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03-1528

STATE VERSUS FRIERSON. GOOD MORNING .

GOOD MORNING.MAY IT PLEASE THE COURT ANDOPPOSING COUNSEL , I AM DANIEL HINDMAN ON BEHALF OF THE PETITIONER , THE STATE OF FLORIDA, AND WE AREREQUESTING THAT THIS COURT REVERSE THE DECISION OF THE FOURTH DISTRICT AND RESOLVE CERTIFIED CONFLICT IN FAVOR OF FALSE THE. A BRIEF FACTUAL I N FAVOR OF FAUFT IS.

IT LOOKS LIKE THE THIRD DISTRICT AND SECOND DISTRICT IN LATER OPINIONS , HAVE ALL GONE WITH HOW THE FOURTH DISTRICT INTERPRETED THIS CASE. WE GOT THIS OTHER CASE FROM 30 YEARS AGO , THAT DOESN'TMAKE IT CLEAR THAT THERE WAS , THAT YOU KNOW, THAT THERE WAS AN ILLEGAL STOP . COULD YOU GIVE IT YOUR BEST SHOT AS TO WHY I T IS CLEARLY IN CONFLICT?

YES. JUSTICE PARIENTE, OF COURSE , FOURTH DISTRICT HAS CERTIFIED CONFLICT WITH FAUST. THE PRINCIPLE , THE LEGAL PRINCIPLE OF FAUST, THAT A SEARCH THE REASONABLENESS OF A SEARCH AFTER ARREST IS NOT REASONABLE AFTER AN ORIGINAL CAUSE FOR A STOP.

DID THEY HOLD?

NO , MADAM JUSTICE, I DON'T BELIEVE THAT THEY DID. I DON'T BELIEVE THEY HAD THE SPECIFIC CIRCUMSTANCES AS WE HAD IN FAUST. PERHAPS YOU ARE REFERRING TO THE RUCK YEAR CASE. I THINK TO THE ROUGE YEAR CASE. I THINK IN THAT CASE WE HAD CIRCUMSTANCES AS IN WARREN.I THINK ARGUABLY IN THIS CASE WE HAD AN ILLEGAL STOP AND AN ATTENUATING CIRCUMSTANCE OF A WARRANT AND SUPPRESSING EVIDENCE. WE DON'T HAVE IT IN THAT THIS THOSE CASES. WE HAVE IT IN FAUST. WE HAVE IT IN

HOW DO WE KNOW WE HAVE IT IN FAUST? WE TALK ABOUT PROBABLE CAUSE.IS THAT THE STANDARD FAUX A STOP?

NO , JUSTICE QUINCE , IT'S NOT.

S O HOW DO WE KNOW IN FAUST , THAT THERE WAS NOT , FOUNDED SUSPICION FOR THESTOP. THE FAUST OPINION IS VERY SHORT , ISN'T IT?

YES, IT IS.

AND WE HAVE NO FACTS THAT WOULD INDICATE WHAT WERE THE CIRCUMSTANCES?

NO FACTS BEHIND WHY THE PERSON WAS STOPPED. THAT IS CORRECT. BUT THE THIRD DISTRICT PUT IT IN TERMS OF LACK OF PROBABLE CAUSE , BUT WITH THAT TRANSLATED TO, BASICALLY , THEY FOUND THAT THERE WAS A N ILLEGAL STOP, WHERE THEY

THAT IS NOT SAID IN THE OPINION.

IT SAID IT WAS WITHOUT

THEY EVEN IS HE ASSUMING OR SOME THEY EVEN SAID ASSUMING OR SOME LANGUAGE TO THAT

EFFECT IS EXACTLY WHAT THE THIRD DISTRICT SAYS, ISN'T IT?

