TIME THE BASIC ISSUE ON THE MOTION TO SUPPRESS WAS WHETHER OR NOT THE DEPUTY DEMANDED THE LICENSE OR ASKED FOR THE LICENSE. THE TRIAL COURT, ON PAGE 126 OF THE TRANSCRIPT, SAID THAT HE

FOUND THE OFFICER'S TESTIMONY TO BE CREDIBLE, THAT HE ASKED FOR IT, BUT VERY LITTLE WAS DISCUSSED ABOUT WHY THIS WAS CONDUCTED AND HOW THE PROCEDURE TOOK PLACE.

SO WE DON'T KNOW HOW LONG HE RECEIVED THE LICENSE UNTIL HE DETERMINED AN EXISTING WARRANT. WE DON'T KNOW A SIGNIFICANT DELAY.

THIS IS IMPORTANT. WE DO KNOW THAT HE IMMEDIATELY WENT TO RUN IT AND IMMEDIATELY A WARRANT CAME UP. THAT IS PRETTY CLEAR FROM THE FACTS. WE DON'T KNOW THE LENGTH OF TIME AND THIS PARTICULAR SCENARIO WAS DISTINGUISHABLE FROM A SCENARIO IN A NUMBER OF CASES RECITED BY THE RESPONDENT, WHERE ONCE A LICENSE IS TAKEN, THEN THE OFFICERS WILL CONTINUE TO ASK QUESTIONS OR, IN A WHOLE SLEW OF OTHER CASES, THE OFFICERS CONTINUE TO HOLD THE LICENSE AFTER THEY HAVE RUN A CHECK AND IT HAS COME UP NEGATIVE. A DISTINGUISHING FACTOR IN THIS CASE THAT MAKES IT ALMOST EXACT AND, IN THE OPINION OF THE STATE, THE SITUATION IN LIGHTBOURNE IS THAT THE OFFICER TOOK THE LICENSE, RAN THE CHECK, CAME UP WITH INFORMATION, DONE!

IS THE STATE CONTENDING THAT UNDER POPPELL, THIS IS A LEVEL ONE ENCOUNTER? BECAUSE, AGAIN -- A LEVEL ONE ENCOUNTER? YOU ARE TALKING ABOUT A TERRY STOP, AND WE DON'T HAVE PERMISSION, SO ARE WE GOING TO CREATE SOMETHING BETWEEN LEVEL ONE AND LEVEL TWO FOR WHICH WHEN IS SUSPICIOUS US BUT NOT REASONABLY SUSPICIOUS US?

NO. AND THE STATE HAS SAID FROM THE ONSET AND CONTINUES TO SAY THAT THIS IS PURELY A CONSENSUAL ENCOUNTER. THERE ARE THREE LEVELS. POPPELL DEALT WITH, ALSO, A CONSENSUAL ENCOUNTER. IT DID NOT DEAL WITH, A SAYS YOUR DID OCCUR IN THERE, BECAUSE THE OFFICER DEMANDED THAT THE DRIVER EXIT THE VEHICLE. WE HAVE NO DEMANDS. WE HAVE NO ACTIONS WHATSOEVER ON THE PART OF THE OFFICER THAT COMPLIANCE WAS REQUIRED IN THIS CASE. SO THIS IS A CONSENSUAL ENCOUNTER.

HE SAID MAY I SEE YOUR LICENSE, NOW, UNDER ---MAY I SEE YOUR LICENSE, NOW, UNDER THE FLORIDA STATUTE, I DON'T KNOW THAT SOMEONE HAS THE ABILITY NOT TO SHOW THE LICENSE WHEN HE SAYS "MAY I SEE YOUR LICENSE", THE LICENSE IS REQUESTED, AND ALSO HE SAID I AM GOING TO GO AHEAD AND RUN A CHECK. NOW, ISN'T THAT WHAT THE FOURTH DISTRICT WAS CONCERNED ABOUT, NOT HIM ASKING FOR THE LICENSE BUT THEN TAKING THE LICENSE, SO THAT SOMEBODY CANNOT LEAVE OR THEY CAN'T DRIVE OFF WITHOUT THEIR DRIVERS LICENSE, AND GOING AND RUNNING A CHECK ON A PERSON THAT THERE IS NO, YOU ARE NOT UNDER A TERRY STOP OR AN ARREST.

YOU HAVE A QUESTION BUT YOU HAVE BROUGHT UP A SLEW OF ISSUES. NO, HE DID NOT SAY I AM GOING TO RUN A CHECK. HOWEVER, THAT IS NOT WHAT THE FOURTH DCA PINED ITS RULING ON. THE FOURTH DCA'S RULING IS CLEARLY BECAUSE OF A RETENTION OF THE LICENSE AND UNFORTUNATELY IT CREATES AN ARBITRARY STANDARD. HOW LONG CAN THE OFFICER RETAIN IT AND WHAT CAN THE OFFICER DO WITH IT? NOW --

ARE YOU ARGUING THAT THE DEFENDANT DIDN'T, WASN'T REQUIRED TO GIVE IT AT ALL. HE COULD HAVE REFUSED TO GIVE THE LICENSE?

ABSOLUTELY, YOUR HONOR THAT, IS EXACTLY THE CASE. THERE IS NO STATUTE THAT REQUIRES THAT AN INDIVIDUAL PRODUCE HIS LICENSE. IN THIS CASE, THE DEFENDANT WAS NOT OPERATING THE MOTOR VEHICLE. HE WAS ASLEEP. HE WAS ASLEEP OVER THE STEERING WHEEL OF A PARKED CAR. SECTION 322.15, WHICH HAS BEEN TO ATTENTION BY RESPONDENT'S COUNSEL, SAYS THAT YOU MUST POSSESS IT IF YOU ARE OPERATING A MOTOR VEHICLE, AND THAT YOU MUST DISPLAY IT ON DEMAND BY AN OFFICER. WE DO NOT HAVE A DEMAND BY AN OFFICER HERE. WE HAVE A REQUEST. ALL THE CASE LAW HAS DISTINGUISHED --

HOW DOES THAT DISTINGUISH BETWEEN A REQUEST AND A DEMAND, WHEN AN OFFICER SAYS

"CAN I SEE YOUR LICENSE?" THERE WOULD HAVE TO BE A DISTINGUISH IN LINGUISTICS IN ORDER TO DETERMINE WHETHER IT IS A REQUEST OR A DEMAND?

IT IS THE SAME KIND OF STANDARD THAT HAS BEEN APPLIED IN ALL OF THE CASES. MEND ENHALL, DELGADO AND BOSTICK TOUCH UPON THOSE. THE SUPREME COURT PRECEDENT WHEN THEY TALK ABOUT A REQUEST AS OPPOSED TO A DEMAND, AND LIGHTBOURNE THAT CAME TO THIS COURT IN 1983, THEY TALKED ABOUT A REQUEST AND RELINQUISH OF IDENTIFICATION UNDER SAME ALMOST EXACT CIRCUMSTANCES, SO AN INDIVIDUAL --

IN THOSE CASES THEY WERE PEDSTRINGS, WEREN'T THEY, NOT -- PEDESTRIANS, WEREN'T THEY, NOT TRIFING -- DRIVING A CAR?

