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Ernest Tillman v. State of Florida

THE LAST CASE THIS MORNING IS EARNEST TILLMAN VERSUS THE STATE OF FLORIDA.

GOOD MORNING.

GOOD MORNING, JUSTICE PARIENTE. MAY IT PLEASE THE COURT, MY NAME IS ROSEMARIE FARRELL AND I'M HERE REPRESENTING EARNEST TILLMAN. THE ISSUE IN THIS CASE SETS BEFORE THE COURT TODAY IS WHETHER OR NOT O DEFENDANT CAN BE CONVICTED OF BATTERY OF A LAW ENFORCEMENT OFFICER OR RESISTING THAT OFFICER WITH VIOLENCE ABSENT PROOF OF THE LAWFUL EXECUTION OF A LEGAL DUTY. THE MATERIAL FACTS.

THE ACTUAL LANGUAGE IS LAWFUL PERFORMANCE OF DUTY, RIGHT?

IN ONE OF THE STATUTES IT IS PERFORMANCE. I BELIEVE THE BATTERY ON A LAW ENFORCEMENT OFFICER AND IN THE RESISTING AN OFFICER IT IS LAWFUL EXECUTION. I'VE TREATED THEM AS THE SAME.

OKAY. CAN YOU FIRST EXPLAIN WHY YOU THINK THAT THIS OFFICER WAS NOT ACTING IN THE LAWFUL PERFORMANCE OR EXECUTION OF HIS DUTIES?

WELL,.

IN PARTICULAR WHY WEREN'T THERE CIRCUMSTANCES THEN TO THE HOME?

THE REASON THAT HE GAVE FOR CALLING BACK-UP WERE THE NUMBER OF INDIVIDUALS, YOUNG PEOPLE AT THE PARTY, A THREAT THAT HAD BEEN MADE TO HIM, AND HE HAD OBSERVED TWO MINORS WHO ADMITTED THAT THEY WERE CONSUMING ALCOHOLIC BEVERAGES, AND BASED ON THAT HE SUM ONED BACK-UP. ONE OF THE RESPONDING OFFICERS TESTIFIED THAT THE COMPLAINT THAT HAD COME IN FROM OFFICER DUNCAN WAS THAT HE RECOGNIZED ONE OF THE INDIVIDUALS AT THE PARTY AS A A BANK ROBBERY SUSPECT, AND BASED UPON THAT COMPLAINT THAT WAS CALLED IN, IT WAS UPGRADED TO AN EMERGENCY BACK-UP.

WAS THAT THE SAME PERSON THAT HAD THREATENED OFFICER DUNCAN?

THERE WAS WIDE RANGING TESTIMONY ON THAT. OFFICER DUNCAN HIMSELF AT THE TIME SAID THAT THIS WAS NOT HE SAID MR.^TILLMAN WAS NOT ONE OF THE PEOPLE WHO HAD VOICED THE THREAT, BUT I THINK IT IS REASONABLE AND WE CAN SEE THAT, YOU KNOW, IN THE COMMOTION ONE OF THE OFFICERS MAY NOT HAVE KNOWN THAT FOR FACT AT THE TIME BECAUSE THE MANNER IN WHICH THIS UNFOLDED.

SO WHEN YOU HAVE OFFICERS WHO BELIEVE THERE WAS A THREAT MADE TO AN OFFICER AND THAT ONE OF THE PEOPLE IN THE HOME POSSIBLY WAS A ROBBERY SUSPECT, WHICH OBVIOUSLY IS A FELONY, WHY WEREN'T THERE EXOGENT CIRCUMSTANCES TO ENTER THE HOME TO FIND THE SUSPECT BEFORE THE SUSPECT LEFT FOR SOMEWHERE ELSE AND THEN THEY WOULD NOT BE ABLE TO APPREHEND THEM?

WHAT IS INTERESTING AND I WOULD BE ABLE TO CONCEDE THAT WERE THAT THE CASE THERE STILL WAS NOT IN THE INSTANCE OF THE OFFENSE THAT MY CLIENT WAS CHARGED WITH, THAT

IT WAS LONG AFTER THE ENTRY, THE SEIZURE, THE SEARCH WHICH HAD UNCOVERED NOTHING, AND THEN MY CLIENT TURNED TO LEAVE AND THE OFFICER GRABBED HIM BY THE SHOULDER. I THINK THAT, YOU KNOW, WHETHER OR NOT THERE WAS EXOGENT CIRCUMSTANCES TO ENTER ISN'T REALLY DISPOSITIVE OF WHETHER OR NOT THERE WAS LAWFUL PERFORMANCE IN FRONT OF, IF YOU WILL, THE HEAD LOCK THAT MY CLIENT WAS ACCUSED OF PERFORMING.

WAS THAT ARGUMENT MADE TO THE JURY? ARE WE DEALING WITH SOMETHING THAT BECAUSE BOTH OF THE STATUTES, ONE SAYS LAWFUL PERFORMANCE OF HIS OR HER DUTIES AND THE OTHER SAYS LAWFUL EXECUTION OF MY LEGAL DUTY.

RIGHT.

IS THAT AN ESSENTIAL ELEMENT OF THE CRIME THAT THE JURY DETERMINED WHETHER IT HAS BEEN IN THE LAWFUL EXECUTION OR LAWFUL PERFORMANCE, OR ARE YOU SAYING {SMAUF} AS A MATTER OF LAW THAT THE COURT HAS TO LOOK AT THESE FACTS AND SAY AS A MATTER OF LAW THERE COULD NOT BE ANY LAWFUL PERFORMANCE? WHICH ONE?

I THINK IF THERE IS NO EVIDENCE, IF THERE IS NOT A PRIMA^FACIE CASE MADE AND JUST AS A MATTER OF FACT THE OPINION THAT IS ON APPEAL TODAY FROM THE 5TH DISTRICT COURT OF APPEALS, DOES NOT REALLY RENDER A DECISION ON WHETHER THESE WERE LEGAL. WHAT'S PROBLEMATIC, I THINK, ABOUT THE HOLDING, IS THAT IT SAYS EVEN IF THE ENTRY WERE ILLEGAL, THE SEIZURE WERE ILLEGAL, THE SEARCH WERE ILLEGAL AND THEN THE NEXT SEIZURE WERE ILLEGAL, STILL MR.^TILLMAN WAS NOT JUSTIFIED TAKING THE LANGUAGE FROM THE STATUTE THAT DEALS WITH THE EXCEPTION IN THE CASE OF AN ARREST TO USE FORCE IN THESE CASES.

BUT IT IS SHIFTING THE BURDEN TO MY CLIENT.

IF THERE WERE A LAW THAT WOULD EMERGE HERE, ASSUMING THAT WE ACCEPT THE LAWFUL PERFORMANCE OF HIS OR HER DUTIES MEANS SOMETHING AS OPPOSED TO THE RESIST ARREST THAT DOESN'T SAY THERE IS NO JUSTIFICATION FOR FORCE ANY CIRCUMSTANCES. DID THE JURY IN THIS CASE, WERE THEY INSTRUCTED THAT THAT WAS AN ESSENTIAL ELEMENT OF THE CRIME?

YES, THEY WERE.

AND DID THE DEFENSE LAWYER THEN HAVE AN OPPORTUNITY TO ARGUE WHAT YOU ARE ARGUING TO US, WHICH IS THAT HE, YOU KNOW, WAS NOT EXCUSED TO GO IN THERE AND WAS THAT ARGUMENT MADE TO THE JURY?

YES, IT WAS.

SO WHY WOULDN'T THAT THEN BE A BASIS JUST GOING BACK TO AFFIRM THE JURY'S VERDICT ON THE FACT THAT THEY WERE INSTRUCTED PROPERLY ON THE ELEMENTS OF THE CRIME AND THEY MADE A FACTUAL DECISION THAT THE THAT THE POLICE OFFICER WAS IN THE LAWFUL PERFORMANCE OF HIS OR HER DUTIES?