I THINK THAT IS NOT MERE DICTA , JUSTICE QUINCE. THEY FOUND THAT THAT WAS A FINDING OF THE COURT THAT IT WAS AN ILLEGAL STOP AND FINDING OF LACK OF PROBABLE CAUSE, BECAUSE I THINK THE BOTTOM LINE WHAT WE HAVE SHEER THAT THE TRIAL COURT , THE FAUST COURT FOUND THAT THE STOP WAS ILLEGAL AND AS THE SAME FINDING THAT THE FOURTH DISTRICT MADE IN THE INSTANT CASE, WAS THAT THE STOP

WHAT I UNDERSTAND THAT THE STATE'S POSITION IS THAT , WHAT MAKES THIS CASE DIFFERENT , IS THE FACT THAT THERE IS THE OUTSTANDING BENCH WARRANT.

YES , JUSTICE WELLS.

AND THAT IS WHAT FAUST WAS ABOUT, CORRECT?

YES.

NOW , DID I JUST UNDERSTAND YOU TO SAY THAT PROBABLE CAUSE WAS NOT THE BASIS FOR MAKING A TRAFFICSTOP?

THE STANDARD FOR MAKING A TRAFFIC STOP IS REASONABLE CAUSE .

REASONABLE CAUSE.

REASONABLE CAUSE.

DOES THAT DIFFER FROM PROBABLE CAUSE?

IT IS A DIFFERENT STANDARD I BELIEVE . PROBABLE CAUSE IS A HIGHER STANDARD.

IS THERE ANYBODY , WREN VERSUS UNITED STATES , TALKS IN TERMS OF PROBABLE CAUSE , DOES IT NOT?

IT DOES SPEAK IN TERMS OF PROBABLE CAUSE. ' AND THIS COURT I N HOLLAND , TALKED IN TERMS OF PROBABLE CAUSE. CORRECT?

YES , JUSTICE WELLS.

NOW, THERE DOES APPEAR TOBE A DIFFERENCE BETWEEN THE CAUSE WHERE THE TRAFFIC VIOLATION IS A MOVING VIOLATION OR SOMETHING THAT HAPPENS IN FRONT O F THE OFFICER , AND AN EQUIPMENT VIOLATION , WHICH MAY BE REASONABLE SUSPICION. I MEAN, I PICKED THAT

IT CAN B E DIFFERENT , YES.

- - READING THOSE CASES , BUT AT ANY RATE , THE FACT, AS I UNDERSTAND THIS CASE , THE FACT OF THE STOP BEING ILLEGAL , COMES INTO PLAY ONLY FROM THE STANDPOINT OF THE , OF WHETHER THAT , IN FACT , TAINTS THE OUTSTANDING ARREST WARRANT . IS THAT CORRECT?

YES. YES. THAT IS THE HEART OF THE CONFLICT BETWEEN FAUST AND WIGFALLS, WHICH WAS ANOTHER THIRD DCA CASE , AND IN INSTANT CASE, BECAUSE WHAT WE HAVE ARGUABLY THAT ALL OF THOSE CASES ARE BASED UPON REASONABLE STOP , WHETHER IT IS BASED ON PROBABLE CAUSESTANDARD OR REASONABLE CAUSE.

HOW DO YOU GET THERE, TO THE FACT OF THE ARREST WARRANT , WITHOUT GOING THROUGH THE COMPUTER SEARCH , OR DO YOU HAVE TO GO THROUGH THE COMPUTER SEARCH, AND ISN'T THE COMPUTER SEARCH LINKED TO THE ORIGINAL STOP ?

YES. IT IS LINKED TO THE ORIGINAL STOP. IT , BUT FOR THE STOP , THERE WOULD NOT HAVE BEEN A COMPUTER SEARCH, AND BUT FOR THE COMPUTER SEARCH , THE OFFICER WOULD NOT FIND THAT THERE WAS AN OUTSTANDING WARRANT AND THEN THE ARREST. IT ALL FOLLOWS IN A CAUSAL CHAIN.

HASN'T THE U.S. SUPREME COURT SAID THAT IT IS NOT A BUT-FOR RULE?

YES , JUSTICE CANTERO , IT IS NOT A BUT-FOR RULE, AND THIS IS WHERE WE BELIEVE THAT THE FOURTH ESSENTIALLY ERRED IN THEIR DECISION. WE HAVE THE WONG SUN DECISION FROM THE UNIT - - THE WONG SUN DECISION FROM THE UNITED STATES SUPREME COURT , THAT NOT ALL EVIDENCE IS FRUIT OF THE POISONOUS TREE.

