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Martin Matthew Dobrin v. Florida Dep't of Highway Safety & Motor Vehicles

THE LAST CASE ON THE COURT'S DOCKET IS DOBRIN VERSUS FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES. JUSTICE QUINCE IS REQUESTING -- JUSTICE QUINCE IS GOING TO JOIN US ON THE PANEL AND I AM GOING TO BE EXCUSED. JUSTICE WELLS WILL PRESIDE.

PETITIONER READY TO PROCEED?

THANK YOU, YOUR HONOR. FLEM WHITED FOR PETITIONER MARTIN MATTHEW DOBRIN, THE PETITIONNER THIS CASE. OF ALL OF THE RECORDS THIS COURT HAS TO GO THROUGH, I WOULD SUBMIT THAT THIS WOULD BE ONE OF THE SMALLER ONES THAT THE COURT HAS TO DEAL WITH IN ITS CAREER. THIS IS PROCEEDING OUT OF THE ADMINISTRATIVE SUSPENSION OF A DRIVERS LICENSE IN A HEARING OFFICER CAPACITY. MR. DOBRIN QUESTIONED THE LAWFULNESS OF THE STOP, WHICH IS PROPER UNDER THE CIRCUMSTANCES AT THE HEARING. THE EVIDENCE PRESENTED AT THE HEARING IS ALL DOCUMENTARY. THERE WERE NO LIVE WITNESSES TESTIFYING AT THAT HEARING. THE POLICE REPORT OR ARREST AFFIDAVIT IS ACCEPTED AS EVIDENCE, PURSUANT TO THE RULES ESTABLISHED AND THE DEPARTMENT OF HIGHWAY AND MOTOR VEHICLES.

WAS COUNSEL TESTIFY SOMETHING.

NO. WHEN WE FILED A MOTION FOR REHEARING, WE ALLEGED THE DEFICIENCY AT THAT POINT IN TIME.

POINTING OUT THE HOLLAND CASE.

YES, SIR.

AND THE FIFTH DISTRICT --

DENIED REHEARING AS WELL, YOUR HONOR, AS WE HAVE INDICATED IN OUR BRIEF. OUR MOTION FOR REHEARING SET FORTH THE, WHAT WE PERCEIVE TO BE THE FAILURE OF APPLYING THE CORRECT LAW, WHICH WAS THEIR OBLIGATION AT THE TIME.

WELL, I TAKE IT THEY CERTAINLY NEED TO SPEAK FOR THE DEPARTMENT, BUT THERE IS A CONCESSION HERE, THAT THE HOLLAND CASE, STATES THE LAW, WHICH WAS CONTRARY TO WHAT THE FIFTH DISTRICT STATED. WHAT IS THE REMEDY HERE?

WELL, THE REMEDY, YOUR HONOR, AS WE PERCEIVE IT IN REVIEWING THIS COURT'S ORDERS, IN REMAND INSTRUCTIONS IN THE IVEY AND MOST RECENTLY IN THE COURT'S DADE VERSUS OMNIPOINT CASE, WHICH WAS DECIDED A FEW WEEKS AGO, IN DADE VERSUS OMNI POINTS, THE COURT REMANDED WITH INSTRUCTIONS TO THE DECISION OF THE THIRD DISTRICT APPEAL AND REMAND THE CIRCUIT COURT'S DECISIONS, PURSUANT TO ESTABLISHED PRINCIPLES OF LAW, WHICH IS WHAT WE ARE REQUESTING TO DO. NOW, THE ALTERNATIVE IN THIS PARTICULAR CASE, SINCE YOU HAVE EVERYTHING IN FRONT OF YOU. YOU HAVE THE ORDER OUT OF THE DEPARTMENT OF MOTOR VEHICLES AND YOU HAVE THE WELL WRITTEN AND, I THINK, ANALYZED CORRECTLY LAW, ORDER OF THE CIRCUIT COURT, AND YOU HAVE ALL OF THAT IN FRONT OF YOU. THE ALTERNATIVE REMEDY WOULD BE TO REMAND TO WITHDRAW THE OPINION THAT THEY HAVE FILED IN THIS, IN THE CASE AND TO DENY CERT TO THE DEPARTMENT OF MOTOR VEHICLES

AS AN ALTERNATIVE REALMDY>. THAT IS THE WAY I SEE IT. THE, ALL OF THE RULES OF LAW DEALING WITH THE ADMINISTRATIVE PROCEDURE AND WHAT THE DISTRICT COURT'S OBLIGATION WERE, HAVE NOT BEEN COMPLIED WITH. IT IS APPARENT, REFERRING TO CERTAIN PORTIONS OF YOUR IVEY DECISION, THAT THE DISTRICT COURT JUST SIMPLY DISAGREED WITH THE RULING. JUST STATED THE LAW, ABROGATING ITS DETERMINATION TO WHETHER THE CIRCUIT COURT APPLIED THE CORRECT LAW AND THEN ISSUED THIS DECISION. THAT IS WHAT --

DID THE CIRCUIT COURT APPLY THE CORRECT LAW?

YES, YOUR HONOR. THE CIRCUIT COURT DID. A REVIEW OF THAT ORDER WOULD SHOW, AS THE COURT REVIEWS THE ORDER, THE THREE STATEMENTED POSITIONS BY THE DEPARTMENT IN THEIR PETITION OR RESPONSE, I SHOULD SAY, IN THE CIRCUIT COURT, MUCH SPEEDING, FAILURE TO MAINTAIN A SINGLE LANE, AND POTENTIAL --

YOU ARE GOING TO SUBSTANTIAL AND COMPETENT EVIDENCE, BUT I AM ASKING WHETHER THE LAW THAT APPLIED IN THIS CIRCUIT COURT ORDER CITES NEITHER THE WREN CASE FROM THE U.S. SUPREME COURT NOR HOLLAND, AND IT SIMPLY SAYS THE COURT FINDS IT CANNOT UPHOLD A STOP ON THE BASIS OF WHAT THE OFFICER COULD HAVE DUCHBLT RATHER IT MUST ONLY ANALYZE WHAT, IN FACT, THE OFFICER DID AND WHY HE DID IT, AND HE CITES TO AN ELEVENTH JUDICIAL CIRCUIT COURT CASE. NO APPELLATE COURT CASES, NO CASE FROM THIS COURT, NO CASE FROM THE U.S. SUPREME COURT.

WELL, IF YOU WILL LOOK AT THE WEDDINGBURG DECISION, THAT CLEARLY IS A DECISION WHERE THEY CITE WREN AND HOLLAND AND APPLY THE CORRECT LAW. IN ANALYZING EACH AND EVERY ASPECT OF WHETHER THERE WAS COMPETENT, SUBSTANTIAL EVIDENCE IN THE RECORD, THE COURT APPLIED THE CORRECT LAW. IN ANALYZING THE STOP ISSUE, THEY REVIEWED THE LAW IN CROOKS AND JORDAN OUT OF THE FIFTH DISTRICT.

THE COURT NEVER SAID, NEVER ANALYZED SIMPLY WHETHER THE OFFICER HAD PROBABLE CAUSE TO MAKE THE STOP.

WELL, YOU WOULD HAVE TO LOOK AND SEE WHAT THE COURT ACTUALLY SAID. I BELIEVE, AS IT RELATES TO THOSE ISSUES, THEY, HE ACTUALLY DID SAY THOSE THINGS, AND IN GOING BACK AND LOOKING AT THE ORDER.