BECAUSE I THINK ARGUEABLEY THERE WAS NOT, I THINK, ACQUITTAL CAN BE ENTERED NOTWITHSTANDING THE VERDICT.

SO THERE ARE THREE OPTIONS. ONE IS TO SAY IF THE 5TH DISTRICT IS SAYING IT DOESN'T MATTER, WE ARE GOING TO ERASE, MAYBE IN YOUR VERSION WE ARE ERASING THE WORD LAWFUL PERFORMANCE FROM THE STATUTE AND AS LONG AS IT IS A POLICE OFFICER THAT'S ENOUGH, OR WE COULD SAY IT HAS SOME MEANING. THE JURY DECIDES IT, BUT WHAT YOU ARE SAYING IS IT IS THE OPPOSITE HERE THAT WE WOULD HAVE TO DECIDE OR SAY AS A MATTER OF LAW THAT THE CIRCUMSTANCES DIDN'T CALL GOOD FAITH BELIEF THAT WHAT HE WAS DOING

WAS APPROPRIATE, THAT THAT WOULD BE FOR THE JURY TO DECIDE AND NOT TO DECIDE AS A MATTER OF LAW THERE WAS NO CRIME SUBMITTED.

I THINK WHAT IS HAPPENING IN PRACTICE, JUSTICE PARIENTE, IS THAT THERE IS JUST LOOKING AT THE OUTFLOW OF CASE LAW ON THESE STATUTES, IS THERE IS NOT SO SUBTLE SHIFTING OF THE BURDEN ON TO THE DEFENDANT TO PROVE THAT THE OFFICER WAS NOT IN THE LAWFUL EXECUTION OF LEGAL DUTY WHEN, IN FACT, THAT IS SOMETHING THAT MUST BE PROVED BEYOND A REASONABLE DOUBT.

BUT THIS JURY WAS INSTRUCTED TO THAT EXTENT.

CORRECT.

THEY WERE INSTRUCTED THAT LAWFUL PERFORMANCE WAS AN ESSENTIAL ELEMENT.

YES, THEY WERE.

AND THEY HAD THE BURDEN. IT DIDN'T SHIFT. SO IN THIS CASE WHY WOULDN'T THAT BE A PROPER, EVEN IF WE ACCEPT SOME OF YOUR ARGUMENT, ALTERNATIVE BASIS TO AFFIRM THE CONVICTION IN THIS CASE?

YES, I THINK THE ARGUMENT THAT IT WAS THE OFFICERS WERE NOT IN THE LAWFUL PERFORMANCE IN THESE CASES IS A LEGAL ARGUMENT, AND WHAT THE JURY WAS PRESENTED WITH WAS TO MAKE A FACTUAL FINDING.

YOU ARE SAYING IN THIS PARTICULAR CASE THAT THE FACTS REALLY ARE UNDISPUTED.

RIGHT.

AND THAT ON UNDISPUTED FACTS THE OFFICER WAS NOT EXECUTING A LEGAL DUTY AT THE TIME THAT THIS HAPPENED.

PRETTY MUCH.

YOU ARE REALLY ENTITLED TO A DIRECTED VERDICT JUST AS IF THERE WAS NO PROOF OF SOME OTHER ELEMENT OF THE CRIME. IS THAT CORRECT?

YES, YOUR HONOR.

THAT'S WHAT YOUR ARGUMENT IS BEFORE US; IS THAT CORRECT?

THAT'S RIGHT. JUSTICE ANSTEAD. THE CASE INITIATED, IT BEGAN WITH A MOTION TO DISMISS, AND BASED ON PAYTON, BECAUSE THERE WASN'T, I MEAN MOST OF THE CASE LAW, AND IT WAS ARGUED, AND I WOULD ARGUE THAT, BUT I DON'T THINK IN TERMS OF THE CONFLICT THAT'S BEFORE THIS COURT, I THINK THE PROBLEM THE PROBLEM IS THAT WE'VE GOT ONE COURT SAYING, OKAY, THE OFFICER, TECHNICALLY THERE WAS NOT LAWFUL PERFORMANCE OF A LEGAL DUTY BUT BECAUSE THIS DEFENDANT ISN'T JUSTIFIED TO RESIST AN ARREST WITH FORCE, WE ARE GOING TO NONETHELESS, EVEN THOUGH THERE HAS BEEN NO ASSUMING EVERYTHING THE OFFICERS DID AT EACH STAGE IN THIS ENCOUNTER WAS NOT LAWFUL, STILL WE ARE GOING TO UPHOLD THIS CONVICTION ABSENT EVIDENCE OF THAT ESSENTIAL ELEMENT.

HELP US WITH THE INTERPLAY BETWEEN THE PROVISION, FOR INSTANCE, I BELIEVE IT IS IN THE RESIST ARREST OR WHATEVER, THAT REALLY EVENTS A STRONG POLICY THAT WE DON'T WANT CITIZENS TO FORCEABLY RESIST POLICE OFFICERS, YOU KNOW, THAT APPARENTLY ARE LEGITIMATE POLICE OFFICERS GOING ABOUT THEIR BUSINESS, AND THE PROPOSITION THAT THE

STATE HAS TO DEMONSTRATE IN EACH INSTANCE THAT THE OFFICER ACTUALLY, THAT, YOU KNOW, WHETHER IT IS PROBABLE CAUSE AND AN ARREST OR WHETHER IT'S A YOU KNOW, WHATEVER THE LEGAL STANDARD MAY BE FOR THEM TO BE LAWFULLY EXECUTING THEIR DUTY, THIS IS WHAT IS CAUSING A LOT OF THE PROBLEMS WITH US TRYING TO INTERPRET THIS. HELP ME WITH WHAT SEEMS TO BE A VERY STRONG PUBLIC POLICY THERE IN THE LANGUAGE THE LEGISLATURE USES IN THE RESIST ARREST SITUATION OF TELLING CITIZENS, WE DON'T WANT YOU PHYSICALLY RESISTING OUR OFFICIAL POLICE OFFICERS. OFFICERS MAY GET IT WRONG FROM TIME TO TIME, BUT WE DON'T WANT YOU TO MAKE THAT DECISION. THERE ARE WAYS FOR YOU TO DO THAT SHORT OF PHYSICALLY RESISTING THE OFFICER, YOU KNOW, THAT IS THERE ON THE SCENE, YOU KNOW, TAKING CHARGE OR WHATEVER. HELP ME WITH THAT. THAT'S A BROAD QUESTION.

IF I MAY, BECAUSE WE'VE ALL SPENT A LOT OF TIME ON THIS, AND I THINK IT IS IMPORTANT TO KEEP IN MIND THAT 776.051 WHICH TALKS ABOUT THE SPECIFIC FACTUAL SITUATION OF AN ARREST BEING MADE, WHETHER LAWFUL OR 1/2, SAYS THAT, AND THIS IS THE PROBLEM THAT A DEFENDANT OR SUSPECT IS NOT JUSTIFIED IN THE USE OF FORCE, IMPLYING THAT THERE ARE CIRCUMSTANCES WHERE A DEFENDANT WOULD BE JUSTIFIED IN THE USE OF FORCE, AND I WOULD ARGUE THAT UNDER THE EXISTING LAW, EVEN WITHOUT ENHANCING BASED UPON THE LAW ENFORCEMENT STATUS OF A VICTIM, THERE IS SIMPLE BATTERY STATUTES WHICH PROTECT US ALL.