NO. WE HAVE LIGHTBOURNE IN THIS CASE EXACTLY THE SAME THING, SOMEONE IN A PARKED VEHICLE, WHERE THERE WAS A CALL ABOUT A SUSPICIOUS US INCIDENT. WE HAVE BOSSTIC, OF COURSE, AND THAT IS THE BUS CASE. DELGADO WAS JUST FACTORY WORKER CASES WHERE WE HAD AGENTS WANDERING AROUND, ASKING FOR RESIDENCY IDENTIFICATION AND OTHER IDENTIFICATION, WITH AGENTS AT THE DOOR, AND --

WAS IT BOSTICK THAT WAS ON A BUS?

BOSTICK WAS THE ONE ON A BUS.

YOU ARE TELLING US THAT IN CASES LIKE THIS, WHERE THERE WAS A CALL OF A SUSPICION, WHETHER SUSPICION OF CRIMINAL ACTIVITY OR NOT, BUT THERE WAS A SUSPICIOUS US VEHICLE IN THE AREA. POLICE APPROACH, AND THERE IS THIS PERSON SLUMPED OVER THE STEERING WHEEL, AND EVEN SOME CONCERN THAT THE PERSON MIGHT BE ILL, THAT IF THE POLICE ASKED FOR IDENTIFICATION AND THE PERSON SAYS, NO, I DON'T WANT TO GIVE IT TO YOU, THE POLICE ARE JUST GOING TO WALK AWAY?

YES, YOUR HONOR, AND I AM SO HAPPY THAT YOU ASKED ME THAT QUESTION, BECAUSE THIS IS WHAT HAS DEVELOPED FROM OUR CASE LAW FROM THE UNITED STATES SUPREME COURT. BOSTICK IS THE MOST RECENT CASE, AND BOSTICK MADE IT VERY, VERY CLEAR THAT IT DOESN'T MATTER WHAT AN AVERAGE INDIVIDUAL, THAT AN AVERAGE VEHICLE WOULD -- AN AVERAGE INDIVIDUAL WOULD NORMALLY COOPERATE WITH AN OFFICER IN ANY CASE. IT DOESN'T MATTER WHETHER A PERSON IS ACTING IN THEIR OWN SELF-INTEREST, WHEN THEY RESPOND TO AN OFFICER'S Q THE SOLE ISSUE IS WHETHER OR NOT A PERSON WOULD FEEL FREE TO DECLINE OR ELIMINATE THE ENC WE CANNOT PLEASE LOOK AT THE UNITED STATES SUPREME COURT IN A PRECEDENT. WE HAVE TO LOOK AT THE FACTS. LOOK AT MEND ENHALL. YOU HAVE A YOUNG LADY THAT IS 22 YEARS OLD, WHO DOESN'T HAVE A HIGH SCHOOL DEGREE, WHO IS TAKEN TO A ROOM, AND THE SUPREME COURT FOUND THAT SHE VOLUNTARILY WENT WITH OFFICERS TO A ROOM 50 FEET AWAY, ONE FLIGHT UP, WENT INTO A SMALL ROOM WITH A FEMALE OFFICER, AGREED TO STRIP SEARCH. SAID SHE HAD A FLIGHT ABOUT READY TO GO AND THAT SHE WOULD NEED TO MAKE IT, AND IN THAT CASE, THE COURT SAID IT WAS A CONSENSUAL ENCOUNTER FROM THE BEGINNING TO THE END.

LET TALK ABOUT THE STATUTE HERE. I DON'T THINK ANY OF THOSE SUPREME COURT CASES DISCUSS SECTION 322 HERE, AND WE HAVE A STATUTE THAT REQUIRES SOMEONE THAT REQUIRES SOMEONE OPERATE AGO MOTOR VEHICLE, WHO, UPON DEMAND, THIS PERSON WAS BEHIND THE WHEEL OF A CAR, RIGHT?

NOT AT THE TIME THAT THE REQUEST WAS MADE. PLEASE REMEMBER THAT IT WAS A PARKED CAR. WE HAVE NO IDEA WHETHER THE KEYS WERE IN THE IGNITION AND THAT HE HAD ALREADY GOTTEN OUTSIDE OF THE CAR, AT THE TIME THAT THE REQUEST WAS MADE. UNDER THIS CIRCUMSTANCE, IT IS NO DIFFERENT, REALLY, YOUR HONOR, THAN IF YOU WERE AT A BUS DEPOT OR IN SOME OF THESE CASES WHERE THERE ARE, NEAR THEIR VEHICLES.

BUT AT THE TIME THAT THE POLICE OFFICER FIRST SAW THE DEFENDANT, WASN'T HE SLUMPED BEHIND THE WHEEL?

ASLEEP. YES, YOUR HONOR.

ASLEEP BEHIND THE WHEEL, SO THE OFFICER COULD HAVE REASONABLY INFERRED THAT THIS PERSON HAD BEEN OPERATING THE MOTOR VEHICLE AT SOME TIME BEFORE HE WAS SLUMPED OVER THE VEHICLE. HE WAS IN A PARK LOT.

HE -- SO THE CAR HAD TO GET THERE SOMEHOW.

BUT I WOULD CERTAINLY HOPE THAT THE COURT WOULDN'T CONSTRUE IT IN SUCH A NATURE. WE CERTAINLY DON'T DO THAT IN DUI CASES, WHERE WE ARE TALKING ABOUT OPERATE A MOTOR VEHICLE. HE WAS IN A CAR WHEN HE WAS -- OPERATING A MOTOR VEHICLE. HE WAS IN A CAR WHEN HE WAS APPROACHED, ASLEEP. HE GOT OUT OF THE CAR AND THE OFFICER SAID, MAY I SEE SOME IDENTIFICATION, AFTER HE MADE SURE THAT THE DEFENDANT WAS OKAY. SAME EXACT CIRCUMSTANCES AS IN LIGHTBOURNE. 322.15 DID NOT COMPEL THE DEFENDANT TO SHOW HIS IDENTIFICATION IN THIS PARTICULAR SITUATION. HE WASN'T STOPPED PURSUANT TO A TRAFFIC VIOLATION OF ANY KIND. HE WAS NOT OPERATING THE MOTOR VEHICLE AT THE TIME OF THE REQUEST. HE WAS NOT EVEN IN THE VEHICLE, AND THE TRIAL COURT FOUND THAT THE OFFICER'S TESTIMONY THAT HE SIMPLY ASKED TO SEE THE ID, PURSUANT TO ROUTINE PROCEDURE, TO BE CREDIBLE.