SPECIFICALLY WHAT THEY SAID IS WHETHER THE EVIDENCE HAS BEEN PROCURED BY MEANS, AND THEY USE THE WORDS SO ATTENUATED AS TO DISSIPATE THE TAIN OF THE ILLEGAL ACTION. NOW , WHETHER OR NOT BROWN APPLIES TO THESE KINDS OF CIRCUMSTANCES , BECAUSE BROWN WAS DEALING WITH DIFFERENT THING, YOU LOOK AT THE TIME ELAPSED , THE PRESENCE OF THE INTERVENING CIRCUMSTANCE , AND THE PURPOSE OF FLAGGING RAISES OFF THE MISS CON THE FLAGGING RAISES OF THE MISCONDUCT . OBVIOUSLY IT IS CONTEMPORANEOUS , THE TIME PERIOD .

FAIRLY SHORT .

AND HE PULLS HIM OVER FOR EQUIPMENT FAILURE. HE SEES THAT THE LEFT TURN SIGNAL ISN'T ON EVEN THOUGH THE LIGHT HAS A LEFT TURN. CORRECT. AND HE IS CONCERNED BECAUSE HIS TAILLIGHT IS BROKEN.

YES.

SO HE IS CONCERNED THAT MAYBE THE LEFT TURN SIGNAL , I MEAN THAT, IS WHAT HE SAID.

EXACTLY .

SO WHAT IS THE FIRST THING THAT HE DOES WHEN HE PULLS HIM OVER? WHAT DOES HE SAY , DOES HE ASK HIM TO TURN ON HIS LEFT TURN SIGNAL ?

I BELIEVE THE TESTIMONY WAS THAT HE OBTAINED HIS IDENTIFICATION, WHICH WOULD BE ROUTINE.

DID HE THEN ASK HIM TO TURN ON HIS LEFT TURN SIGNAL?

I DON'T THINK THAT THAT WAS PART OF THE RECORD.

INSTEAD WHAT HE DOES IS GOES OVER AND RUNS A COMPUTER CHECK, TO SEE IF HE HAS GOT ANY WARRANTS.

YES. WHICH WOULD BE IN KEEPING WITH STANDARD LAW ENFORCEMENT.

AND SO HE GETS A HIT AND HE FORGET ABOUT THE, HE NOW IS ARRESTING HIM FOR THAT. NOW , I AM HAVING TROUBLE TO UNDERSTAND HOW, IN THAT CIRCUMSTANCE, THAT THAT SITUATION IS SO ATTENUATED , AS TO DISSIPATE THE TAIN OF THE ILLEGAL ACTION. I AM JUST HAVING THAT DIFFICULTY IN SAY SEEING , AND I UNDERSTAND THAT IT IS NOT A BUT-FOR TEST , BECAUSE YOU SAY BUT FOR THIS , THIS WOULDN'T HAPPEN TEN DAYS LATER , WE ARE TALKING ABOUT A TRAFFIC STOP WHERE THE VERY FIRST THING THAT THE OFFICER DOES IS GO OVER AND RUN THE SEARCH, EVEN THOUGH HE STOPPED HIM FOR A CONCERN THAT HIS EQUIPMENT ISN'T SAFE.

YES , JUSTICE PARIENTE , AND I WILL ADDRESS. THAT THE TROUBLE, I THINK, WITH THE FOURTH DCA'S OPINION IS THAT THEY D O APPLY A BUT-FOR TEST. THEY DON'T EVEN GET INTO THE FACTORS BUT LET ME APPLY THE FACTORS.