AND I AGREE, BUT 776.051 IS THE STATUTE THAT DEALS WITH JUSTIFIABLE USE OF FORCE AND SELF DEFENSE AND WHATEVER. DID MR. TILLMAN RAISE SELF DEFENSE SOCIAL SECURITY A DEFENSE TO THE CHARGES DEFENSE AS TO DEFENSE TO THE CHARGES IN THIS CASE AND THE NEXT QUESTION, WAS THE JURY INSTRUCTED ON SELF DEFENSE WHERE THIS JUSTIFIABLE USE OF FORCE IS A STAND ARRESTED INSTRUCTION?

I DON'T BELIEVE SO, AND I'M RELYING ON MEMORY ON AN OLD CASE BUT I DON'T BELIEVE THAT WAS THE GIST. I THINK THE GIST WAS THAT IT WAS JUST IT WASN'T REALLY, IT WAS AS THE OFFICER GRABBED HIM HE TURNED AND IT WASN'T

SO THE OFFICER RAN INTO HIS HANDS OR SOMETHING LIKE THAT WAS THE WAY HE ARTICULATED IT IN FRONT OF THE JURY.

HE ADMITTED THAT HE GRABBED HIM BY THE SHOULDER.

THIS ISN'T A CASE WHERE YOU HAVE A RESISTING AND BATTERY CHARGE AND THE DEFENDANT IS SAYING I HAVE SELF DEFENSE. I MEAN, THE GUY LIKE UNLIKE THE TAYLOR CASE WHERE THE OFFICER WAS BASICALLY BUSTING INTO THE GUY'S HOUSE AND THE GUY WAS DEFENDING HIMSELF IN HIS OWN HOME. IN THE TILLMAN CASE THIS IS NOT A CASE WHERE YOUR CLIENT WAS SAYING, I WAS ACTING IN SELF DEFENSE AGAINST UNREASONABLE FORCE OF A LAW ENFORCEMENT OFFICER.

NO, I THINK ONE OF THE THINGS THAT THESE CASES BOTH HAVE IN COMMON IS THAT EACH DEFENDANT REALLY WAS PRETTY MUCH RESPONDING IN KIND. NOW, IN THE PARTY'S SITUATION UNDER YOUR FACTS THERE WAS A PILING ON OF OFFICERS AND I MEAN IT WAS A SITUATION WHICH WAS RIPE FOR SOMETHING BAD TO HAPPEN.

BUT SELF DEFENSE WAS NOT RAISED?

IT WAS NOT RAISED. IT WAS A SHOVING AWAY IN TAYLOR AND IT WAS WHEN I WAS GRABBED IT WAS THE HEAD LOCK

BUT DO WE HAVE TO DEFINE I AGREE THERE IS AN ELEMENT OF DEFENSE, BUT THE REAL QUESTION BEFORE US IS HOW DO WE DEFINE LAWFUL PERFORMANCE OF A LEGAL DUTY? IS IT

LIMITED TO A FOURTH AMENDMENT VIOLATION OR IS IT A BROADER CONCEPT AND WHAT'S YOUR POSITION?

IF I MAY, I'VE LOOKED CAREFULLY AT THE CASES AND THE SUBJECT AND I'VE FOUND THREE SPECIES OF CASES AND ONE OF THEM, AND ONE OF THE CASES WHICH WAS DISCUSSED DURING THE HARRIS ORAL ARGUMENT AND I'VE SINCE CITED AS SUPPLEMENTAL AUTHORITY IN THIS CASE AND EARLIER FLORIDA SUPREME COURT CASE IS THE LEAD CASE IN THE GROUP OF CASES WHICH CHARACTERIZES LAWFUL PERFORMANCE. THEY NEED TO BE NONSUPPRESSION CASES. THEY ARE TALKING ABOUT THE IMPORTANCE OF SHOWING LAWFUL PERFORMANCE BEFORE WE TAKE A CRIME OF BATTERY AND ENHANCE IT, THE NEED, THE COURT WRITES, IS THAT IN ORDER TO SURVIVE THE EQUAL PROTECTION CHALLENGE IN THAT CASE THERE IS A NEED TO SHOW A RATIONAL RELATIONSHIP BETWEEN SOME PUBLIC INTEREST, WHICH WAS THE GOAL OF THE LAW, WHICH IS TO PROTECT THE PUBLIC, AND THE ENHANCEMENT BASED ON THE STATUS OF THE VICTIM. THE COURT POINTS OUT THAT SHORT OF THAT, WE ARE NOT ENCOURAGING USE OF FORCE.

BUT WHAT ABOUT THE KEY ISSUE?

THERE ARE CASES, I ACTUALLY DID A WORD SEARCH AND THERE ARE DIFFERENT PHRASINGS OF IT AND THERE ARE DIFFERENT DEFINITIONS. IT IS OFFICIAL DUTY, THE NICOLSI CASE TALKS ABOUT WHETHER THE SUBJECT MATTER OF WHAT THE OFFICER IS DOING. THAT CASE WAS, IF YOU WILL RECALL IT WAS AN OFF DUTY OFFICER CHECKING IDENTIFICATION IN A CLUB AND TURNED A YOUNG WOMAN AWAY REPEATEDLY AND SHE ENDED UP CLOCKING THE OFFICER WHO WAS IN FULL UNIFORM AND IN THAT CASE THE COURT DETERMINED THAT IT WAS NOT BATTERY ON A LAW ENFORCEMENT OFFICER BECAUSE HE HAD NOT BEEN ACTING IN HIS OFFICIAL CAPACITY. HE WAS ACTING AS AN EMPLOYEE OF THE CLUB.

SO ARE YOU SAYING IT IS NOT THE HIGHEST STAND ARRESTED FOR DEFENDANT WHICH WOULD BE THE LAWFUL PERFORMANCE MEANS IN COMPLIANCE WITH ALL CONSTITUTIONAL RIGHTS OF THE DEFENDANT, BUT IT IS ITS OFFICIAL DUTIES?

NO, I THINK IT NEEDS TO BE MORE THAN THAT. I'M CITING THAT'S ONE OF THE CASES OUT THERE. THAT'S ONE WAY TO GET AT IT.

YOU ARE IN YOUR REBUTTAL AND I THINK THIS IS AN IMPORTANT QUESTION TO ANSWER. SO JUST BE MINDFUL, BUT WE NEED TO KNOW YOUR ARTICULATION THEN IF IT IS AN ESSENTIAL ELEMENT OF, YOU KNOW, OFFICIAL DUTY WOULD NOT HELP YOU IN THIS CASE AND HE WAS IN

I THINK IT IS WORTH IN REBUTTAL TIME TO JUST CLARIFY I THINK IT IS IMPORTANT LOOKING AT WHAT THE PURPOSE OF THE LAW IS, WHICH IS TO ENHANCE THE PROTECTION OF THE PUBLIC, THAT LAWFUL PERFORMANCE OF A LEGAL DUTY HAS TO BE NOT BREAKING THE LAW, NOT ULTIMATELY NOT INFRINGING ON SOMEONE'S CONSTITUTIONAL RIGHTS. I THINK LESSER THAN AN ARREST, A GOOD FAITH ARREST WHICH IS A PRETTY SERIOUS SET OF CIRCUMSTANCES BASED ON PROBABLE CAUSE, THAT'S AN EXCEPTION TO THE RULE, WHICH IN OTHER CASES BEFORE YOU CAN BE CONVICTED OF OBSTRUCTING AN OFFICER WITH FORCE OR BATTERING AN OFFICER WHO IS IN THE LAWFUL PERFORMANCE OF HIS OR HER DUTIES, THEY MUST BE SHOWN TO HAVE BEEN LAWFULLY CARRYING OUT THEIR DUTIES. SO THERE IS A LAWFUL ELEMENT. THAT'S WHY LAWFUL IS THERE AND THEN THE OFFICIAL DUTY AND I'LL RESERVE WHAT LITTLE IS LEFT FOR MY REBUTTAL. THANK YOU.