I GUESS YOU ARE ARGUING THAT, WHERE THE RECORD SHOWS, AND THE UNDISPUTED FACTS ARE, THAT A CAR WAS GOING BY AT A HIGH RATE OF SPEED AND WAVERING IN THE LANES, WHERE AN OFFICER HAS SUSPICION THAT THERE MAY BE IMPAIRED BY ALCOHOL, A OFFICER CANNOT STOP THE VEHICLE AND DETERMINE WHETHER THAT IS THE CASE. IF WE HAVE A POLICY LIKE THAT, AREN'T WE DENYING THE SAFETY OF PEOPLE ON THE ROAD, WHEN AN OFFICER HAS REASON TO BELIEVE THAT SOMEBODY SHOULD NOT BE DRIVING BECAUSE HE IS UNDER THE INFLUENCE OF ALCOHOL?

WELL, AND I WILL PERFECTLY WELL CONCEDE THAT ALL OF THOSE THINGS MAY VERY WELL AND UNDER THAT SET OF FACTS, PROVIDE SUFFICIENT BASIS FOR THE STOP, GIVEN THE TRAINING AND EXPERTISE OF THE OFFICER, WHICH IS CLEARLY SOMETHING THAT COULD HAVE BEEN PRESENTED AS PORTIONS OF THE EVIDENCE, BUT WHAT WE HAVE IS AN ARREST AFFIDAVIT THAT SAYS ESSENTIALLY, THREE THINGS WITH REGARD TO SPEED. I SAW IT AT A HIGH RATE OF SPEED. WE DON'T KNOW WHETHER IT IS EXCEEDING THE SPEED LIMIT OR NOT, BECAUSE IT NEVER SAYS IN THE REPORT WHETHER HE WAS EXCEEDING THE SPEED LIMIT. I ATTEMPTED TO PACE HIM, WHICH DIDN'T HAPPEN, AND SOME VAGERIES WITH REGARD TO PARTICULAR WAVING ISSUES.

DID THE PARTICULAR OFFICER TESTIFY AT THIS HEARING, OR JUST AFFIDAVIT WAS BEING USED TO DETERMINE?

JUST AFFIDAVIT, YOUR HONOR.

THAT, BECAUSE I AM FOLLOWING UP ON TWO THINGS, THE WAY I READ WHERE WE UNDERSTOOD THE WREN DECISION, THE ATTACK WAS BEING MADE ON OFFICERS THAT YOU KNOW, SAID I AM GOING TO PULL SOMEONE OVER FOR A TAILLIGHT VIOLATION, BUT, REALLY, THE REAL MOTIVATION WAS THEY WERE SUSPECTING OR THEY REALLY WANTED TO LOOK FOR DRUGS OR SOMETHING, AND THE SUPREME COURT SAID WE ARE NOT GOING TO LOOK INTO WHAT MAY HAVE BEEN THE REASON THE POLICE OFFICER PULLED THE DEFENDANT OVER. OBJECTIVELY, IF THERE IS A VIOLATION, WE ARE GOING TO END THE INQUIRY. THAT IS REALLY WHAT WREN IS ABOUT.

EXACTLY.

ALL RIGHT. BUT NOW IN THIS CASE, THOUGH, IF THIS WAS, ASSUME THEY HAD PULLED HIM OVER, AND INSTEAD OF DOING THE, YOU KNOW, THE ROADSIDE SOBRIETY TEST, THEY HAD FOUND THAT HE WAS SMOKING MARIJUANA AN ARRESTED HIM AND NOW THERE IS A MOTION TO SUPPRESS. CERTAINLY IN THE NORMAL SITUATION, WE WOULDN'T SAY JUST ARREST AFFIDAVIT IS WHAT WE ARE GOING TO USE TO DECIDE WHETHER THERE IS PROBABLE CAUSE. THERE IS GOING TO BE A TOTALITY OF THE CIRCUMSTANCES.

CORRECT.

SO THE PROBLEM IN THIS CASE IS JUST REALLY ONE OF LACK OF PROOF, THAT THERE WAS ANYTHING MORE FOR THIS OFFICER. IF THE OFFICER HAD TESTIFIED, WOULD YOU AGREE THAT THERE MIGHT BE SUFFICIENT CIRCUMSTANCES ON ALL OF THIS ESTABLISHED PROBABLE CAUSE?

WELL, ACTUALLY NO. I WILL NOT MAKE THAT CONFESSION SESSION, SIMPLY BECAUSE -- CONCESSION, SIMPLY BECAUSE AS THE FIRST DISTRICT SAID IN THE TRIMBLE CASE, IF THE DEPARTMENT TENDS TO RELY ON NOTHING BUT A PIECE OF PAPER AND A FEW SENTENCES IN THAT PAPER, THEN YOU LIVE WITH IT OR YOU DIE WITH IT.

COULD THEY PROSECUTE HIM FOR DUI?

THEY DID PROSECUTE HIM FOR DUI, AND AS AN ASIDE, THE SUPREME COURT GRANTED THE MOTION TO SUPPRESS AND THE CASE WAS DISMISSED, SO WHAT IT GETS DOWN TO IS ALL OF THESE FACTORS REGARDING THE TRAINING OF A POLICE OFFICER, IF YOU LOOK AT THE CASES CITED BY THE DEPARTMENT, THE ESHONG, CAR ILL-, AND ALL -- CARILLO, AND ALL OF THE CASES THAT ARE IN THEIR BRIEF, AND DENY THE DECISIONS BUT YOU HAVE AN EXTENSIVE HEARING, AND PARTIALLY IN THIS ONE, THE PROSECUTORS GOT IN DEPARTMENT WITH THE TRAINING OF THE POLICE OFFICERS AND HOW LONG THEY HAD BEEN ON THE FORCE AND HOW MANY STOPS THEY HAD MADE AND ALL OF THAT AND WENT INTO GREAT DETAIL REGARDING THE DISTANCE THAT WAS TRAVELED, ACTIONS THE CAR TOOK AND MOLDED ALL OF THAT INTO THEIR TRAINING AND THEN GAVE THEM THE REASONS FOR THE STOP. DON'T QUESTION THAT. WHAT WE HAVE HERE IS WE DON'T HAVE THE POLICE OFFICER TESTIFYING. WE HAVE A POLICEMAN THAT SEES A CAR THAT HE THINKS MAY BE GOING FAST.

WHAT YOU ARE SAYING IS IT IS REALLY NOT FOR THE COURT TO SORT OF FILL IN THE BLANKS. WE WOULD NEED TO HEAR FROM THE OFFICER.

IT IS WHAT IT AMOUNTS. THE CIRCUIT COURT'S OBLIGATION WAS DETERMINED IF THE OBJECTIVE EVIDENCE SUPPORTS THE OPINIONS, WHICH WERE BASICALLY WHAT IS IN THERE. I ESTIMATED HE WAS GOING FAST. HE LOOKED LIKE HE WAS WEAVING A LITTLE BIT AND NEVER LEFT HIS LANE BUT CITED HIM FOR FAILURE TO MAINTAIN A SINGLE LANE, BUT THE CIRCUIT COURT'S DECISION WAS THAT THERE ARE OBJECTIVE DECISIONS TO SUPPORT WHAT THE POLICEMAN SAID IN HIS REPORT, WHICH AUTOMATICALLY MADE A FINDING OF FACT.

SO IF HE HAD CITED HIM FOR GOING 50 IN A 25-MILE ZONE, THAT WOULD BE THE END OF THE CASE.

WE WOULDN'T BE HERE. WE ABSOLUTELY WOULDN'T BE HERE IN ANY WAY, SHAPE OR FORM.