IN FACT, THE TESTIMONY FROM THE OFFICER IN THIS CASE, WAS, NOT THAT HE ASKED FOR A DRIVERS LICENSE BUT THAT HE ASKED FOR AN IDENTIFICATION. CORRECT?

IDENTIFICATION. THAT'S CORRECT, YOUR HONOR.

AND THE TRIAL JUDGE SIMPLY SAID, AT THE END, AND THE OFFICER NEVER SAID DRIVERS LICENSE. IS THAT CORRECT?

YOU ARE RIGHT, YOUR HONOR. HE DID ASK FOR IDENTIFICATION. I THINK THAT THE DISCUSSION ABOUT THE DRIVERS LICENSE HAS COME MORE INTO PLAY, NOW THAT WE ARE UP HERE ON REVIEW, AND RESPONDENT HAS POINTED TO SECTION 322.15 AND SUGGESTS THAT --.

THE DRIVERS LICENSE, THERE WAS TESTIMONY FROM, BAEZ, THAT HE WAS ORDERED TO GIVE HIS DRIVERS LICENSE. OONT TRIAL COURT ON, PAGE 126 OF THE ERROR --

AND THE TRIAL COURT, ON PAGE 126 OF THE RECORD.

-- SAID THAT I BELIEVE THE POLICE OFFICER.

-- IS HE THAT I BELIEVE THE POLICE OFFICER.

WHERE DO THE --

YOU WOULD BELIEVE THAT.

I BELIEVE. THAT.

AND WHERE DO THE EXCHANGES TAKE PLACE? GOING BACK TO HIS AUTOMOBILE AND GOING THERE --

BEHIND.

-- AND GOING IN THERE AND, BY THE COMPUTER THAT HE HAS IN THE CAR.

CORRECT.

IS THAT WAP HERE?

THAT'S CORRECT, AND -- IS THAT WHAT HAPPENED HERE?

THAT'S CORRECT, AND I WOULD LIKE TO STRESS, POINT OUT THAT BOTH PERSONS, THE DEFENDANT OFFICER WERE OUT OF THE CAR AT THIS TIME, SO HE IS WALKING BACK. IF YOU LOOK AT THE LANGUAGE OF BOSTICK, BOSTICK TALKS ABOUT THE FACT THAT THE PASSENGER IS ON THAT BUS IS A FACT INDEPENDENT OF THE POLICE CONDUCT, SO WE ARE NOT LOOKING AT THE FACT THAT HE IS A BUS PASSENGER ABOUT TO TAKE OFF ON A BUS. WE ARE GOING TO APPLY TOTALITY OF THE CIRCUMSTANCES ANALYSIS, AND WE ARE NOT GOING TO ASK UNDER THAT CIRCUMSTANCE WHETHER HE IS FREE TO LEAVE BUT ANY CIRCUMSTANCE THAT HE IS FREE TO DECLINE IN THAT FIRST INSTANCE.

WHAT DO YOU SAY ABOUT THE CASE AND THERE ARE NUMEROUS CASES OUT THERE.

YES.

THAT SAY THAT, WHILE THE OFFICER IS HOLDING THE DRIVERS LICENSE OR IDENTIFICATION OF SOMEONE, THAT THAT CONSTITUTES A DETENTION, THAT IS THAT, WHILE THEY HAVE THAT, THAT THEY OBVIOUSLY ARE RESTRAINING A PERSON FROM LEAVING THE SCENE. NUMEROUS CASES --

YOUR HONOR, I WOULD POINT OUT FIRST, AND I WANT TO MAKE VERY CLEAR THAT THE MAJORITY OF THE CASES REALLY ARE IN THE STATE'S FAVOR. ALL OF 9 -- ALL OF THE CASES EXCEPT FROM THE FOURTH DISTRICT ARE IN THE STATE'S FAVOR. PRIMARILY THEY ARE IN THE FIFTH, AND GOLPHIN, AND I SUPPLIED YOU WITH THE CASE INFORMATION AND THE AUTHORITY AND LIGHTBOURNE. THE MAJORITY OF STATE HAVE FOUND IN FAVOR OF THE STATE'S POSITION, SAYING IT HAS BEEN A CONSENTUAL ENCOUNTER WHERE THERE HAS BEEN A VOLUNTARILY RELINQUISHMENT.

I AM TALKING ABOUT THAT CIRCUMSTANCE WHERE THE CIRCUMSTANCE HOLDS, THAT IS WHILE THEY ARE HOLDING THAT DRIVERS LICENSE -- WHILE THEY ARE HOLDING THAT DRIVERS LICENSE THAT, THAT PERSON IS REFRAINED FROM LEAVING THAT, THEY ARE RETAINED.

ARE YOU TALKING ABOUT A DRIVERS LICENSE OR IDENTIFICATION IN GENERAL?

EITHER.

FIRST, THERE ARE A NUMBER OF GENERAL RESPONSES TO THAT. ONE IS THAT WE ARE NOT SUPPOSED TO APPLY A PER SE RULE WITH THAT ONE FACTOR BEING CONTROLLING OR DISPOSITIVE, i.e. THAT DECISION, IN FAVOR OF THE DECISION TO HOLD IT, EVEN MEND ENHALL AND TERRY SAID YOU ARE PERMITTED TO HOLD IT TO COMPARE IT TO TICKETS AND TO RESIDENCY PAPERS. THEY HELD IT FOR SOME TIME. THIRDLY, IT DEPENDS ON WHAT THEY ARE HOLDING IT FOR. ARE THEY ASKING QUESTIONS DURING THAT TIME, OR ARE THEY DOING WHAT THE OFFICER DID IN THIS CASE, WHICH WAS TO GO RUN A VERY BRIEF, VERY ROUTINE CHECK, AND I SEE MY LIGHT HAS COME UP, IT SAYS THAT THE OFFICER'S ACTIONS WERE NOT UNDULY HARSH AND WE NEED TO LOOK AT HOW THE OFFICER BEHAVED IN THIS CASE. HE ENCOUNTERED A SCENE UPON A DISPATCH AND HE ACTED PRUDENTLY AND HE ACTED QUICKLY, AND HE DID NOT DO ANYTHING TO MAKE THIS PARTICULAR DEFENDANT FEEL AS IF HE NEEDED TO COMPLY WITH HIS REQUEST. THERE WERE NO THREATS.

LET ME ASK ONE LAST QUESTION, BEFORE YOU TAKE YOUR REBUTTAL TIME. THAT IS THAT YOU

ARE NOT CONTENDING IN THIS CASE THAT THE OFFICER, AS WE SEE IN MANY OF THE TRAFFIC DETENTION CASES, WHERE THEY HAVE A DOG BROUGHT TO THE SCENE AND THEY SNIFF THE CAR, AND THOSE DOG SNIFFS HAVE BEEN APPROVED UNDER THE BRIEF DETENTION, YOU KNOW.