MR. HEIDT?

MAY IT PLEASE THE COURT, MY NAME IS WESLEY HEIDT, AND I REPRESENT THE STATE IN THIS CASE.

MAY I ASK YOU THIS QUESTION? WE'RE DEALING HERE WITH A STATUTORY CONSTRUCTION, CORRECT?

CORRECT.

ALL RIGHT. AND MEMBERSHIP HE TO UNDERSTAND HOW AND THIS GOES BACK TO JUSTICE ANSTEAD'S QUESTION 776.0 A 51, WHICH TALKS ABOUT A PERSON NOT BEING JUSTIFIED IN THE USE OF FORCE TO RESIST AN ARREST BY A LAW ENFORCEMENT OFFICER, WHICH IS AN ALTERATION OF THE COMMON-LAW, HOW THAT IS PROPERLY READ INTO THE TWO STATUTES WITH WHICH THIS DEFENDANT WAS CHARGED, WHICH ARE NOT RESISTING ARREST STATUTES, BUT ONE BEING AGGRAVATED BATTERY ON A LAW ENFORCEMENT OFFICER AND THE OTHER IS JUST RESISTING AN OFFICER WITH VIOLENCE. FROM A STATUTORY CONSTRUCTION POINT OF VIEW, HOW DO YOU GET THERE OR DO YOU? DO YOU NEED THAT STATUTE IN ORDER TO GET YOU TO A POSITION THAT AS LONG AS IT IS AN OFFICER AND THEY SHOW THROUGH BATTERY THAT THE DEFENDANT CAN BE CONVICTED OF THE AGGRAVATED BATTERY?

AS FAR AS STATUTORY CONSTRUCTION, WHEN YOU LOOK AT 776.051, THE LEGISLATURE IS SHOWING A CLEAR INTENTION TO PROTECT POLICE OFFICERS, AND CASE LAW, THIS STATUTE WAS PASSED IN 1975, I BELIEVE, AND THERE ARE 30 YEARS OF CASE LAW ABOUT THE PUBLIC POLICY OF THIS. ALMOST AS SOON AS THAT STATUTE CAME OUT, CASE LAW STARTED INTERPRETING THAT STATUTE TO APPLY TO DETENTIONS.

BUT THE LEGISLATURE WANTED TO INCLUDE EVERYTHING, NOT JUST RESISTING LAW ENFORCEMENT OFFICER, BUT DOING ANYTHING AT ANY TIME TO A LAW ENFORCEMENT OFFICER, WHY WOULD THEY PUT IN TO RESIST AN ARREST BY A LAW ENFORCEMENT OFFICER? WHY NOT JUST SAY A PERSON IS NOT JUSTIFIED IN THE USE OF FORCE AGAINST A LAW ENFORCEMENT OFFICER OR SOMEONE WHO APPEARS TO BE ONE? I MEAN, THE FACT THAT THEY PUT IN THAT PHRASE TO RESIST AN ARREST HAS TO MEAN SOMETHING, DOESN'T IT?

I THINK, {DPEN}, THE EMPHASIS ON THE FACT THAT THE PROTECTION OF THE OFFICER, AND NOT NECESSARILY THE LEGALITY OF THE ARREST. CASE LAW HAS INTERPRETED THE PUBLIC POLICY OF THAT STATUTE TO APPLY TO DETENTIONS.

BUT I HAVE A QUESTION ABOUT THAT. THERE IS REPEATED REFERENCE TO THE FACT THAT CASE LAW SAYS, AND I WENT WAND READ THOSE STRICT COURT CASES, BUT DISTRICT COURT CASES BUT THERE IS NO REASONING IN THOSE CASES AS TO WHY WHEN THE STATUTE SAYS IT IS A RESIST ARREST THAT THE STATUTE IS ACTUALLY TALKING ABOUT AN ARREST ON A DETENTION. WHAT IS THE REASON THAT THE STATUTE CAN BE CONSTRUED TO BE PERTAINING TO A DETENTION AS WELL AS AN ARREST?

I THINK PROBABLY THE BEST LOGIC AND BEST REASONING IS SET OUT IN THE DOMINIQUE CASE OUT OF THE 4TH DISTRICT COURT IN WHICH THEY POINT OUT THE FACTS THAT THE MORE LIMITED INTRUSION OF A DETENTION, YOU WOULD NOT WANT TO ENCOURAGE OR ALLOW A DEFENDANT TO HAVE A FORCEABLE TYPE JUSTIFICATION.

BUT THAT HAS NOTHING TO DO WITH THE PLAIN LANGUAGE. I ASKED YOU FIRST IS THIS A STATUTORY CONSTRUCTION CASE. I DON'T SEE THAT THAT OUR VIEW THAT THE PUBLIC POLICY SHOULD BE THAT A LAW ENFORCEMENT OFFICER SHOULD NEVER BE BATTERED AND IT ALWAYS SHOULD BE AN AGGRAVATED CRIME IS OUR DECISION TO MAKE, AND WITHOUT THAT, LET ME JUST, YOU KNOW, LET'S ASSUME THAT WE READ THIS AND IT SAYS TO RESIST ARREST WHICH DOESN'T MEAN ANY, YOU KNOW, JUST A BROAD, ANY DETENTION. DO YOU, GETTING TO THE ACTUAL STATUTES, WOULD YOU AGREE THAT IN ANY EVENT, THAT THERE IS SPECIFIC LANGUAGE THAT SAYS THE OFFICER MUST BE IN THE LAWFUL PERFORMANCE OF HIS OR HER DUTIES OR AS THE OTHER STATUTE READS IN THE EXECUTION OF LEGAL PROCESSES OF THE LAWFUL EXECUTION OF A LEGAL DUTY AND THAT'S AN ELEMENT OF THE CRIME THAT THE STATE MUST

PROVE?

YES.

ALL RIGHT. SO HOW WOULD YOU DEFINE IS THERE ANY INDICATION IN THE LEGISLATIVE, YOU KNOW, INDEFINITE INITIATIONS OR WHATEVER, HOW IT SHOULD BE SHOULD THE JURY DECIDE THAT AND IF SO, WHAT SHOULD THE JURY BE TOLD? IF NOT, HOW DOES THE COURT DETERMINE AS A MATTER OF LAW THAT IT IS OR IS NOT A LAWFUL PERFORMANCE WHICH, YOU KNOW, IS A NARROW TEST AS THE DEFENDANT CONTENDS, WHICH IS THEY'VE GOT TO COMPLY WITH THE CONSTITUTION OR IS IT A MORE THAT IT IS LIKE A WORKERS' COMPENSATION THING. THEY ARE IN THE LINE AND THE COURSE AND SCOPE OF THEIR EMPLOYMENT OR ACTING IN GOOD FAITH. IT SEEMS LIKE THERE ARE A LOT OF CHOICES YOU GET TO ONCE YOU SAY THAT IT HAS TO MEAN SOMETHING.

I THINK SCOPE OF EMPLOYMENT WITH CARRYING OUT THEIR OFFICIAL DUTIES. LET ME BACKTRACK. IF YOU INTERPRET THE STATUTE, GOING BACK TO STATUTORY INTERPRETATION TO NOT APPLY TO RETENTION, ONE OF THE TENANTS, PRINCIPLES IS YOU SHOULD NOT INTERPRET A STATUTE TO BE ABSURD AND TO LOOK AT THAT AND SAY IN THIS INSTANCE IF HE HAD ARRESTED THE PERSON WE WOULD BE FINE, THEN YOU COULD NOT JUSTIFY THE RESIST IF YOU HAD HANDCUFFED HIM AND SAID YOU ARE UNDER ARREST.

WELL, WHEN DOES THE JURY GET TO KNOW THAT? THE JURY IN THIS CASE WAS NOT INSTRUCTED ON THIS SEPARATE STATUTE, WAS IT?