GOING BACK TO OUR CERTIORARI PROCEDURE HERE, IS IT YOUR POSITION THAT THE, WHAT HAPPENED WAS THAT THE HEARING OFFICER MADE A FINDING THAT THERE WAS PROBABLE CAUSE, AND THE CIRCUIT COURT HELD THAT THERE WAS NOT PROBABLE CAUSE. BASED UPON THAT THERE WASN'T COMPETENT SUBSTANTIAL EVIDENCE TO SUSTAIN THAT, CORRECT?

CORRECT.

AND SO IT IS YOUR POSITION THAT THERE IS NO WAY THAT THE DISTRICT COURT CAN REACH THAT ISSUE OF COMPETENT SUBSTANTIAL EVIDENCE.

WELL, THE DISTRICT COURT'S OBLIGATION, UNDER THE LAW AS I UNDERSTAND IT, IS TO DETERMINE WHETHER THERE WAS PROCEDURAL DUE PROCESS, WHICH ISN'T AN ISSUE IN THE CASE.

RIGHT.

AS WELL AS DID THE CIRCUIT COURT APPLY THE CORRECT LAW, AND THE CIRCUIT COURT APPLIED THE CORRECT LAW, AND AGAIN, GOING BACK TO PAGE 2 OF THE ORDER, THE CIRCUIT COURT SAYS THIS COURT AGREES WITH THE PETITIONER THAT THESE FACTS DO NOT PROVIDE AN OBJECTIVE BASIS TO STOP THE PETITIONER FOR FAILURE TO MAINTAIN A SINGLE LANE. NOW, THE SENTENCE THAT JUSTICE CANTERO --

WHAT I AM CONCERNED ABOUT IS THAT WE HAVE A SITUATION IN WHICH A HEARING OFFICER MAKES A DECISION AS TO WHETHER THERE IS PROBABLE CAUSE, BASED UPON EVIDENCE PRESENTED, AND THEN THE CIRCUIT COURT COMES ALONG AND MAKES A DECISION AND DECIDES THAT THERE WAS NOT COMPETENT SUBSTANTIAL EVIDENCE, SO, AND I TAKE IT THAT THIS OPINION OF THE CIRCUIT COURT IS JUST UNREVIEWABLE.

WELL, NO --

UNDER OUR CASE LAW.

NO. THAT IS NOT THE CASE. AS THE DEPARTMENT ALWAYS ARGUES IN THESE MATTERS, THE CIRCUIT COURT REWEIGHED THE EVIDENCE. THIS IS A HYBRID SITUATION, AS I AM NOT IN ADMINISTRATIVE, LAW EXPERT, BUT CLASSICALLY, WHEN ONE SIDE ATTEMPTS TO SAY, WELL, THE HEARING OFFICER HAD THE ABILITY TO OBSERVE THE WEIGHT OF THE CREDIBILITY OF THE WITNESSES, LIKE YOU ALL DISCUSSED WITH THE LAST CASE, THAT IS NOT THE SITUATION HERE. THERE IS THREE PIECES OF PAPER WITH THREE SENTENCES AND ONE PARAGRAPH.

RIGHT.

SO THERE IS NO CREDIBILITY ASSUMED.

THAT POINTS OUT THE FACT THAT WE HAVE GOT A HEARING OFFICER THAT BELIEVES THAT THAT PIECE OF PAPER MEANS ONE THING. THE CIRCUIT COURT COMES TO THE CONCLUSION THAT THAT PIECE OF PAPER MEANS ANOTHER THING, AND THERE IS NO WAY THAT THE DISTRICT COURT IS GOING TO BE ABLE TO REVIEW WHAT THE CIRCUIT COURT DID.

WELL, THE DISTRICT COURT'S OBLIGATION IN THIS CASE, PURSUANT TO ALL OF THE CASES THAT THIS COURT HAS DECIDED ON THAT ISSUE, DETERMINED IF THE CIRCUIT COURT APPLIED THE

CORRECT, THE DISTRICT COURT REVIEWED THE TRIAL, CIRCUIT COURT'S ORDER, TO DETERMINE IF IT APPLIED THE CORRECT LAW.

LET ME ASK YOU A CLASSIC QUESTION. LET'S SAY THE HEARING OFFICER, THE ARREST REPORT, I ASSUME, WOULD SHOW THE ADDRESS UPON WHICH THE ARREST WAS MADE.

CORRECT.

AND LET'S ASSUME THE HEARING OFFICER WAS FROM THE COMMUNITY AND KNEW THAT IT WAS A RESIDENTIAL ADDRESS AND THE SPEED LIMIT WAS 35. BUT DIDN'T ARTICULATE IT. ON THE RECORD. HOW DOES THE CIRCUIT COURT REVIEW THAT?

WELL, I MEAN, HE, THE CIRCUIT COURT HAS TO REVIEW WHAT THEY ARE GIVEN, AND IF THE, IF THE HEARING OFFICER WANTS TO PUT IN HIS ORDER, I WILL TAKE JUDICIAL NOTICE THAT A 1 A IS A 35 MILES PER HOUR SPEED ZONE BECAUSE EVERYBODY KNOWS THAT, THAT IS FINE, BUT WE DON'T HAVE ANY OF THAT IN THIS PARTICULAR CASE. I MEAN, WE ARE DEALING WITH A PRETTY SPARSE RECORD. COMING OUT OF THE HEARING OFFICER LEVEL INTO THE CIRCUIT COURT.

WELL, WE CALL, IT IS THE CIRCUIT COURT BUT THE CIRCUIT COURT IS SETING IN AN APPELLATE CAPACITY.

CORRECT.

THIS IS A SINGLE CIRCUIT JUDGE, BUT THERE ARE MANY PLACES IN THIS STATE WHERE THERE IS A THREE-JUDGE CIRCUIT COURT, WHICH, ONE DAY WE WILL HAVE UNIFORMITY, BUT ASSUMING --

NOBODY WOULD BE HAPPIER.

I AM A LITTLE BIT CONFUSED ABOUT WHAT THE CIRCUIT COURT FOUND, BECAUSE IN LOOKING AT THE FACTS, THE CIRCUIT COURT APPEARS TO ESSENTIALLY ADOPT THE FACTS FOUND BY THE HEARING OFFICER, ABOUT WHAT ACTUALLY OCCURRED, WHERE THE CIRCUIT COURT DIFFERS IS WHETHER THOSE FACTS ESTABLISH, EVEN THOUGH THE CIRCUIT COURT NEVER MENTIONS THE PHRASE PROBABLE CAUSE, WHETHER IT JUSTIFIED THE STOP, AND THE CIRCUIT COURT CONCLUDES THAT THOSE FACTS DID NOT JUSTIFY THE STOP. NOW, WHY IS THAT CONCLUSION THAT THE UNDISPUTED FACTS DO NOT JUSTIFY A STOP, A CONCLUSION ABOUT SUBSTANTIAL COMPETENT EVIDENCE AND NOT A CONCLUSION OF LAW THAT IS WHAT THE DISTRICT COURT MAY JUSTIFIABLY REVIEW?

WELL, I WILL ATTEMPT TO ANSWER THE QUESTION. THIS WAY, AS IN THIS PARTICULAR ORDER, THERE ARE FACTS, AND THERE ARE OPINIONS. AS IT RELATES TO THE SPEEDING ISSUE, ESTIMATED, VERY FAST, THAT IS, THOSE ARE OPINIONS BASED UPON WHAT THE OFFICER SAW AND MAKE CONCLUDE THAT THEY ARE FACTS.

WHETHER PROBABLE CAUSE EXISTS IS A QUESTION OF LAW, ISN'T IT?

QUESTION OF LAW.

SO IN THIS CASE WHAT THE CIRCUIT COURT DETERMINED AND WHERE HE DISAGREED WAS ON THE QUESTION OF LAW AND NOT ON ANY ISSUES OF FACT.