UM-HUM FORM.

ARE YOU CONTENDING -- UM-HUM.

ARE YOU CONTENDING HERE THAT THE OFFICER COULD HAVE ALSO, UNDER THIS FOR INSTANCE, UNDER SUSPICIOUS US CIRCUMSTANCES, COULD HAVE RETAINED THE DRIVER LONG ENOUGH TO HAVE THE DOG COME AND SNIFF THE CAR?

NO, YOUR HONOR, I DON'T THINK SO.

WHAT IS THE DIFFERENCE BETWEEN GOING BACK TO THE POLICE CAR AND RUNNING THIS CHECK, THAN HAVING A DRUG SNIFF DOG COME TO THE SCENE?

IT IS A HUGE DIFFERENCE. UNLESS THE DOG WAS ALREADY THERE, THEN THE COURTS HAVE ALL SAID THAT A DOG SNIFF IS NOT A SEIZURE UNDER THE FOURTH AMENDMENT. THE DOG COULD HAVE GONE RIGHT UP, BUT UNDER NORMAL CIRCUMSTANCES, THE DOG IS NOT THERE ALREADY, UNLESS YOU WANT TO WAIT. I WANT TO MAKE REALLY CLEAR THAT THIS IS NOT A TRAFFIC CITATION TRAFFIC STOP. THIS IS A CONSENTUAL ENCOUNTER, WHERE THE OFFICER WAS BROUGHT THERE SIMPLY BECAUSE OF A CALL OF A CONCERNED CITIZEN, SO WE ARE NOT CONTEND AGO THAT THIS IS A PERSON WE WANT TO DETAIN HERE FOR A PERIOD OF TIME TO GET THE GOODS ON HIM. THE OFFICER IN THIS CASE WAS JUST ACTING PRUDENTLY, AFTER HE MADE SURE THAT THE DEFENDANT WAS OKAY, HE WAS MAKING SURE THAT THE COMMUNITY WAS OKAY. THIS, AFTER ALL, WAS A SNURB CIRCUMSTANCES -- AN UNUSUAL CIRCUMSTANCE, AND SO I WOULD LIKE TO RESERVE THE REST OF MY COMMENTS FOR REBUTTAL, IF I MAY.

CHIEF JUSTICE: FINE. THANK YOU.

> GOOD MORNING. GOOD MORNING, SIR. MAY IT PLEASE THE COURT. GARCAL WELL FOR THE -- GARY CALDWELL FOR THE RESPONDENT. SINCE COUNSEL READ A SENTENCE FROM LIGHTBOURNE, WITH THE COURT'S INDULGE EPPS IN THE VERY SAME PARAGRAPH, THE COURT WENT ON TO LEAVE OPEN THE EXACT QUESTION WHICH IS IN THIS CASE. THE COURT WROTE THE COURT NEED NOT CONSIDER HERE, THE QUESTION OF WHAT WOULD HAPPEN, IF A CITIZEN ASKED FORITY FIX -- ASKED FOR IDENTIFICATION UNDER SOMEWHAT SIMILAR CONDITIONS, AND WHO, UPON DECLINING TO SURRENDER SUCH IDENTIFICATION, WAS PLACED UNDER ARREST. THE IMPLICATION IS THAT, IN REALITY, RATHER THAN IN THEORY, ONE WHO HAS BEEN SO CONFRONTED BY OFFICER IS NOT FREE TO LEAVE.

WE NEED NOT --

THIS ISN'T A SITUATION, WE DON'T HAVE A SITUATION WHERE THE DEFENDANT DECLINES TO GIVE HIS IDENTIFICATION. WE HAVE A SITUATION WHERE HE WAS ASKED FOR IDENTIFICATION AND HE ACTUALLY GIVES HIS DRIVERS LICENSE. HOW DOES THAT, WHAT YOU JUST READ, HELP THIS DEFENDANT?

WELL, WHEN THE COURT SAID THAT THE COURT NEED NOT CONSIDER WHAT WOULD HAPPEN IF THE PERSON WAS ARRESTED, OBVIOUSLY IF THE PERSON IS ARRESTED, THEN HE IS NOT FREE TO LEAVE, BUT THEN THE COURT WENT ON TO WRITE IN SUCH A SITUATION, THAT I EXPECT THAT WHAT THE COURT MEANT, WHEN IT SAID SUCH A PERSON WOULD NOT FEEL FREE TO LEAVE, IT MEANT THAT PERSON WOULD FEEL THAT HE HAD TO SUBMIT TO THE APPARENT AUTHORITY OF THE POLICE, AND SURRENDER THE IDENTIFICATION, AND IN FACT THE DRIVERS LICENSE.

YOU WOULD AGREE.

OTHERWISE HE WOULDN'T.

YOU WOULD AGREE IN THIS VERY TECHNICAL AREA THAT, THE OFFICER DID NOT ASK FOR THE DRIVERS LICENSE.

WE ALL KNOW, JUSTICE WELLS, THE RECORD REFLECTS EXACTLY WHAT YOU MENTIONED BEFORE.

THE RECORD SAYS THAT, BY THE OFFICER, I ASKED FOR THE IDENTIFICATION, CORRECT?

YES, SIR.

OKAY. NOW, TAKING THIS, THOUGH, JUST TO A DEGREE, YOU DON'T DRAW A LINE AT BOSTICK, IN THIS PARTICULAR CASE, YOU WOULD AGREE WITH THE CIRCUMSTANCES, WOULD YOU NOT?

BOSTICK SAID THAT IN THE CONTEXT OF WHERE THE "FREE LEAVE" ANALYSIS A DOES NOT APPLY. WHAT THE COURT SAID IS THAT THE FREE TO LEAVE ANALYSIS DOES NOT APPLY, WHERE A PERSON IS ON A BUS AND THEY ARE NOT GOING ANYWHERE, ANYWAY. THEY SAID THAT THIS COURT ERRED BY SAYING, ESTABLISHING A PER SE RULE THAT A PERSON ON A BUS IS NOT --

IS THE PER SE RULE THAT YOU ARE ADVOCATING, THAT WHEN THE POLICE OFFICER IS GIVEN THE NAME OF THE PERSON, IN AN ENCOUNTER, ASKS FOR IDENTIFICATION AND THE PERSON GIVES IT, AND THE PER SE RULE WOULD MEAN THAT THE POLICE OFFICER MAY NOT ACT ON ANY INFORMATION RECEIVED ON A COMPUTER CHECK. IS THAT THE PER SE RULE?

YOU ARE ASKING WHETHER THE POLICE OFFICER HAS RECEIVED INFORMATION ON A COMPUTER CHECK.

THE FACT THAT THE PERSON HAS IDENTIFIED HIMSELF AND SAID THAT HIS NAME IS BAEZ.