776 WAS INSTRUCTED SPECIFICALLY IN SECTION 304, SUBSECTION E WAS DISCUSSED AT LENGTH IN THE CHARGE CONFERENCE AND ALSO WAS LAWFUL PERFORMANCE AND THE JURY DECIDED AND MADE A DETERMINATION WHICH IS ONE WAY THAT THIS IS DISTINGUISHABLE FROM THAT.

WHAT IS THE STATE'S POSITION AS TO WHETHER THE OFFICERS IN THIS CASE ACTUALLY DID ANYTHING UNCONSTITUTIONAL?

AND THAT'S WHERE I WAS GOING TO START, BUT THE STATE'S POSITION THAT WE ARE NOT IN CONFLICT WITH TAYLOR BECAUSE IN TAYLOR YOU HAVE AN OFFICER WHO SHOWS UP AT THE DOOR AND ENTERS THE HOUSE. IN OUR CASE, THE OFFICER AT ISSUE, OFFICER HENRIQUEZ, WHO WAS THE SECOND OFFICER TO REPORT TO THE SCENE, IS RESPONDING TO A CALL FOR HELP IN WHICH HE SAYS THERE HAS BEEN A THREAT TO AN OFFICER. THERE HAS BEEN AN ARMED ROBBERY SUSPECT WHO IS HERE. OFFICER DUNCAN, WHO IS OUR FIRST OFFICER POINTS OUT THE DEFENDANT AND SAYS THAT'S ONE OF THE TWO.

WE'RE NOT SO MUCH CONCERNED, I MEAN, WE ARE, ABOUT THE OUTCOME OF THE SPECIFIC CASE AS WE ARE WITH FOLLOWING THROUGH REALLY WITH THE CHIEF JUSTICE'S QUESTION TO YOU AS FAR AS ASSUMING WE GOT STATUTORY CONSTRUCTION NOW, AND THE JURY IS INSTRUCTED AS A SEPARATE ELEMENT, OKAY? THEN WHY COULDN'T THE JURY, YOU KNOW, LET'S SUPPOSE THAT I'M NOT SURE WHETHER IT IS STILL GOOD LAW, BUT THERE WAS A CASE CALLED BROWN VERSUS TEXAS THAT SAID THAT POLICE OFFICERS CANNOT STOP CITIZENS ON THE STREET AND DEMAND IDENTIFICATION. THAT'S A VIOLATION OF THEIR CONSTITUTIONAL RIGHTS. SO LET'S SUPPOSE THAT'S THE CASE WE HAD HERE, AND THE POLICE OFFICER STOPPED THE CITIZEN ON THE SIDEWALK IN BROAD DAYLIGHT AND SAID LET ME SEE YOUR IDENTIFICATION AND THE PEDESTRIAN SAID, NO, I'VE GOT A COPY OF THE CASE HERE FROM THE U.S. SUPREME COURT THAT SAYS YOU CAN'T DO THAT. THAT THAT VIOLATES MY CONSTITUTIONAL RIGHTS AND THE OFFICER SAYS I COULD CARE LESS. THE CITIZEN STARTS TO WALK AWAY AND THE OFFICER DOES JUST EXACTLY WHAT OCCURRED HERE, ALL RIGHT? NOW, COULDN'T A JURY THEN, UNDER THIS LANGUAGE OF THE LAWFUL EXECUTION, LAWFUL DUTY, DETERMINE THAT, NO, THIS CITIZEN DID NOT VIOLATE THAT STATUTE BECAUSE THE OFFICER WAS NOT LAWFULLY EXECUTING A LAWFUL

DUTY. COULDN'T THE JURY DETERMINE THAT?

THE JURY WAS INSTRUCTED AS THEY WERE IN THIS CASE THAT THEY HAVE TO FIND LAWFUL PERFORMANCE AND WHEN YOU GET INTO

I'M JUST ASKING, JUST STAY WITH MY HYPOTHETICAL, ALL RIGHT? COULD THE JURY PROPERLY DETERMINE THEN UNDER THOSE CIRCUMSTANCES THAT THE OFFICER WAS NOT IN THE LAWFUL PERFORMANCE OF HIS DUTY, YOU KNOW, I JUST DESCRIBED WHAT THE AND, THEREFORE, THE STATE HAS NOT PROVEN THAT ELEMENT OF THE OFFENSE. COULD A JURY DO THAT?

IF IS JURY FINDS IT IS NOT, THEY CAN FIND .

IF THE JURY CAN DO IT, WHY CAN'T A JUDGE DO IT WHEN THE FACTS ARE UNDISPUTED?

TWO FOLD. I THINK IT DEPENDS ON HOW YOU DEFINE LAWFUL PERFORMANCE AND IT IS THE STATE'S POSITION IT MEANS SCOPE OF EMPLOYMENT AND IN THAT SITUATION WE WOULD ARGUE THAT THE STATE COULD NOT ENTER JOA, WHICH IS WHAT THEY DID.

IN THIS CASE THEN THE JURY WAS INSTRUCTED ON 777.6051, THE

IT IS MY UNDERSTANDING, YES, YOUR HONOR.

WAS THAT OBJECTED TO? WAS IT OBJECTED TO BY THE DEFENDANT?

THE JURY, IN THIS CASE, THE DEFENSE ASKED FOR A SPECIFIC INSTRUCTION AS TO PAYTON AND AS FOR JOA.

I UNDERSTAND, BUT I WANT TO UNDERSTAND. WAS THAT INSTRUCTION OBJECTED TO?

776.051? I DO NOT REMEMBER IT BEING OBJECTED TO.

BECAUSE, AGAIN, IF WE GO ON THIS ASSUMPTION THAT IT IS NOT APPLICABLE, IT WOULD HAVE BEEN IF IT WAS OBJECTED TO IT WOULD REALLY BE ERROR, BUT GOING BACK TO THE QUESTION OF THE STATUTORY CONSTRUCTION, YOU SAY THAT IT SHOULD BE SYNONYMOUS WITH SCOPE OF EMPLOYMENT BUT WHAT I'VE GOT PROBLEMS WITH IS IT ACTUALLY SAYS, IT DOESN'T SAY WHILE THE OFFICER IS ENGAGED IN THE PERFORMANCE OF HIS OR HER OFFICIAL DUTIES. IT SAYS, IS ENGAGED IN THE LAWFUL PERFORMANCE OF HIS OR HER DUTIES. SO LAWFUL IS THE WORD THAT WE'VE GOT TO FOCUS ON, AND THAT'S WHY ALTHOUGH IF THE LEGISLATURE HAD SAID IT IS ENGAGED IN THE OFFICIAL PERFORMANCE OR IN THE SCOPE OF HIS OR HER EMPLOYMENT, YOU WOULD BE HOME FREE ON YOUR DEFINITION, BUT WE'VE GOT TO GIVE THAT WORD MEANING, AND HOW DO YOU THEN HOW DO WE TAKE AND DEFINE LAWFUL?

IF HE WAS ACTING IN BAD FAITH, IF HE WAS ACTING OUTSIDE THE SCOPE OF EMPLOYMENT THAT WOULD BE A 1/2 BEHAVIOR. IF HE WAS ACTING ON A TECHNICAL

I GUESS THE CONSTITUTION, THOUGH, PEOPLE SAY IT IS TECHNICAL BUT WE LOOK AT IT DIFFERENTLY.

BUT THAT'S WHAT MOTION TO SUPPRESS AND IN THIS INSTANCE WE HAVE ON THE STREET WE HAVE DEFENDANTS ENCOUNTERING OFFICERS AND IN THIS CASE WAS A GREAT ILLUSTRATION. THE SECOND OFFICER SHOWS UP AT THE SCENE. THE SECOND OFFICER MAY HAVE BEEN ADMITTED

I KNOW YOU WANT TO ARGUE THAT. SO YOU'RE SAYING LAWFUL SHOULD BE DEFINED, FIRST YOU SAID IT COULD BE DEFINED AS OFFICIAL AND NOW YOU'RE SAYING IT SHOULD BE DEFINED FROM

A GOOD FAITH STANDARD.