THAT'S CORRECT. HE DIDN'T REWEIGH THE EVIDENCE. HE APPLIED THE FACTS AS THEY WERE PRESENTED TO HIM IN THE HEARING OFFICER'S ORDER, AND IT WENT THROUGH THE ANALYSIS UNDER THE LANE VIOLATION, THE SPEEDING, CONCLUDED THERE WERE NO OBJECTIVE FACTS TO SUPPORT THAT, AS WELL AS THE VAGERIES IN THE DUI STOP.

YOU ARE IN YOUR REBUTTAL TIME. SO THANK YOU. RESPONSE.

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT. HEATHER KRAMER -- HEATHER CREMER FOR THE DEPARTMENT OF HIGHWAY -- HEATHER CRAMER FOR THE DEPARTMENT OF HIGHWAY SAFETY. AT THE OUTSET I WANT TO SAY THAT THE COURT KEEPS TALKING ABOUT PROBABLE CAUSE. THERE ARE TWO STANDARDS FOR A STOP.

BEFORE YOU GET TO THAT, WHAT IS THIS COURT'S REVIEW? WHAT ARE WE LOOKING AT? DO WE GO ALL OF THE WAY BACK TO WHAT THE HEARING OFFICER AND THE CIRCUIT COURT DID, OR ARE WE LIMITED TO DETERMINING WHETHER OR NOT THE DISTRICT COURT APPLIED THE CORRECT LAW IN ITS DECISION?

YOUR HONOR, I THINK THIS COURT IS CHARGED WITH EXAMINING THE HISTORICAL FACTS, WHICH ARE BASED ON THE ARRESTING OFFICER'S AFFIDAVIT, TO DETERMINE WHETHER THOSE FACTS RISE TO A LEVEL OF PROBABLE CAUSE OR FOUNDED SUSPICION TO JUSTIFY THE STOP IN THIS CASE, SO I THINK THAT YOU ARE GOING BACK TO THE BEGINNING, LOOKING AT THE ARREST AFFIDAVIT, TO DETERMINE WHETHER THE STOP WAS LAWFUL.

SO WHAT CASES FROM THIS COURT SAYS THAT OUR REVIEW OF THIS GOES BACK TO THE HISTORICAL TAX?

YES -- HISTORICAL FACTS?

WHAT I LOOK AT IS THE CASE THAT TALKS ABOUT THE HISTORICAL FACTS, AND SUBSEQUENT TO THAT, THERE WAS PULLMAN VERSUS SWENT, THAT TALKS ABOUT THE HISTORICAL FACTS. THEY DEAL WITH MOTIONS TO SUPPRESS, BUT I THINK THE SAME THING IS APPLICABLE HERE. THIS IS A ISSUE OF A STOP IN THIS CASE.

DIDN'T WE TAKE THIS UNDER EXPRESS AND DIRECT CONFLICT?

YES.

WHAT CASE DOES THE DISTRICT COURT OPINION CONFLICT WITH?

WELL, I DON'T BELIEVE THAT THE DISTRICT COURT'S OPINION CONFLICTS WITH ANY CASE.

ASSUMING IF IT DOESN'T, I GUESS WE DON'T HAVE JURISDICTION. IF IT DOES, ISN'T OUR RESPONSIBILITY TO RESOLVE WHATEVER CONFLICT EXISTS?

AND TO ISSUE A CORRECT OPINION, YES.

DID THE DCA CITE OUR HOLLAND CASE?

WELL, THIS IS THE PROBLEM THAT I SEE. THE DISTRICT COURT DID NOT CITE HOLLAND OR WREN. THE DISTRICT COURT INSTEAD CITED McNEIL AND POLLARD, WHICH I AGREE WERE INAPPROPRIATE CASES TO CITE. THOSE CASES TALK ABOUT A REASONABLE OFFICER'S STANDARD AND THEY DEALT WITH PRETEXTURAL STOPS. WREN AND HOLLAND DEALT WITH PRETEXTURAL STOPS.

WHY DIDN'T WE QUASH THE DCA DECISION UNDER REVIEW, TELL THE DCA THAT THE APPROPRIATE CASES TO RELY ON ARE WREN AND HOLLAND AND REMAND FOR RECONSIDERING IN LIGHT OF THOSE CASES?

YOUR HONOR, I THINK THAT WOULD BE AN APPROPRIATE REMEDY. HOWEVER, I THINK THAT THE, WHERE THE DISTRICT COURT WAS GOING WITH THIS, WAS NOT NECESSARILY A FINDING BASED

ON WREN AND HOLLAND, RATHER THE DISTRICT COURT WAS HEADING TOWARDS A FINDING THAT THE OBJECTIVE TAX OF THIS CASE IS UP -- FACTS OF THIS CASE SUPPORTED THE REASONABLENESS OF THE STOP, BASED ON FOUNDED SUSPICION WREN AND HOLLAND, AS I SAID, WERE PRETEXTURAL STOPS.

CAN THE COURT DO THAT? WHAT IS THEIR SCOPE OF REVIEW, WHEN THEY ARE DETERMINING WHAT THE CIRCUIT COURT DID? AREN'T THEY LIMITED TO WHETHER OR NOT THE CORRECT LAW WAS APPLIED AND DUE PROCESS.

CORRECT, AND THE CORRECT LAW WAS NOT APPLIED IN THIS CASE BY THE CIRCUIT COURT, BECAUSE THE CIRCUIT COURT APPLIED A SUBJECTIVE STANDARD. THE CIRCUIT COURT SAID WE CAN'T GO BEYOND WHAT THE OFFICER WAS SAID WAS THE REASON FOR THE STOP. IF THE OFFICER DIDN'T SAY THAT THE POTENTIAL FOR DRIVING UNDER THE INFLUENCE WAS THE REASON FOR THE STOP, WE CAN'T LOOK AT THESE FACTS OBJECTIVELY AND FIND AS A MATTER OF FACT THAT THESE OBJECTIVE FACTS --

IF ALL THAT WAS BEFORE THEM WAS THIS ARREST AFFIDAVIT, I ASSUME THE DEPARTMENT DID NOT ATTEMPT TO PUT ON THE OFFICER OR ANY OTHER EVIDENCE TO SUPPORT PROEPL PROBABLE CAUSE, DID -- TO SUPPORT PROBABLE CAUSE, DID THEY?

NO. WE ARE TALKING ABOUT PROBABLE CAUSE AND REASONABLE SUSPICION.

OR A REASON TO STOP THE VEHICLE.

OR REASONABLE SUSPICION TO STOP THE VEHICLE, WHICH IS A LOWER STANDARD THAN PROBABLE CAUSE. PROBABLE CAUSE AS DISCUSSED IN WREN AND HOLLAND IS, AND I ARGUED PROBABLE CAUSE FOR THE TRAFFIC INFRACTION, THE SPEEDING, BUT A WHOLE SECOND ELEMENT TO THIS CASE WHICH IS WITH WHERE I THINK THE DISTRICT COURT WAS GOING WITH THIS, WHERE THE CASE IS THE BAILEY CASE OUT OF THIS COURT AND SUBSEQUENT CASES, DESHONG, ESTEEM, FENEZIO, WHERE THEY SAID, NO, WE DON'T HAVE PROBABLE CAUSE. THERE IS NO LEVEL AFTER TRAFFIC INFRACTION HERE THAT THE OFFICER OBSERVED, BUT WE DO HAVE UNUSUAL DRIVING, WHICH THE OBJECTIVE FACTS IN THIS CASE OF THE UNUSUAL DRIVING PATTERN, PROVIDED THE OFFICER WITH A REASONABLE SUSPICION TO STOP THIS DRIVER, TO RULE OUT DRUNK DRIVING, TO RULE OUT POSSIBLY THAT THIS DRIVER WAS TIRED. IT WAS 1:20 IN THE MORNING.