WE DON'T KNOW THAT THAT IS WHAT HAPPENED IN THIS CASE.

I AM ASKING YOU IF THAT IS THE PER SE RULE THAT COMES OUT OF THIS CASE.

NO, SIR, THAT IS NOT THE PER SE RULE. NO, SIR. I AM NOT, NO, SIR.

SO, THEN, IF THE POLICE OFFICER LOOKED AT THE ID AND GAVE IT BACK TO HIM, RAN OVER TO HIS CAR, HAD THE, IN HIS HEAD, AND DID THE COMPUTER CHECK, A WARRANT CAME UP, THEN HE COULD ARREST HIM, CORRECT?

WELL, I MEAN --

HE COULD THEN, COULDN'T HE?

YES, SIR. YOU ARE PRESUPPOSING THIS INSTANTANEOUS ACTION.

WHAT IF HE HAD A HAND-HELD COMPUTER LIKE I RUN INTO WHEN I GO TO AVIS TO CHECK MY CAR IN, AND HE GIVES HIM HIS NAME. HE FLIPS IT UP ON THE HAND-HELD COMPUTER AND THE WARRANT, CAN HE ARREST HIM THEN?

I BELIEVE SO, YES, SIR.

SO ARE WE, THEN THE DIFFERENCE IS GOING TO BE, WHAT, THE TIME PERIOD? THAT IS TAKES.

WELL, IN ROYER, THE YOINTEED STATES -- IN ROYER, THE UNITED STATES SUPREME COURT MAINTAINED THAT IT MAY NOT BE ON AN UNREASONABLE GROUND, SO ALWAYS IS THERE A DETENTION, AND THE SITUATION IN WHICH YOU POSTED, THERE IS NO DETENTION, WHEREAS IN THIS SITUATION OF THIS CASE THERE, IS A DETENTION. THAT IS WHAT THE UNITED STATES SUPREME COURT WAS TALKING ABOUT IN BOSTICK, WAS HOW DOES ONE DETERMINE WHETHER THERE IS OR HAS BEEN A DEFINANCIAL TENSION -- A DEEXTENSION?

WHAT -- A DETENTION?

WHAT ABOUT HERE, WHERE THE PERSON IS DETAINED? WASN'T HE ASLEEP AT THE WHEEL, AND THERE WAS AN INDICATION THAT HE DESIRED TO LEAVE AT ONE POINT AND HE COULDN'T LEAVE, BECAUSE THE OFFICER HAD DETAINED HIM?

NO. NO. THE SHORT ANSWER TO YOUR QUESTION IS NO, JUSTICE CANTERO. I WOULD SUBMIT TO YOU THAT WE ARE ALL IN SOME CONDITION IN WHICH, WHEN THE POLICE OFFICER APPROACHES US, AND I DON'T KNOW THAT IT MATTERS THAT MUCH, WHAT WE ARE DOING AT THAT EXACT INSTANT. THE ISSUE HERE IS THAT THE PERSON WAS SIMPLY NOT FREE TO LEAVE. ' THAT IS THE CONCLUSION WE NEED TO REACH, BUT --

THAT IS THE CONCLUSION THAT WE NEED REACH, BUT WHAT ARE THE FACTS LEADING TO THAT CONCLUSION? THE U.S. SUPREME COURT SAID THAT YOU HAVE TO LOOK AT ALL OF THE CIRCUMSTANCES, AND IN BOSTICK, EVEN THOUGH THEY WERE ON A BUS AND THEY WEREN'T GETTING OFF A BUS AND THERE WAS AN OFFICER AT THE FRONT OF THE BUS, THE SUPREME COURT SAID, WELL, THEY WERE TECHNICALLY FREE TO LEAVE. NOBODY SAID THAT THEY WEREN'T FREE TO LEAVE, SO WHAT ARE THE PARTICULAR CIRCUMSTANCES HERE THAT WOULD INDICATE THAT THE DEFENDANT WAS NOT FREE TO LEAVE.

BECAUSE HE COULDN'T GO ANYWHERE. THE OFFICER HAD HIS LICENSE. HE COULDN'T DRIVE WITHOUT THE LICENSE. THAT IS THE CATCH-22 HERE OF THIS SITUATION. IF HE REFUSES TO SHOW THE OFFICER ANY IDENTIFICATION, AND OBVIOUSLY A DRIVERS LICENSE IS IDENTIFICATION --

DID HE ASK FOR IT BACK?

EXCUSE ME?

DID HE ASK FOR IT BACK?

NO. THE RECORD IS SILENT ON THAT.

SO YOUR RULE, THEN, WOULD BE THAT, ONCE THE OFFICER, IT WAS OKAY FOR THE OFFICER TO ASK HIM FOR IDENTIFICATION. IS THAT CORRECT?

I BELIEVE SO.

AND SO ONCE THE OFFICER ASKED HIM FOR THE IDENTIFICATION, ACTUALLY SAW THE IDENTIFICATION AND SAW THAT IT WAS A VALID LICENSE, HE SHOULD HAVE IMMEDIATELY HANDED IT BLACK TO HIM. IS THAT WHAT -- HANDED BACK TO HIM? IS THAT WAUR ASKING THIS COURT TO DECIDE?

YES. -- IS THAT WHAT YOU ARE ASKING THIS COURT TO DECIDE?

YES THERE. IS A SITUATION IN WHICH IT MAY BE CONSIDERED COERCIVE.

> DO YOU DETERMINE WHETHER IT IS CONSIDERED A DETENTION, THE MERE ASKING FOR IDENTIFICATION IS CONSIDERED A DETENTION.

THAT IS A PART OF THE PROCESS, A PART OF THE TOTALITY OF THE CIRCUMSTANCES, AS OPPOSED TO SOMEBODY JUST SAYING, HERE IS MY ID. IT IS IN RESPONSE TO THE APPARENT OF THE AUTHORITY OF THE OFFICER IN ASKING FOR IT. THAT IS PART OF THE TOTALITY OF THE CIRCUMSTANCES. THAT IS AMONG THE FACTORS WHICH THE COURT MUST CONSIDER. HOW THE OFFICER --

SO I AM NOT SURE IF YOU ARE SAYING THE OFFICER COULD OR COULD NOT ASK HIM FOR IDENTIFICATION. ANOTHER OFFICER COULD ASK FOR IT. THERE IS NO QUESTION ABOUT THAT.

DO YOU SEE THIS, AND I WAS ASKING ABOUT POPPELL, AND, REALLY, POPPELL ONLY INVOLVED, HE ASKED POPPELL TO EXIT HIS VEHICLE.

RIGHT.