SCOPE OF EMPLOYMENT, I THINK IS WHERE I WAS, CARRYING OUT THE DUTIES.

ARE WE JUST TAKING THIS OUT OF THIN AIR? IF WE ARE GOING TO DEFINE A TERM, WE'VE GOT TO BASE IT ON EITHER A DICTIONARY DEFINITION OR OTHER GOOD CASE LAW OR, BECAUSE WHAT WE ARE GETTING TO HERE IS THE LEGISLATIVE INTENT. I HAVE NO DOUBT THAT THE LEGISLATURE COULD HAVE AN AGGRAVATED CRIME BASED ON OTHER CONDITIONS IF IT WAS A LAW ENFORCEMENT OFFICER BUT THEY WOULD HAVE TO DEFINE IT THAT WAY.

AND I THINK THAT'S WHAT THEY HAVE DONE. THEY SAID YOU CANNOT COMMIT AGGRAVATED BATTERY ON A LAW ENFORCEMENT OFFICER WHEN HE IS CARRYING OUT HIS DUTIES AND IF YOU LOOK AT THE FIVE ELEMENTS OF AGGRAVATED BATTERY AND INTENTIONALLY TOUCH, GREAT BODILY HARM.

BUT THEY DIDN'T SAY JUST WHEN HE IS CARRYING OUT HIS DUTIES.

THEY USED LAWFUL PERFORMANCE OF HIS DUTIES. IT IS THE STATE'S INTERPRETATION THEY MEAN UNLESS HE IS ACTING BEYOND HIS DUTIES AND BEYOND HIS SCOPE OF EMPLOYMENT.

WELL, LET ME GO BACK. I'M A LITTLE CONCERNED ABOUT WHAT THE 5TH DISTRICT HAS SAID HERE IN THE OPINION, AND IT SAYS EVEN IF THE ENTRY PAT DOWN AND DETENTION WERE ILLEGAL, ONCE TILLMAN PLACED OFFICER HENRIQUEZ IN THE HEAD LOCK, HE HAD PROBABLE CAUSE TO ARREST HIM. WHAT IS THAT ALL ABOUT? I UNDERSTOOD WAS HE TRYING TO ARREST HIM BECAUSE HE WAS A BANK ROBBER OR WAS HE HE TOUCHED HIM AND THEN TURNED AROUND AND THERE {WAM} A BECAME AN AL ALTERCATION AND HE PUT HIM IN A HEAD LOCK; IS THAT WHAT HAPPENED?

HE WAS TRYING TO GET THE DEFENDANT FROM LEAVING THE SCENE. HE REACHED OUT AND PLACED HIS

WAS THERE EVER PROBABLE CAUSE TO ARREST HIM?

I DON'T BELIEVE SO. I THINK THE OFFICER WAS SPECIFICALLY ASKED THAT AT TRIAL, AND SAID MY UNDERSTANDING WAS THIS WAS THE SUSPECT AND HE WAS NOT LEAVING AND OFFICER DUNCAN'S SUBJECTIVE DETERMINATION OF PROBABLE CAUSE IS NOT AT ISSUE SO WHEN HENRIQUEZ WAS ASKED THAT HE SAID MY JOB WAS TO STOP HIM AND TO TRY TO FIND OUT WHO THE HOMEOWNER WAS FOR THE UNDER AGE DRINKING AND FIND THE TWO PEOPLE WHO MADE THE THREAT.

I WANT TO TRY, I THINK WAS IT JUSTICE LEWIS AND THEN JUSTICE CANTERO?

I ALSO HAVE DIFFICULTY WITH THE OPINION BELOW AND PARTICULARLY WHEN IT CONCLUDES BY SAYING, THEREFORE, WE HOLD THAT WHILE THE STATE MUST PROVE THE ALLEGED VICTIM WAS A LAW ENFORCEMENT OFFICER WHO WAS ENGAGED IN THE LAWFUL EXECUTION OF LEGAL DUTY, THE ILLEGALITY OF THAT ACTION DOES NOT JUSTIFY RESISTING. IT SEEMS TO BE CONCLUDING SAYING WHETHER IT IS ILLEGAL OR NOT, THAT DOESN'T MAKE ANY DIFFERENCE AT ALL.

THE CASE LAW, AND AS MY OPPONENT REFERENCED, JUMPS AROUND TO JUST ELIMINATE AN ELEMENT. THERE IS CASE LAW SAYING THIS IS NOT A DEFENSE. WHEN YOU SUGGEST THE STATE MUST PROVE A LAW ENFORCEMENT OFFICER THAT WAS BATTERED WAS BUT THE TECHNICAL ILLEGALITY.

BUT IT WAS AN ILLEGALITY THAT FORMED THE PREDICATE IN TAYLOR.

TAYLOR ACKNOWLEDGED THE FACT THAT YOU CANNOT RESIST WITH AN ARREST. IF YOU LOOK AT ARREST YOU ARE GOING TO HAVE THE SAME PROBLEMS YOU ARE ENCOUNTERING HERE WITH THE DEFINITION OF A LAW ENFORCEMENT OFFICER. AND IN TAYLOR IT ALSO SAYS THAT IN DETENTION THERE IS CASE LAW THE NEXT TO LAST PARAGRAPH THAT TALKS ABOUT THE FACT THAT EVEN THE DETENTIONS IT MAKES SENSE BUT NOT IN THE INSTANCE OF THE UNIQUE FACT OF TAYLOR WHERE HE ENTERS THE HOUSE.

BUT IT WAS THE ILLEGALITY OF THE ENTRY, RIGHT?

AGAIN I THINK OUR CASE IS DISTINGUISHABLE AND THERE IS NO CONFLICT, BUT I UNDERSTAND THE COURT'S CONCERN AS UNDERSTANDING LAWFUL PERFORMANCE.

I WANT TO GIVE YOU AN OPPORTUNITY TO FINISH ANSWERING MY QUESTION BECAUSE I THINK YOU WERE INTERRUPTED WITH ANOTHER QUESTION AND I AM CONCERNED ABOUT THE FACTS OF THIS CASE AND THE STATE'S POSITION AS TO WHETHER THESE OFFICERS WERE IN THE LAWFUL PERFORMANCE OF THEIR DUTIES, AND THE DEFENDANT HAS APPARENTLY CONCEDED AS FAR AS THE INITIAL ENTRY THERE MAY HAVE BEEN EXOGENOUS CIRCUMSTANCES SO WHAT OTHER THINGS HAPPENED WHEN THEY ENTERED THE HOME THAT WOULD RENDER LAWFUL WHAT THEY DID THERE?

THE INITIAL OFFICER, OFFICER DUNCAN ARRIVED AT THE SCENE AND HAS AN ENCOUNTER WITH 10, 15 PEOPLE. ASKED THEM TO TURN BACK AND WHEN THEY RETURNED ONE MAKES A THREAT AND WHEN HE MAKES A THREAT TO THE OFFICER THE OFFICER AT THAT POINT CALLS FOR BACK-UP. HE BELIEVES ONE OF THE PERSON WAS A ROBBERY SUSPECT OR HAD PREVIOUSLY BEEN INVOLVED IN A ROBBERY SO THEY WALK IN AND TRY TO FIND THE TWO THAT JUST MADE THE THREAT. THE SECOND OFFICER WHO IS OUR VICTIM IN THIS CASE ARRIVES OFF THE FIRST OFFICER, OFFICER DUNCAN POINTS AND SAYS THAT'S ONE OF THE TWO THAT MADE THE THREAT AND HE STOPS IN, JUST 100 PEOPLE BACK HERE, THE MUSIC IS BLARING AND EVERYBODY IS JUST WANDERING OFF AND THE OFFICER PUTS HIS HANDS ON THE SHOULDER AND THEN HE MANAGES TO START A FIGHT.