YOU DON'T REALLY THINK THAT, IF THE DISTRICT COURT HAD CITED WREN AND HOLLAND, AND CAME TO THE CONCLUSION, YOU WOULD SAY, AND THAT THERE WAS NOT PROBABLE, THAT THERE WAS NOT PROBABLE CAUSE FOR THE TRAFFIC INFRACTION, YOU WOULD BE ARGUING THAT THAT WAS THE WRONG LAW, THAT REALLY THE LAW THAT SHOULD BE APPLIED IS THE LAW OF REASONABLE SUSPICION AND NOT PROBABLE CAUSE?

I THINK THAT IT IS BOTH. I THINK THAT THE DISTRICT COURT DID NOT ADDRESS, IN ITS FACTUAL SCENE IRYO AND ITS -- SCENARIO ANDIES ANALYSIS, I DON'T THINK THAT THE COURT ADDRESSED -- SCENARIO, I DON'T THINK SCENARIO AND ANALYSIS, I DON'T THINK THAT THE COURT ADDRESSED AND APPLIED IT IN HOLLAND AND WREN.

YOU ARE SAYING THAT THERE WAS ANOTHER REASON FOR THE STOP. THIS WAS JUST A TECHNICAL VIOLATION. SO YOU WOULDN'T EVEN THINK THAT HOLLAND IS THE CORRECT CASE TO BE CITING IN THIS SCENARIO, RIGHT? BECAUSE NO ONE IS ALLEGING THERE WAS A PRETEXTURAL STOP.

EXACTLY. I HATE TO SAY FLAT-OUT NO, BECAUSE I THINK THAT THE OFFICER HAD PROBABLE CAUSE TO STOP HIM FOR THE SPEEDING. BUT, YES, GETTING INTO THE SECOND POINT, WHICH IS THE ANALYSIS THAT THE CIRCUIT COURT, THAT THE DISTRICT COURT, RATHER, WENT THROUGH,

WHICH DEALT WITH THE OBJECTIVE FACTS, THE 1:20 IN THE MORNING, THE HIGH RATE OF SPEED, THE UNABLE TO MAINTAIN A STRAIGHT COURSE, YOU ARE ABSOLUTELY RIGHT, YOUR HONOR. IT WASN'T A WREN, HOLLAND --

WHAT CASE --

BAILEY.

FROM THIS --

FROM THIS COURT, AND THE CITE FOR BAILEY IS 319 SO.2D 22, WHICH I CITE, I CITED, AND ARGUED WREN AND HOLLAND, AND BAILLY, AND DESHONG TO THE DISTRICT COURT. THAT WAS ALL IN MY PETITION FOR WRIT OF CERTIORARI FOR THE COURT, STATING THAT THERE WERE TWO GROUNDS UNDER WHICH THIS OFFICER COULD STOP MR. DOBRIN, THE PROBABLE CAUSE THAT THE EVENT OCCURRED AND THE REASONABLE SUSPICION OF HIS ATTEMPT TO RULE OUT, AND THAT IS BAILEY, WHERE THE COURT TALKS ABOUT --

I UNDERSTAND WHAT YOU ARE SAYING, AND I AM THINKING THOUGH, AND THIS IS REALLY, WE HAVE HAD A SERIES OF THESE CASES WHERE WE ARE TELLING THE DISTRICT COURTS YOU HAVE GONE TOO FAR IN WHAT YOU HAVE DONE. THE CONCEPT IS SUPPOSED TO BE THAT YOU HAVE GOT THE HEARING OFFICER AND THEN THE CIRCUIT COURT, EVEN THOUGH THERE IS ONLY ONE JUDGE HERE, THAT FUNCTIONS AS AN APPELLATE COURT, AND ONLY UNDER RARE CIRCUMSTANCES, SHOULD, THEN, ANOTHER APPELLATE COURT, IT WOULD BE AS IF THIS COURT WAS GOING TO REVIEW ALL OF THE MYRIAD OF SEARCH AND SEIZURE CASES THAT ARE COMING OUT FROM THE APPELLATE COURTS, AND SO IT GOES BACK TO THE QUESTION THAT, DIDN'T THE APPELLATE COURT EXCEED ITS SCOPE OF CERTAIN REVIEW OF WHAT THE CIRCUIT COURT SITTING IN ITS APPELLATE CAPACITY DID?

THE ANSWER IS NO, BECAUSE THE DISTRICT COURT WAS CHARGED WITH DETERMINING WHETHER THE CIRCUIT COURT APPLIED THE CORRECT LAW. THE CIRCUIT COURT, WHEN IT STATED THAT IT COULD NOT GO BEYOND WHAT THE OFFICER STATED WERE THE REASONS IN HIS MIND, HIS SUBJECTIVE REASONS, AND I THINK THAT SUBJECTIVE IS HOW THEY GOT, SOMEHOW GOT TO McNEIL AND POLLARD, BUT THE SUBJECTIVE REASONS GIVEN BY THAT OFFICER, HAD TO JUSTIFY WHATEVER THE COURT RULED ON.

THE EVIDENCE?

GO AHEAD.

I AM SORE I GO AHEAD.

THAT SEEMED TO BE THE ONLY EVIDENCE, SO YOU CAN'T ASSUME EVIDENCE, AND YOU CAN'T PRESUME CERTAIN EVIDENCE. REALLY IT IS VERY LIMITED WHAT THE APPELLATE, THE INITIAL APPELLATE JUDGE, CIRCUIT JUDGE, WAS WORKING WITH.

BUT IT WAS LIMITED, BUT THE FACTS HAD TO BE VIEWED OBJECTIVELY, AND WHAT THE CIRCUIT COURT DID WAS THEY SAID WE CAN'T GO BEYOND WHAT THE OFFICER SAID WAS HIS REASON FOR THE STOP. HE SAID FAILURE TO MAINTAIN THE SINGLE LANE WAS A REASON FOR THE STOP. WE CAN'T LOOK BEYOND WHAT HE STATED WAS HIS REASON. THAT IS NOT THE LAW. YOU, THE LAW IS WE VIEW THESE FACTS OBJECTIVELY, TO DETERMINE WHETHER OR NOT THEY RISE TO A LEVEL OF A FOUNDED SUSPICION, TO JUSTIFY A BRIEF DETENTION TO DETERMINE THE REASON FOR THE UNUSUAL DRIVING PATTERN.

BASED UPON THE EVIDENCE PRESENTED.

EXACTLY.

YOU CAN'T MAKE UP EVIDENCE, AND THE ONLY EVIDENCE PRESENTED WAS WHAT WAS --

THE EVIDENCE PRESENTED WAS, IT IS 1:20 IN THE MORNING. THE VEHICLE CAN'T MAINTAIN A STRAIGHT COURSE OF ACTION. IT IS OPERATING AT A HIGH RATE OF SPEED. DO THOSE FACTS, VIEWED OBJECTIVELY, NOT REASON THE OFFICER ULTIMATELY SAYS HE STOPPED HIM BUT THOSE FACTS VIEWED OBJECTIVELY.