AND POPPELL SAID THAT WAS A, YOU KNOW, THAT COULD NOT BE DONE, WITHOUT THEIR BEING REASONABLE SUSPICION. I GUESS THIS COULD BE, IN THIS CASE, THAT HE ASKED TO GET OUT ON HIS OWN. IN OTHER WORDS HE STARTED OUT IN THE VEHICLE, AND THEN IS HE OUT WITHOUT HIS LICENSE AND IT IS BEING CHECKED. WAS THERE ANY ARGUMENT MADE THAT THIS WAS REALLY, EVEN CLOSER TO POPPELL, THAT IS THAT, BY BEING ASKED TO GET OUT OF THE VEHICLE, THAT IT WAS ALREADY A DETENTION AT THAT POINT, OR WAS THAT NOT PURSUED?

WELL, I, THAT WAS NOT PURSUED BELOW. THE, BUT AGAIN, THAT IS, YOU KNOW, PART OF THE TOTALITY OF THE CIRCUMSTANCES THAT HE IS EVEN AT THAT POINT, SUBMITTING TO THE APPARENT AUTHORITY OF THE POLICE OFFICER.

WAS THERE TESTIMONY THAT HE, THAT THE OFFICER ASKED HIM TO GET OUT OF THE VEHICLE, THAT THE TRIAL JUDGE FOUND WAS TRUE?

THE OFFICER'S TESTIMONY, WHICH AS YOU POINT OUT, THE JUDGE CREDITED THAT HE KNOCKED ON THE WINDOW AND ASKED HIM TO GET OUT AND HE GOT OUT.

SO HE ASKED HIM TO GET OUT AND HE GOT OUT. THAT WAS --

I SUBMIT THAT THE OFFICER KNOCKING ON THE WINDOW AND TALKING TOM AND HIM GETTING OUT, WAS ONLY CONSISTENT WITH THE CONCLUSION THAT HE UNDERSTOOD THAT THE OFFICER WAS ASKING HIM TO GET OUT OF THE CAR. YOU KNOW, AGAIN, THAT IS A CIRCUMSTANCE OF THE TOTALITY OF THE CIRCUMSTANCES. THIS SIGNIFICANT ISSUE HERE, THOUGH, IS MICHIGAN VERSUS CHESTER NUT AND ROYER AND OTHER CASES, THE QUESTION IS IS THE PERSON FREE TO LEAVE AROUND AS WE KNOW, A PERSON CAN'T DRIVE OFF AND LEAVE HIS DRIVERS LICENSE BEHIND WITH THE OFFICER. AT THAT POINT, THE OFFICER CAN DETAIN HIM. THERE IS A TRAFFIC STOP, SO THAT THE OFFICER CAN DO THE COMPUTER CHECK AND WHATNOT, SO HE WAS OBVIOUSLY NOT FREE TO LEAVE AT THAT POINT, WHEN THE OFFICER TOOK THE LICENSE, SO THEREFORE THERE WAS A DETENTION. NOW, COUNSEL --

COUNSEL, HOW DO YOU DISTINGUISH THE FACTS OF THIS CASE FROM THE FACTS IN LIGHTBOURNE?

WELL, THE MOST IMPORTANT DISTINCTION IS THAT, AS I SAID BEFORE, AND I DON'T KNOW THAT I PERSUADED JUSTICE QUINCE --

I KNOW YOU SAY WHAT THEY SAY ABOUT THEY NEED NOT CONSIDER, BUT I HAPPEN TO AGREE WE NEED NOT CONSIDER IT HERE, EITHER, BECAUSE THAT IS NOT WHAT HAPPENED. HE DIDN'T TRY TO LEAVE. HE DIDN'T ASK FOR HIS ID BACK, SO GIVEN THE FACT THAT WE DON'T HAVE THAT SITUATION, WHAT ARE THE FACTS IN THIS CASE THAT WOULD DISTINGUISH IT FROM THE FACTS IN LIGHTBOURNE?

WELL, LIGHTBOURNE, RESPECTFULLY, I WILL RESPECTFULLY SUBMIT, IS WRITTEN IN SUCH A WAY THAT IT IS REALLY IMPOSSIBLE TO TELL THE SEQUENCE OF EVENTS. AT SOME POINT DURING, LIES BOURN IS MAKING THESE FURTHER I HAVE MOVEMENTS, BUT WE DON'T KNOW WHEN THEY OCCUR. IF THE FURTHER I HAVE MOVEMENTS MUCH MADE DURING THE OFFICER QUESTIONING FOR HIM THE LICENSE, THE OFFICER AT THAT POINT HAD THE REASONABLE SUSPICIONS TO RETAIN THE -- SUSPICION TO RETAIN THE DEFENDANT, REGARDLESS. WE DON'T KNOW HOW, EXACTLY, THE DEFENDANT VOLUNTARILY RELINQUISHED THE LICENSE. PERHAPS WHEN THE COURT SAID WE NEED NOT CONSIDER WHAT HAPPENS IF IT IS REQUESTED BY THE OFFICER, PERHAPS WHAT THE COURT MEANT WAS THAT, AND IN LIGHTBOURNE, THE GUY, LIGHTBOURNE SIMPLY JUST VOLUNTARILY GAVE HIS LICENSE OVER TO THE OFFICER, WITHOUT ANY REQUEST WHATSOEVER.

DOES IT MAKE ANY DIFFERENCE WHERE THIS TOOK PLACE? I MEAN THE FACT THAT IT IS OUT IN THIS WAREHOUSE AREA? THIS IS AT NIGHT. WHAT IF IT WAS OUT HERE IN OUR PARKING LOT? AND WHERE WE HAVE PEOPLE PARKED TO GO TO THE CIVIC CENTER, AND ALL OF A SUDDEN AT 3:00 A.M., THERE IS SOME FELLOW SLUMPED OVER A WHEEL OF A VEHICLE OUT IN OUR PARKING LOT, AND IT IS YOUR POSITION THAT NONE OF OUR PEOPLE COULD WALK UP THERE AND ASK HIM TO HAVE IDENTIFICATION FOR LONG ENOUGH TO IDENTIFY WHO WAS THAT THAT MIGHT HAVE A BOMB OUT THERE?

UNDER THE TERRY STOP, A PERSON SUCH AS ROYER, MAY NOT BE DETAINED, EVEN MOMENTARILY, WITHOUT JUSTIFICATION. THE QUESTION, AGAIN, IN THIS CASE, IS WAS THERE A DETENTION? SIMPLY WALKING UP AND ASKING THE PERSON FOR IDENTIFICATION IS, DOES NOT REACH THE LEVEL OF A DETENTION, UNDER THE CASE LAW. THE ISSUE HERE, IN OUR CASE, OF COURSE, IS THAT THE OFFICER TOOK THE LICENSE, AND WENT TO RUN A WARRANT.