BUT AS JUSTICE WELLS AND ANSTEAD SAID THEY WERE TRYING TO GET PEOPLE TO SIT DOWN AT THAT POINT?

THEY ARE SAYING, STOP, SIT DOWN. AND, AGAIN, COMPLETELY DISTINGUISHABLE FROM TAYLOR, SO IS IT THE STATE'S POSITION THAT ALL OF THESE ACTIONS LEADING UP TO THE HEAD LOCK WERE LAWFUL ACTIONS?

HE HAS REASONABLE SUSPICION AT THAT POINT TO TRY TO ASCERTAIN WHO MADE THE THREAT OF THE OFFICER AND THE OFFICER DUNCAN HAD MENTIONED THE FACT THAT THESE THREATS WERE MADE AND THIS WAS RELATED TO OFFICER HENRIQUEZ.

JUSTICE QUINCE, DO YOU STILL HAVE A QUESTION?

ACTUALLY I HAVE TWO QUESTIONS. FIRST IN REGARDS TO WHAT YOU JUST SAID, I THOUGHT THE SITUATION WAS THAT THEY \$ ALREADY PATTED PEOPLE DOWN, THEY HAD ALREADY ASCERTAINED THAT THERE WAS NOTHING WRONG ON THIS PARTICULAR SETTING, AND THE PERSON STARTED TO LEAVE. THAT ISN'T WHAT WENT ON IN THIS CASE?

YES AND NO. THE DEFENDANT WAS PATTED DOWN BY THE OFFICER BY THE SECOND OFFICER, BUT AS SOON AS HE ENCOUNTERS HE STARTS TO WALK OFF. HE'S WEARING A HEAVY JACKET. IT IS NOT COLD SO THE OFFICER PATS HIM DOWN AND

BUT ALL OF THIS HAPPENED AFTER THAT.

HE TURNS AND WALKS OFF. IF YOU WOULD, OFFICER DUNCAN'S TESTIMONY, HE SAID AS SOON AS I WALK IN, I SEE BASICALLY THE FIGHT. THIS IS ALL, YOU KNOW, THIS IS NOT A LONG DELAY. OFFICER DUNCAN WALKS IN, TRIES TO FIND THE HOMEOWNER. TELLS EVERYONE TO QUIET DOWN AND EVERYONE TAKE A SEAT AND THEN HE HEARS A BIG FIGHT GOING ON AND THE DEFENDANT JUMPS ON THE OFFICER.

I GUESS BEYOND THIS CASE AND BEYOND THESE FACTS, WHAT I HAVE HEARD YOU SAY BASICALLY TODAY SEEMS TO WRITE OUT OF THE STATUTES THE TERM THE WORD LAWFUL BECAUSE YOU HAVE BASICALLY SAID IF THEY ARE PERFORMING ANY KIND OF DUTY THAT IS WITHIN THEIR STATUTORY RIGHT TO PERFORM, THEN IT SHOULD BE OKAY, SO WHAT IS THE PURPOSE? DOESN'T LAWFUL MODIFY THE WORD PERFORMANCE? I MEAN, WHEN YOU READ THAT STATUTE, DOESN'T THE WORD LAWFUL MODIFY PERFORMANCE?

AGGRAVATED BATTERY SAYS LAWFUL PERFORMANCE OF HIS DUTIES.

SO IF IN FACT YOU ARE GOING TO GIVE ANY MEANING TO LAWFUL .

HE IS LAWFULLY THERE AS A POLICE OFFICER.

EXCUSE ME?

HE IS LAWFULLY THERE AS A POLICE OFFICER.

BUT IT DOESN'T SAY LAWFULLY THERE. IT SAYS LAWFUL PERFORMANCE. SO IF HE IS {FRCHL}ING SOME DUTY.

AND IT IS OUR POSITION HE WAS PERFORMING HIS DUTIES AS A POLICE OFFICER.

UNLIKE THE SITUATION WHERE HE IS NOT ACTING AS A POLICE OFFICER. HE IS ACTING ON HIS OWN.

SO AS LONG AS HE IS A POLICE OFFICER LAWFULLY THEN HE IS PERFORMING A LAWFUL YOU SEE, IT SEEMS VERY CIRCULAR TO ME AND WE GET BACK TO

IF YOU LOOK AT NICOLOSI, WHICH IS REFERENCED BY THE PETITIONER. IN THAT INSTANCE YOU HAVE AN OFF-DUTY POLICE OFFICER NOT WITHIN THE SCOPE OF EMPLOYMENT ACTING AT THAT PARTICULAR TIME AND THE OFFICER AT THAT MOMENT IS PATTERNED. IN THIS INSTANCE, OFFICER HENRIQUEZ IS THERE RESPONDING AS A LAW ENFORCEMENT OFFICER. THEY ARE LAWFULLY PERFORMING THEIR DUTIES AND RESPONDING TO THE CALL FOR BACK-UP.

SO ANY TIME THE OFFICER IS THERE. ANY TIME THE OFFICER IS THERE HE IS LAWFULLY THERE.

IF YOU LOOK BEYOND THAT TO A SITUATION OF BAD FAITH, OR IF THE OFFICER WAS DOING SOMETHING COMMITTING A ROBBERY ON SOMEONE WITH EXCESSIVE FORCE, WHEN YOU READ THE JURY INSTRUCTIONS, 304 IS WHERE THE JUSTIFIABLE USE IS INCORPORATED. IF THE OFFICER HAS EXCESSIVE FORCE UPON THAT PERSON THERE IS A DEFENSE THERE.

WHAT ABOUT THE TAYLOR CASE? IS IT THE STATE'S POSITION THEN THAT WE SHOULD DISAPPROVE OF TAYLOR?

I BELIEVE TAYLOR IS LEGALLY WRONG. I THINK THE OFFICER WAS THERE RESPONDING LEGALLY IN THE PERFORMANCE OF HIS DUTY. I THINK HE WALKS IN. THERE IS ANOTHER CASE, LET'S SAY THE DEFENDANT IN TAYLOR GRABS A GUN AND COMMITS AN AGO {VA} {VAT}ED AGGRAVATED ASSAULT REFERENCED IN THE INSTANT CASE. IN ESPIET HE GRABS THE GUN AND CHASES THE OFFICER OUT. WITH THAT DEGREE OF FORCE OR IF AN OFFICER PULLS A GUN IN A SITUATION AND

WALKS IN, HE THINKS THERE IS AN ATTACK HERE AND A THREAT AND THE DEFENDANT PULLS THE GUN, THE POLICY BEHIND THIS IS WE DO NOT WANT SUBJECTIVE DEFENDANTS MAKING THIS DETERMINATION. AND THE OBJECTIVE COURTROOM, WE CAN DO A CONSTITUTIONAL ANALYSIS, WE CAN DEBATE THE TENSIONS.

YOU ARE OUT OF TIME BUT I WOULD LIKE JUSTICE BELL, I KNOW YOU HAD A QUESTION AND AN ANSWER IF YOU COULD RAISE YOUR HAND.