DON'T YOU AGREE THAT MOST OF THESE CASES, AGAIN, HAVE THE POLICE OFFICER TESTIFYING, THE JUDGE IS ABLE TO THEN MAKE SOME DETERMINATIONS? APPELLATE COURTS DON'T JUST IN A VACUUM SAY, LET'S LOOK AT THESE FACTS AND SEE IF WE WOULD HAVE ARRESTED HIM UNDER THESE CIRCUMSTANCES. I MEAN, THE DEFICIENCY HERE AND THE PROBLEM WITH WHERE WE TAKE THIS IS THAT, AS JUSTICE LEWIS WAS SAYING, WE HAVE GOT A BARE ARREST AFFIDAVIT, SO FOR SOMEONE TO FILL IN THE BLANKS THE OFFICER TESTIFIED MIGHT BE A DIFFERENT SCENARIO, WHERE THE OFFICER SAID I PUT IN ALL OF THESE REASONS, BUT MY REASON FOR STOPPING HIM MIGHT HAVE BEEN ALL OF THESE OTHER FACTORS.

WE KNOW WHAT THE FACTS ARE. THE KEY IS OBJECTIVELY. THE VEHICLE IS OPERATING AT A HIGH RATE OF SPEED AND IT CAN'T MAINTAIN A STRAIGHT COURSE, AND THE DISTRICT COURT PROPERLY HELD THAT, BY VIEWING THIS CASE SUBJECTIVELY, THE CIRCUIT COURT EXCEEDED, NOT EXCEEDED BUT IT DIDN'T APPLY THE CORRECT LAW.

WHAT THE DISTRICT COURT ACTUALLY SAYS IS THAT THE QUESTION SHOULD BE THE ESTABLISHED FACTS WOULD CAUSE A REASONABLE OFFICER, UNDER THE SAME CIRCUMSTANCES, TO MAKE THE STOP, AND THAT IS CONTRARY TO WHAT THIS COURT SAID IN HOLLAND. I MEAN, THAT IS JUST PLAIN IN ERROR OF LAW.

I AGREE WITH YOU 100 PERCENT. THE SECOND STATEMENT THAT THE QUESTION --

BUT IF THEY HAD MADE THE CORRECT STATEMENT AND SAID THAT, UNDER THE OBJECTIVE FACTS, THAT THE, THEY WOULD THEN HAVE HAD TO SAY UNDER THE OBJECTIVE FACTS, THERE WAS COMPETENT SUBSTANTIAL EVIDENCE TO FIND PROBABLE CAUSE TO STOP HIM, RIGHT?

I THINK THAT IT SHOULD HAVE BEEN UNDER THE OBJECTIVE FACTS, THE OFFICER HAD A FOUNDED SUSPICION TO STOP THIS VEHICLE TO DETERMINE WHY IT WAS BEING OPERATED IN THIS UNUSUAL MANNER, TO RULE OUT DRIVING UNDER THE INFLUENCE, A MECHANICAL MALFUNCTION, A TIRED DRIVER AT 1:20 IN THE MORNING WHO IS POSSIBLY COMING HOME FROM WORK OF THE HE HAD THE AUTHORITY, BASED ON DESHONG, BASED ON BAILEY, BASED ON FENEZIO, BASED ON ALL THESE CASES, TO HAVE A REASONABLE REASON TO STOP THIS DRIVER. IT WAS BASED UPON A REASONABLE REASON AS A PUBLIC SAFETY MEASURE.

WHAT I AM CONCERNED WITH HERE IS HOW THIS WORKS WITHIN THE FRAMEWORK OF OUR COURT SYSTEM AND THIS CERTIORARI REVIEW, AND THAT IS WHAT THE STUMBLING BLOCK IS.

WELL, I THINK THAT THE DISTRICT COURT ACTED WITHIN ITS SCOPE OF REVIEW, BECAUSE THE CIRCUIT COURT APPLIED THE INCORRECT LAW, WHICH RESULTED IN A MISCARRIAGE OF JUSTICE. MISCARRIAGE OF JUSTICE, THE MANIFEST INTENT OF SECTION 322.2615 UNDER WHICH THIS ORDER CAME OUT, IS PUBLIC SAFETY, AND TO GET DRUNK DRIVERS OFF THE ROAD, AND BY PUT AGO DRIVER BACK ON THE ROAD, BASED ON INCORRECT LAW, WHICH IS WHAT THE CIRCUIT COURT RELIED UPON, IN PUTTING THE DRIVER BACK ON THE ROAD, RESULTED IN MISCARRIAGE OF JUSTICE, SO THE DISTRICT COURT ACTED WITHIN ITS SCOPE OF REVIEW.

I DON'T REALLY, MISCARRIAGE OF JUSTICE, I DON'T THINK WE HAVE EVER INTERPRETED IT TO BE AS A DEFENDANT EITHER IMPRISONED OR LET GOVERNMENT I MEAN, IT IS NOT THE

CONSEQUENCES. THE MISCARRIAGE OF JUSTICE IS VIEWED IN TERMS OF THE JUDICIAL SYSTEM, BECAUSE OTHERWISE WE CAN'T KEEP ON HAVING, I MEAN, THIS IS, FOUR LAYERS OF REVIEW NOW, THAT, IS WHAT WE ARE GETTING HERE, AND THE PROBLEM OVER AND OVER AGAIN, I UNDERSTAND THE DISTRICT COURT'S FRUSTRATION SOMETIMES, THAT THESE CIRCUIT COURTS SAY IT IS NOT THREE FINGERS. IT IS ONLY ONE BUT IT SHOULD BE THREE, THAT THERE IS NOT GOING TO BE ANOTHER APPEAL AND ANOTHER APPEAL, SO THAT IS THE PROBLEM THAT I THINK WE ARE TRYING TO GRAPPLE WITH.

BUT WHEN THE DISTRICT COURT IS CHARGED WITH AND THEIR SCOPE OF REVIEW IS WHETHER OR NOT THE CIRCUIT COURT APPLIED THE CORRECT LAW, AND THEY MAKE A SPECIFIC FINDING THAT THE CIRCUIT COURT DID NOT APPLY THE CORRECT LAW, AND THE CIRCUIT COURT'S ORDER IS CONTRARY TO THE LAW, THE DISTRICT COURT APPROPRIATELY REVERSED IT. UNFORTUNATELY IN THIS CASE, THEY APPROPRIATELY REVERSED IT ON LAW THAT WAS NOT APPROPRIATE.

LET ME ASK YOU A PRACTICAL MATTER. AND THAT IS, WOULD A DEPARTMENT, IF THIS DEFENDANT HAD PROCEEDED WITH THE DUI, WAS HE CHARGED WITH DUI?

IT IS,IA, IT IS TWO COMPLETELY DIFFERENT, FOR IN THE ROAD.

SO IF HE HAD GONE TO TRIAL OR TO COURT ON HIS DUI FIRST AND IN FACT, THE MOTION TO SUPPRESS HAD BEEN GRANTED, WHAT WOULD BE THE STATUS OF THE DEPARTMENT? WOULD YOU STILL BE ABLE TO PROCEED IN TRYING TO SUSPEND HIS DRIVERS LICENSE, OR WOULD YOU HAVE TO TAKE THAT RULING FROM THE CIRCUIT COURT, SUPPRESSING THIS, AND NOT PROCEED?

YOUR HONOR, WHEN SOMEONE IS ARRESTED FOR DUI, THEY BASICALLY TAKE TWO, FOR IN THE ROAD. THERE IS A CRIMINAL END AND THERE IS THE ADMINISTRATIVE END. THE ADMINISTRATIVE AND CRIMINAL HAVE NOTHING TO DO WITH EACH OTHER, SO THE OUTCOME ADMINISTRATIVE FUNCTION HAS NOTHING TO DO WITH IT, SO WITH RESPECT TO THE CRIMINAL DUI --

SO THE MOTION TO SUPPRESS --

IRRELEVANT.

-- THE SAME STOP WOULD NOT HAVE AFFECTED THE PROBLEM.

NO, BECAUSE THE HEARING OFFICER IS LIMITED TO THE ARRESTING OFFICER'S AFFIDAVIT, MEMORANDUM, WHATEVER.