YOU HAVE GOT TO ADMIT THAT ONE OF THE CIRCUMSTANCES OF THIS IS NOT THAT HE WAS ASLEEP OVER THE WHEEL OF, IN A VEHICLE. IT IS THAT HE WAS ASLEEP OVER THE WHEEL AFTER VEHICLE IN A PLACE THAT -- OVER THE WHEEL OF A VEHICLE IN A PLACE THAT AT LEAST SOME CITIZEN THOUGHT THAT THAT WAS UNUSUAL. ISN'T THAT CORRECT?

THAT SEEMS TO BE THE CASE, RIGHT. WE DON'T KNOW ANYTHING ABOUT WHOEVER IT WAS WHO CALLED THIS IN. THAT'S CORRECT. I MEAN, WE --

SIMILARLY, IT WOULD BE UNUSUAL FOR SOMEBODY TO BE ASLEEP, SLUMPED OVER THE WHEEL OF A CAR, IN OUR PARKING LOT AT 3:00 A.M., WOULD IT NOT?

AGAIN, EVERY CASE DEPENDS UPON THE TOTALITY OF THE CIRCUMSTANCES. I DON'T, I MEAN, THE SITUATION YOU ARE TALKING ABOUT SOUNDS A LOT MORE LIKE A REASONABLE SUSPICION OF CRIMINAL ACTIVITY THAN THE DECISION HERE. THE OFFICER IN THIS CASE TESTIFIED SPECIFICALLY HE HAD NO SUSPICION OF ANY CRIMINAL ACTIVITY. THIS IS LIKE THE TENNESSEE CASE STATE VERSUS DANIEL, WHICH IS IN THE BRIEFS AND GOES THROUGH THE CASE LAW ON THIS VERY EXTENSIVELY, WHERE IT IS NOT A TERRY STOP. IT WAS NOT SUSPICIOUS US CRIMINAL ACTIVITY IN THIS CASE. THE OFFICER WAS ADAMANT THAT HE WAS NOT INVESTIGATING ANY CRIMINAL ACTIVITY, SO THE QUESTION BECOMES UNDER ROYER, WHETHER HE WAS MOMENTARILY DETAINED.

WHEN DO YOU CLAIM THAT THE DETENTION BEGAN IN THIS CASE?

WHEN THE OFFICER TOOK THE LICENSE.

SO YOU DON'T BELIEVE THAT THE OFFICER HAD THE RIGHT TO ASK FOR IDENTIFICATION UNDER A CONSENSUAL ENCOUNTER SITUATION?

HE ASKED FOR IDENTIFICATION, I MEAN, HE CAN ASK FOR IDENTIFICATION, YES. AND WHAT THE

FOURTH DISTRICT HELD IN THIS CASE WAS FOR THE OFFICER TO RETAIN THE DRIVERS LICENSE WHILE RUNNING THE WARRANTS CHECK, AND COUNSEL SAID THAT THIS IS AN IMMEDIATE THING, AND THE RECORD IS SILENT ABOUT THAT.

BUT IT IS YOUR POSITION THAT, ALTHOUGH THE OFFICER WAS ENTITLED IN A CONSENTUAL ENCOUNTER, TO ASK FOR IDENTIFICATION, THAT THE MINUTE THE IDENTIFICATION WAS PROVIDED, THAT A DETENTION OCCURRED?

WELL, THE PURPOSE OF IDENTIFICATION IS TO IDENTIFY THE PERSON. YOU LOOK AT IT. OKAY. THIS IS THIS GUY, AND AT THAT POINT, THE IDENTIFICATION PART HAS ENDED. HE IS KEEPING IT BEYOND THAT. AND HIS KEEPING IT, PREVENTS THE PERSON FROM BEING ABLE TO LEAVE.

WHAT HAPPENS IF THE OFFICER ASKED FOR IDENTIFICATION AND RECEIVES A DRIVERS LICENSE, AND THEN WRITES DOWN ON A NOTE BAD THE -- ON A NOTE ADD THE -- ON A NOTEPAD THE DRIVERS LICENSE NUMBER AND THEN GIVES TO THE PERSON, AND THEN GOES TO HIS CAR AND RUNS A CHECK ON THE LICENSE, IS THERE A SEIZURE THEN?

WHATEVER SEIZURE MAY HAVE OCCURRED ENDED WHEN HE GAVE THE LICENSE BACK, REGARDLESS, SO THAT THE DEFENDANT IS FREE TO LEAVE.

BUT IN THAT MINUTE THAT IT TOOK TO WRITE DOWN THE DRIVERS LICENSE NUMBER, WAS THAT A SEIZURE THEN, AN UNLAWFUL SEIZURE?

I WOULD SAY THAT PROBABLY NOT. YOU KNOW. IT IS A VERY, IT IS A MOMENTARY DETENTION, OBVIOUSLY THE PERSON IS DETAINED WHILE THAT OCCURS. FLORIDA VERSUS ROYER DOES SAY EVEN A MOMENTARY DETENTION IS UNJUSTIFIED IN THE UNITED STATES CONSTITUTION. I WOULD SUBMIT THAT THE SIGNIFICANT FACT IS THAT THE LICENSE IS RETURNED, AND THAT IS WHAT HAPPENS IN MEND ENHALL. THE TICKET IS RETURNED, WHEREAS IN ROYER, THE OFFICER RETAINS THE TICKET AND THE RETENTION --

WHERE THE OFFICER ACTUALLY SAYS "I ASKED FOR IDENTIFICATION", WHICH IS STANDARD. HE IDENTIFIED HIMSELF AS A DEPUTY SHERIFF. HE WAS IN FULL MARKED POLICE UNIT, HE EMPHASIZES. HE SAYS IF I AM SPEAKING TO ANYONE OTHER THAN A NORMAL, EVERYDAY CIRCUMSTANCE, IT DOES, FIRST OF ALL, THERE IS NOTHING FURTHER ABOUT WHETHER THE ASKS FOR IDENTIFICATION WAS SEPARATE FROM, I AM ASKED FOR IT -- I AM ASKING FOR IT PLUS I AM GOING TO RUN A CHECK. THERE ARE TWO SEPARATE THINGS. THERE IS NO DISCUSSION OF, DO YOU AGREE WITH THAT?

YES.

AND THE IMPLICATION ABOUT I AM ASKING FOR IDENTIFICATION, WHICH IS OTHER THAN WHEN IT IS A NORMAL EVERYDAY CIRCUMSTANCE, IS THAT HE IS, IN FACT, THINKING THERE IS SUSPICIOUS US ACTIVITY, BUT WE, IF IT DOESN'T FIT INTO A LEVEL ONE ENCOUNTER OR A LEVEL TWO TERRY STOP, THAT I WAS STARTING TO ASK EARLIER, IS THERE, HAS THE LAW CREATED SOME INTERMEDIATE BETWEEN IT IS REALLY NOT CONSENTUAL, BECAUSE THE GUYS, AGAIN, WE KEEP SAYING SLUMPED OVER, BUT THERE IS NOT, IT IS NOT, NO REASON TO SUSPICION THAT ANYTHING HAS HAPPENED. THERE AREN'T ANY CASES OUT THERE FROM THE APPELLATE CIRCUIT COURTS THAT TAKE IT TO, THERE IS SOMETHING BETWEEN A LEVEL ONE AND A LEVEL TWO, THAT IT IS OKAY TO DO A LITTLE MORE THAN JUST HAVE A COULD NOT SENTULE ENCOUNTER?