I'M TRYING TO FIND THE BALANCE IN LOOKING HERE WE FOCUSED ON SUBSECTION 1 WHICH TALKS ABOUT THE USE OF FORCE IN AN ARREST SITUATION, SUBSECTION 1 LIMITS THE USE OF FORCE BY PERSON BUT SUBSECTION 2 SAYS THE LAW ENFORCEMENT OFFICER IS NOT JUSTIFIED IN THE USE OF FORCE IF THE ARREST IS UNLAWFUL AND KNOWN BY HIM OR HER TO BE UNLAWFUL. HOW DO BOTH OF THOSE SECTIONS TRY TO BALANCE THE ABILITY OF EITHER AN INDIVIDUAL CITIZEN OR AN OFFICER TO USE FORCE. IN THE MAKING OF AN ARREST. BUT NO WHERE IN THAT SECTION GOING BACK TO THE EARLIER DISCUSSION DOES IT TALK ABOUT CONTENTION OR WHATEVER, SO THE FACTS IN TILLMAN HERE, IF THE OFFICER, IF MR.^TILLMAN HAD SUBMITTED TO THE PAT DOWN, LAWFULLY HAD THE RIGHT TO LEAVE, THIS OFFICER HAD GOTTEN TO PUT MR.^TILLMAN IN A HEAD LOCK OR OTHERWISE FORCEABLY RETAINED HIM, HOW WOULD YOU RESPOND TO THAT SECTION 2 THAT THERE PROHIBITS THE OFFICER FROM USING FORCE IF IT IS 1/2 AND KNOWS IT TO BE 1/2?

I THINK THAT'S RECOGNITION THAT YOU USE WHATEVER FORCE IS NECESSARY FOR THE SITUATION. WHEN YOU LOOK AT THAT, YOU CAN RESIST WITHOUT VIOLENCE. YOU CAN WALK AWAY. THE QUESTION IS WHAT HAPPENS WHEN THE OFFICER HAS A LEGAL ARREST OR ILLEGAL DETENTION. IF THERE IS AN ILLEGAL ARREST OR DETENTION, WE ARE NOT HERE. THERE IS A MOTION TO SUPPRESS THAT'S DENIED AND THE ISSUE GOES AWAY. IT IS WHEN YOU HAVE AN ENCOUNTER THAT'S LATER DETERMINED TO BE ILLEGAL AND THE DEFENDANT RESISTS WITH VIOLENCE OR WITH FORCE THIS BECOMES AN ISSUE. AND THE PUBLIC POLICY AND CASE LAW CITED BY US OUT OF STATE HOW THE FEDERAL COURTS HAVE ALL HELD.

THANK YOU VERY MUCH FOR BEING RESPONSIVE TO OUR QUESTIONS. REBUTTAL? THREE AND A HALF MINUTES.

I'D LIKE TO RETURN TO A COUPLE OF THINGS. I HAVE BEEN DOING SOME CHECKING. I WANTED TO RETURN ALSO INITIALLY TO A COMMENT THAT JUSTICE CANTERO MADE THAT WE CONCEDED THE ENTRY. THE REASONING ON ENTRY AT THIS POINT AND IN VIEW OF THE FACT THAT A DECISION JUST CAME OUT FROM THE SECOND DCA SAYING THAT A MISDEMEANOR NEED NOT EVEN BE IN THE PRESENCE OF AN OFFICER FOR AN OFFICER TO PROCEED BASED ON THAT, I THINK AT A MINIMUM, THERE WAS GOOD FAITH ON THE PART OF THE RESPONDING OFFICERS THAT THEY NEEDED TO INVESTIGATE. I DON'T THINK, I COULDN'T FIND ANYTHING IN CASE LAW, FEDERAL OR STATE THAT WOULD SAY THAT THIS WAS EXOGENT CIRCUMSTANCES, A THREATENED MISDEMEANOR IN THE FUTURE.

NO, NOT INSTRUCTION WHAT ABOUT THIS INSTRUCTION?

THIS INSTRUCTION, THE JURY WAS INSTRUCTED ON SELF DEFENSE, FIRST OF ALL, I WASN'T SURE OF THAT. FIRST TIME AROUND, AND THEY WERE GIVEN THE FULL SET OF INSTRUCTIONS AND ON THE JUSTIFIABLE USE OF NONDEADLY FORCE. THERE WAS AN ATTEMPT TO GET A PAYTON INSTRUCTION IN WHICH WAS DENIED BY THE COURT BECAUSE IT WAS FOUND THAT IT WAS FACTUALLY DISPUTED.

BUT THE RESISTING ARREST STATUTE AND THAT PART OF IT THAT SAYS THAT THAT WAS IN HERE, EVERYTHING WAS IN HERE.

WAS THAT OBJECTED TO HERE?

IT WAS OBJECTED TO IN ARGUMENT ALL ALONG. IT WENT IN THE INSTRUCTIONS AS FAR AS I CAN SEE WITH MY NOTES NOW WITHOUT OBJECTION. IT WAS CONTESTED THROUGHOUT THAT THIS WAS NOT AN ARREST. IF I MAY, I WANTED TO JUST DO A COUPLE OF THINGS IN THE REMAINING SECOND AND THAT IS TALK ABOUT

I THINK JUSTICE CAN TEAR O CANTERO.

YOU WERE TALKING ABOUT THE EXOGENT CIRCUMSTANCES AND THERE WERE NONE GIVEN THIS WAS A MISDEMEANOR BUT I'M TALKING ABOUT THE BANK ROBBER THAT WAS IN THE HOUSE AND COULD LEAVE THE HOUSE, DOESN'T THAT GIVE THEM EXOGENT CIRCUMSTANCES TO GO IN?

THERE WAS WIDE RANGING TESTIMONY ON THAT.

WE HAVE TO TAKE THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE AT THIS POINT.

RIGHT. OKAY.

SO WHAT WAS THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE?

THE EVIDENCE WOULD BE THAT ONE OFFICER OUT OF FOUR TESTIFIED THAT THE REPORT THAT HAD COME IN SAID THAT OFFICER DUNCAN HAD THOUGHT HE RECOGNIZED A POSSIBLE BANK ROBBER SUSPECT, A POSSIBLE SUSPECT, SO WHAT HE HAD ACTUALLY CALLED HIM BY HIS OWN TESTIMONY WAS THE NUMBERS OF PEOPLE, THE THREAT THAT HAD BEEN MADE, IT WAS TO HIS VEHICLE, AND THE OPEN BOTTLES, OPEN CONTAINER VIOLATION, SO IT WAS CHALLENGED BELOW. I JUST WANTED TO GET TO MOST OF THE CASES THAT HAVE DETERMINED WHAT BESIDES ARREST SHOULD COME IN UNDER THE EXCEPTION WHERE THERE IS NO NEED TO PROVE LAWFUL PERFORMANCE HAVE THEY HAVE ALL BEEN SUPPRESSION CASES, AND I WANTED TO CALL THIS COURT'S ATTENTION TO THE FACT THAT BOTH THE TAYLOR CASE AND THE TILLMAN CASE ARE IN A SMALLER GROUP OF CASES, INCLUDING SOVARINO AND NICOLSI, SMITH AND TAYLOR, WHICH TALK ABOUT THE NEED TO PROVE LAWFUL EXECUTION OF LEGAL DUTY OR LAWFUL PERFORMANCE AND I WOULD COMMEND THOSE CASES TO YOUR ATTENTION AND I WOULD JUST REMIND THE COURT THAT IT WASN'T MY CLIENT'S BURDEN TO SHOW THAT THE OFFICERS WEREN'T PROCEEDING LAWFULLY OR THAT HE HAD TO I THINK HE HAD STANDING TO HOLD THE STATE TO ITS PROOF OF ALL OF THE ESSENTIAL ELEMENTS OF THE CONVICTIONS THAT HE HAD TO SERVE TIME ON. THANK YOU.

THANK YOU. THANK YOU TO BOTH OF YOU AGAIN FOR VERY HELPFUL ORAL ARGUMENT, BEING VERY RESPONSIVE TO OUR QUESTIONS, VERY PROFESSIONAL AND WITH THAT THE COURT WILL BE IN RECESS UNTIL TOMORROW MORNING.

PLEASE RISE.