THIS IS BECAUSE HE REVUE FUSED THE TEST -- HE REFUSED THE TEST, IS THAT RIGHT?

WHEN SOMEONE IS ARRESTED, IN 326.225, THE DEPARTMENT HAS THE RIGHT TO SUSPEND THE LICENSE ON THE SPOT THEN THAT DRIVER HAS THE RIGHT TO REQUEST A HEARING BEFORE A HEARING OFFICER. IT IS ADMINISTRATIVE DUI.

I THOUGHT IT HAD TO DO WITH --

IT IS NOT JUST REFUSAL. YOU ARE REFUSED, WHERE IF YOU REFUSE, IT IS A ONE-YEAR SUSPENSION AND IF YOU TAKE THE TEST AND FAIL IT, IT IS A SIX-MONTH SUSPENSION, AND THE TESTS ARE DIFFERENT WITH A HEARING OFFICER, BUT ONE IS A BLOOD ALCOHOL LEVEL SUSPENSION AND ONE IS A REFUSAL SUSPENSION, BUT IT IS A COMPLETELY SEPARATE ANIMAL FROM THE CRIMINAL DUI.

WHAT WAS THE PARTICULAR SITUATION HERE?

THIS HAPPENED TO BE A REFUSAL.

SO HE FACED ONE YEAR?

ONE YEAR FOR FIRST REFUSAL AND 18 MONTHS FOR A SECOND OR SUBSEQUENT REFUSAL, AND THEY ARE, THE LEGISLATURE INTENDED IT TO BE 322.2615 SUBSECTION 14, THAT ANYTHING THAT COMES OUT OF THE ADMINISTRATIVE CASE CAN'T BE USED IN THE TRIAL AND THE MOTIONS TO SUPPRESS AND THE THINGS THAT OCCUR IN THE CRIMINAL END DON'T AFFECT WHAT HAPPENS IN THE ADMINISTRATIVE END. THERE ARE, THIS, ONE IS PENAL IN NATURE AND ONE REMEDIAL IN NATURE. THERE IS A WHOLE BODY OF CASE LAW, AND IT IS ACTUALLY DEVELOPING AS WE SPEAK, BUT THEY ARE SEPARATE AND DISTINCT, SO AGAIN, I THINK THE KEY HERE IS THAT THE DISTRICT COURT ACTED WITHIN ITS SCOPE OF REVIEW BECAUSE THE COURT DIDN'T APPLY THE CORRECT LAW, AND I WANT TO REALLY EMPHASIZE TO THE COURT HOW IMPORTANT IT IS NOT JUST PROBABLE CAUSE TO STOP --

WHAT ABOUT THIS COURT MADE A PRETTY STRONG STATEMENT, IN THAT CASE THAT JUSTICE SHAW WROTE, BROWARD COUNTY VERSUS GB, INVOLVING THE CERTIORARI BUSINESS, AND IT SAYS ONCE THE DISTRICT COURT GRANTED CERT AND QUASHED THE COURT OERD ORDER, ONCE THE -- ORDER, ONCE THE COURT HALTED MISS JUSTICE, IT WAS ENDED WITH THE DE NOVO APPLICATION THAT THE DISTRICT COURT ERRED IN DELEGATING TO ITSELF THE COMMISSION. HOW CAN THE COURT IN THAT CASE, STEP IN AND MAKE A DIFFERENT DETERMINATION ON THE COMPETENT SUBSTANTIAL EVIDENCE, AND THE CIRCUIT COURT DID?

BECAUSE I DON'T THINK THEY FOUND DIFFERENTLY ON THE COMPETENT SUBSTANTIAL EVIDENCE. THEY FOUND THAT THE CIRCUIT COURT APPLIED THE INCORRECT LAW BY APPLYING A SUBJECTIVE STANDARD, AND LIMITING ITS REVIEW, ITS FINDINGS TO WHAT THE OFFICER IN FACT, STATED. INSTEAD OF THE APPROPRIATE LAW, WHICH WAS WHETHER THE OBJECTIVE FACTS, AS STATED IN THE OFFICER'S PROBABLE CAUSE AFFIDAVIT, ROSE TO ALEVE OF A FOUNDED SUSPICION TO STOP HIM FOR THE UNUSUAL DRIVING PATTERN OR PROBABLE CAUSE TO STOP HIM ON THE TRAFFIC INFRACTION OF SPEEDING.

BUT HERE, I THINK YOU HAVE ALREADY CONCEDED IF THE DISTRICT COURT OF APPEAL HAD SET FORTH THIS OPINION AND SAID THIS IS THE LAW, AND REMANDED IT TO THE CIRCUIT COURT, TO DECIDE, BASED UPON WHAT THE LAW, THE DISTRICT COURT OF APPEAL MISSTATED THE LAW. THAT IS THE PROBLEM, BECAUSE YOU ARE SAYING I NEED, YOU ARE SAYING YOU NEED TO GO BEHIND THE DISTRICT COURT OF APPEAL DECISION. THERE IS OTHER AUTHORITY BUT IT IS NOT ON THE FACE OF THIS OPINION, SEEMS TO BE WHAT YOU ARE TELLING US.

CORRECT, BECAUSE THEY CITED McNEIL AND POLLARD.

AND STATED DIFFERENTLY, WHAT THE DISTRICT COURTS SHOULD HAVE DONE IS, IF THEY FOUND THIS CIRCUIT COURT APPLIED THE WRONG LAW, IS NOT TO CORRECT IT THEMSELVES, OTHER THAN TO MAKE A CORRECT STATEMENT WHAT THE LAW IS AND REMAND IT BACK TO THE CIRCUIT COURT AS THE PRIMARY LEVEL FOR CERT REVIEW, TO APPLY THE RIGHT LAW.

I THINK THAT THE DISTRICT COURT CAN MAKE A RULING AND SAY THIS IS THE CORRECT LAW, AND FIND THAT THE OBJECTIVE FACTS, BASED ON THE CORRECT LAW, THE OBJECTIVE FACTS SUPPORTED THE STOP.

THAT GOES BACK TO JUSTICE QUINCE'S QUESTION, THOUGH, IS IN THE SECOND TEAR CERT REVIEW WE JUST ADDRESSED IN OMNIPOINT, LIMITS THE SCOPE OF APPELLATE REVIEW.

THEN THEY COULD HAVE REMANDED TO THE CIRCUIT COURT TO APPLY THE CORRECT LAW, WHICH WAS TO EXAMINE THE OBJECTIVE FACTS, BASED ON A FOUNDED SUSPICION AND NOT TALK ABOUT THE SUBJECTIVITY OF THE OFFICER'S, WHAT WAS IN THE MIND OF THE OFFICER, AND WHAT WAS IN HIS ARREST AFFIDAVIT, AND NOT BE ABLE TO GO BEYOND WHAT WAS, NOT

BEYOND WHAT WAS IN THE ARREST AFFIDAVIT, BUT BECAUSE THE OFFICER CITED HIM FOR FAILURE TO MAINTAIN A SINGLE LANE, THAT WAS T.

HOW DO WE KNOW? IT SAYS -- THAT WAS IT.

HOW DO WE KNOW? IT SAYS HIGH RATE OF SPEED. WE GO BACK, AND IF IT WAS HIGH RATE, WE KNOW HE WAS WITHIN THE SPEED LIMIT. HOW DO WE KNOW WHAT THE SPEED LIMIT WAS?