-- THAT JUST HAVE A CONSENTUAL ENCOUNTER?

THE CASE LAW IS COMING DOWN TO US FROM ABOVE, FROM TERRY VERSUS OHIO, AND FLORIDA VERSUS ROYER, IS THAT YOU KNOW, IF THERE IS A REASONABLEARTIC LABLE SUSPICION OF CRIMINAL ACTIVITY, THEN YOU KNOW, IT IS A TERRY STOP. YOU CAN DO ALL OF THESE THINGS.

ANYTHING LESS THAN THAT, ANY DETENTION, HOWEVER MOMENTARY, IS UNCONSTITUTIONAL. SO I WOULD SUBMIT TO YOU THAT THE ANSWER TO YOUR QUESTION IS THAT NOW THERE IS NO, NOTHING LOWER THAN A TERRY STOP THAT ALLOWS A MOMENTARY DETENTION. YOU KNOW, AGAIN, THIS IS A DEFENDANT THAT IS SUBMITTING TO THE APPARENT AUTHORITY OF THE POLICE OFFICER, GIVING HIM HIS DRIVERS LICENSE AND THE OFFICER GOES OFF AND DOES SOMETHING. THAT IS A DETENTION, BECAUSE THE DEFENDANT IS NOT ABLE TO GO ABOUT HIS BUSINESS, UNDER TERMINOLOGY OF FLORIDA VERSUS BOSTICK.

CHIEF JUSTICE: ALL RIGHT. THE MARSHAL HAS INDICATED THAT YOUR TIME IS UP. THANK YOU VERY MUCH.

ALL RIGHT. THANK YOU.

CHIEF JUSTICE: MR. MARSHAL, HOW MUCH TIME IS LEFT FOR REBUTTAL?

YOUR HONORS, IN LIGHTBOURNE V STATE, IT IS VERY CLEAR THAT THE FURTHER I HAVE MOVEMENTS AND THE PAT --- THAT THE FURTIVE MOVEMENTS AND THE PAT-DOWNS CAME ONCE THE PERSON WAS IN THE CAR, SO THERE IS NO CONFUSION AS TO THE ORDER OF THINGS. THIS COURT SAID THAT THE OFFICER ASKED FOR IDENTIFICATION AND REGISTRATION OF THE CAR AND HE RAN A ROUTINE CHECK ON THE DEFENDANT'S CAR AND IDENTIFICATION, AND THEN IT GOES ON TO SAY THAT THE PART OF THE DEFENDANT RELINQUISHS HIS DRIVERS LICENSE TO OFFICER, HE WAS NOT FREE TO GO ON HIS WAY. THAT IS IN THIS CASE BECAUSE WE ARE TALKING NOT FREE TO LEAVE BUT OF FREE FREE TO LEAVE OR DECLINE OR TO TERMINATE. THAT IS PARTICULARLY A LINE IN BOSTICK, PARTICULARLY IF YOU ARE A 122-YEAR-OLD GIRL HALF NAKED IN A -- IF YOU ARE A 22-YEAR-OLD GIRL, HALF NAKED, IN A ROOM WITH AN OFFICER, OR IF YOU ARE A PEDESTRIAN, YOU CAN STILL SAY, ON FOOT, DEPUTY SNYDER, I NEED TO GO. MY KIDS ARE WAITING FOR HIM. YOU DON'T EVEN HAVE TO GIVE A REASON. YOU CAN SAY I HAVE TO GO NOW. MAY I PLEASE HAVE MY LICENSE BACK NOW. YOU SAID THAT YOU WERE GOING TO RUN A CHECK. AND I DON'T KNOW, BECAUSE THE QUESTION WAS NEVER ASKED, BUT THERE IS NOTHING ON THE RECORD THAT SAYS THAT THERE WAS ANY STATEMENT THAT THEY WERE GOING TO RUN THE CHECK. THAT IS TRUE WITH ALMOST ALL OF THESE CASES, AND I THINK IN TODAY'S DAY AND AGE, THAT WHEN WE ARE GOING TO EXAMINE, AND THIS GOES TO JUDGE QUINCE'S POINT ABOUT JUST CHECKING TO SEE IF THE IDENTIFICATION IS VALID, THAT IF WE ARE GOING TO BE PERMITTED TO EXAMINE IDENTIFICATION, THEN IT NEEDS TO BE MEANINGFUL. AND SIMPLY BY VIRTUE EVER A FACT THAT YOU HAND OVER SOME KIND OF IDENTIFICATION DOESN'T MEAN THAT IT IS NOT VOLLEYISH US, IT IS NOT -- VOLICIOUS, IT IS NOT STOLEN AND IN MANY CASES WHERE YOU DRIVE SUSPENDED, AND IN THE UNITED STATES SUPREME COURT, YOU SEE THEM TAKING IDENTIFICATION AND COMPARING IT TO AIRLINE TICKETS OR COMPARING IT TO RESIDENCY PAPERS, THERE IS SOME TIME WHERE THEY ARE EXAMING THAT IDENTIFICATION, AND TO DRAW THIS BRIGHT-LINE RULE IS NOT PROPERLY APPLYING THE B. OSTICK -- THE BOSTICK ANALYSIS AND IT IS NOT PROPERLY APPLY GOT FREE TO DECLINE AND TERMINATE AND FREE TO LEAVE ANALYSIS, AND IT IS HINGING ON ONE FACTOR AND ONLY ONE FACTOR, THAN IS THE RETENTION OF A DRIVERS LICENSE FOR ANY PERIOD OF TIME, HOWEVER BRIEF THE ENCOUNTER IS. UNLESS THERE ARE ANY FURTHER QUESTIONS FROM THE PANEL, I WOULD ASK THAT YOU QUASH THE FOURTH DISTRICT'S OPINION AND, IF ANYTHING, IF NOTHING ELSE, REMAND IT FOR A FURTHER ANALYSIS UNDER A PROPER STANDARD, THE BOSTICK STANDARD, OR SIMPLY REVERSE THE DECISION. THANK YOU.

CHIEF JUSTICE: THANK YOU BOTH VERY MUCH. THE COURT IS GOING TO TAKE ITS REGULAR 15-MINUTE MORNING RECESS AT THIS TIME, BEFORE WE HEAR THE LAST TWO CASES. WE WILL STAND IN RECESS FOR 15 MINUTES.

MARSHAL: PLEASE RISE.