ON THE STOP FOR THE SPEEDING, WE HAVE THE FACT THAT HE ESTIMATED 50 MILES AN HOUR. HE DESCRIBES HIM AS A HIGH RATE OF SPEED. I MEAN, DRIVING AT A HIGH RATE OF SPEED IS NOT DRIVING THE SPEED LIMIT, AND THE HEARING OFFICER'S STANDARD, THE STANDARD BEFORE THE HEARING OFFICER IS A PREPONDERANCE OF THE EVIDENCE, SO BASED ON THE FACT THAT WE KNOW WHERE THE DRIVING TOOK PLACE. IT WASN'T ON I-95. IT WASN'T ON I-75. IT WASN'T ON THE TURNPIKE. AND THE ESTIMATED RAPED, WHICH IS 50 ANYWHERE -- 50 MILES AN HOUR, THERE WAS PROBABLE CAUSE TO STOP HIM FOR SPEEDING, BUT EVEN IF THE COURT FINDS THAT THE FACTS --

WHERE DID THE 50 MILES AN HOUR COME FROM?

FROM THE PROBABLE CAUSE AFFIDAVIT. THE OFFICER SAID I OBSERVED HIM DRIVING AT A HIGH RATE OF SPEED AND THEN IN PARENTHESES SAID 50 MILES AN HOUR.

HE ATTEMPTS TO PACE.

HE TURNS AROUND AND ATTEMPTS TO PACE AND THEN IS DISTRACTED BY THE ERRATIC DRIVING PATTERN. HE OBSERVES HIM SEVERAL TIMES AND CONTINUES TO CONDUCT ALSO BASED UPON THAT.

I AM AFRAID WE HAVE USED UP ALL OF YOUR TIME. HOW MUCH REBUTTAL?

AGAIN, THE COURT TOOK A CERT JURISDICTION, BASED UPON THE CONFLICT IN LAW AS STATED TO STOP, BUT I DON'T SEE THIS AS A STOP CASE. I RECOGNIZE THE CONCEPT THAT SOMEBODY HAS TO LOSE AT SOME POINT IN TIME, AND IN THIS CASE, THE DEPARTMENT LOST AT THE CIRCUIT COURT LEVEL. THE CIRCUIT COURT APPLIED THAT, THE CORRECT LAW, WHEN IT MADE THAT, WHEN IT MADE THAT DECISION.

WHAT ABOUT THE LAW THAT SAYS THAT, THAT, FOR REASONABLE SUSPICION, YOU LOOK AT THE TOTALITY OF THE CIRCUMSTANCES? WHY DOESN'T THAT APPLY HERE?

WELL, IT DOES APPLY HERE, BUT AGAIN, GOING BACK TO WHAT I SAID, I SAID BEFORE, THE OFFICER WHO MADE THE STOP IS FREE TO PUT ANYTHING HE WANTS AS THE REASONS FOR THAT STOP IN THAT ARREST AFFIDAVIT. THERE IS NO TIME LIMIT ON HOW LONG HE TAKES TO WRITE IT OUT. HE CAN PUT HIS QUALIFICATIONS IN. HE CAN DO ANYTHING HE WANTS AS AN EXAMPLE, THE WEAVING ISSUE THAT WAS JUST BROUGHT UP, GOING LEFT AND RIGHT. THAT IS JUST AS CONSISTENT WITH INNOCENT BEHAVIOR, IF YOU MOVE TO THE LEFT, TO TRY TO VIEW A NUMBER ON A DOOR TO TRY TO FIND A PARTICULAR STREET. NOW, THAT IS IN CONSISTENT WITH INNOCENT BEHAVIOR, IF THE OFFICER PUTS IN HIS REPORT, WELL, THERE WAS NO REASON.

THE ARREST AV AFFIDAVIT -- THE ARREST AFFIDAVIT SAYS HE DID IT SEVERAL TIMES NOT JUST ONCE, SO ARE YOU SAYING THAT AN OFFICER HAS NO AUTHORITY TO STOP A CAR, SEES A CAR WEAVING IN AND OUT OF A LANE SEVERAL TIMES? DOES HE HAVE TO WAIT UNTIL THE CAR CRASHES INTO A TREE OR RUNS INTO ANOTHER CAR?

ABSOLUTELY NOT, BUT THE LAW ON THAT IS FAIRLY CLEAR, AS IS STATED IN THE CROOKS AND JORDAN K.A.S YOU CAN LEAVE YOUR LANE IF YOU DO IT SAFELY AND DON'T ENDANGER

ANYBODY ELSE. NOW, IF THE OFFICER HAD FACTS TO JUSTIFY THAT THAT WAS HAPPENING, ALL HE HAD TO DO WAS PUT THEM IN THE REPORT.

SO WE HAVE TO WAIT UNTIL THE CAR ENDANGERS ANOTHER CAR OR A PEDESTRIAN?

NO, SIR. IF THE POLICE OFFICER WANTS TO JUSTIFY THE STOP, BASED UPON A LANE VIOLATION, THE LAW IS CLEAR. IF HE VIOLATES THAT LAW, THEN HE CAN BE STOPPED. IF, THEN, WE DON'T HAVE A PARTICULAR --

THERE IS ANOTHER VIOLATION OF LAW, WHICH IS DRIVING UNDER THE FLUNTS, AND AN OFFICER MAY HAVE REASONABLE SUSPICION -- UNDER THE INFLUENCE, AND OFFICER MAY HAVE REASONABLE SUSPICION, BASED ON CIRCUMSTANCES, THAT A DRIVER IS VIOLATING THAT LAW, AND WHY CAN'T AN OFFICER STOP A CAR IF HE HAS REASONABLE SUSPICION, BASED UPON THE CIRCUMSTANCES THAT THE PERSON IS DRIVING UNDER THE INFLUENCE OF ALCOHOL?

THAT IS PERFECTLY OKAY. THAT IS, I AM NOT QUIBBLING THAT. IS WHAT CAR HE WILL-AND -- THAT IS WHAT CARILLO AND DESHONG AND ALL OF THOSE CASES SAID, BUT LOOK AT THE FACTS OF THIS CASE AND AT SOME POINT, FACTS ARE NOT GOING TO RISE TO THAT PARTICULAR LEVEL. SOMETIME, I DON'T KNOW. IS THAT TWO, THREE, FOUR?

IF THE POLICE OFFICER HAD TESTIFIED, OF COURSE WE DON'T HAVE WHY YOU GOT A MOTION TO SUPPRESS GRANTED IN THE CRIMINAL CASE.

HE TESTIFIED THERE.

THE POLICE OFFICER TESTIFIED. WE CAN'T CONSIDER THAT, BUT HE, YOU MUST HAVE DONE A GOOD JOB OF CROSS-EXAMINING HIM, BUT IF THE POLICE OFFICER TESTIFIES THAT IT WAS WEAVING THAT, IN MY EXPERIENCE, WAS NOT BECAUSE HE WAS LOOKING FOR A HOUSE OR WHATEVER, BUT IT WAS ERRATIC DRIVING, THERE WAS A 25 -- THIS WAS A 25 MILES AN HOUR ZONE. HE WAS GOING TWICE THE SPEED LIMIT, AND HE WAS, YOU KNOW, HE WAS ACTUALLY, HE WAS GOING INTO THE NEXT LANE --

THOSE ARE OBJECTIVE FACTS JUSTIFYING THE STOP. CONCEDE THAT WITHOUT ANY QUESTION. AM I DONE?

YOU ARE FINISHED. [LAUGHTER]

AT LEAST YOUR TIME IS UP.

I AM ABOUT DONE, ANYWAY. APPRECIATE IT. THANK YOU.

THANK YOU, COUNSEL. WE APPRECIATE YOUR HELP WITH THIS CASE. THANK YOU VERY MUCH. THE COURT WILL BE IN RECESS.

MARSHAL: PLEASE RISE.