THE REASONING , YOU ARECORRECT , THAT IT DOESN'T LOOK LIKE ANY OF THE CASESOUT OF FOURTH DISTRICT , DEALT WITH THE WONG SUN , REALLY , SO ATTENUATED , BUT I ALWAYS UNDERSTOOD WONG SUN TO BE TALKING ABOUTSOMETHING THAT DOWN THE ROAD, IF THE ILLEGAL THING WAS THERE BUT THEN HE WAS ARRESTED AND THEN TWO DAYS LATER HE IS BEING HELD AND THEN HE SAYS HE WANTS TO CONFESS TO ANOTHER CRIME , THAT YOU MAY HAVE DISSIPATION , BECAUSE OF THOSE CIRCUMSTANCES. BUT I NEVER THOUGHT IT , REALLY, OCCURRED THAT JUST RIGHT AFTER THE ILLEGAL ARREST, AND SOMETHING IS DONE, THAT THAT IS S O ATTENUATE ED.

BUT WE CAN APPLY THE WONG SUN FACTORS , AND THE FACTORS ARE ACTUALLY

BUT LET'S START WITH THE LANGUAGE. THAT IS WHAT I AM ASKING, THAT IT IS SO ATTENUATE!!ED AS TO DISSIPATE THE INTENT OF THE ILLEGAL ACTION , HOW IS THAT LANGUAGE , S O ATTENUATED , APPLY IN THIS CASE?

IT IS HOW WE USE ATTENUATED. ATTENUATE !!ED CAN CERTAINLY BE IN COMPARATIVE TO TIME. HERE WE ARE DIAL DEEHLING WITH A TRAFFIC STOP HERE WE ARE DEALING WITH A TRAFFIC STOP, WHICH BY THE VERY NATURE CAN BE A SHORT TIME FRAME . THE ATTENUATE !!ING CIRCUMSTANCES THAT ARE INTERVENING CAN BE THE ILLEGALITY OF THE CIRCUMSTANCE.

WHAT IS THE ATTENUATE !!ING ILLEGALITY OF THE CIRCUMSTANCE?

THE TRAFFIC STOCHLT.

HE GOES INCIDENT TO THE TRAFFIC STOP , TO RAHN WARRANT CHECK ON HIM.

WHICH THERE IS NOTHING IMPROPER ABOUT. THAT I DON'T THINK IT IS BEING ALLEGED BITE THE RESPONDENT .

ALLEGED BY THE RESPONDENT.

LET ME FOLLOW-UP ON IT. THE BENCH WARRANT, ITSELF , SUBJECT TO MR . FRIERSON TO ARREST AT ANY TIME, I TAKE IT , THAT HE WAS FOUND.

YES , MR . JUSTICE.

AND THE ONLY THING THAT WAS PENNSYLVANIA LACKING THAT WAS LACKING , AS FAR AS HIS BEING ARRESTED , WAS , ONE, WE DON'T KNOW WHETHER THEY WERE LOOKING FOR HIM ACTIVELY OR SECONDLY , HE HAD SOME WAY TO BE IDENTIFIED . CORRECT?

YES .

BUT ANY TIME HE WAS IDENTIFIED, THEN HE WAS SUBJECT TO BEING PICKED UP.

THAT'S CORRECT.

ON THIS WARRANT .

YES.

AND AT THE TIME THAT HEWAS PICKED UP ON THE WARRANT, HE WOULD BE SUBJECT TO SEARCH.

HE WOULD BE SUBJECT TO ARREST AND SEARCH INCIDENT TO THAT ARREST, YES , CERTAINLY.

NOW , AND SO IN THIS INSTANCE, REALLY, THE QUESTION I S ONE OF WHETHER HIS BEING IDENTIFIED I N THIS MANNER SHOULD BE SUPPRESSED. ISN'T THAT WHERE WE COME DOWN IN THIS CASE?

I THINK THAT IS PART OF IT. I THINK THAT THOUGH ,, THE PROBLEM IS AND MAYBE I AM MISS CONSTRUING THE QUESTION.

WOULD THERE B E ANY REASON THAT ANOTHER POLICE OFFICER OR THIS POLICE OFFICER COULDN'T FOLLOW HIM ? RATHER THAN ARREST HIM RIGHT AT THAT POINT IN TIME? I AM TRYING TO FIGURE OUT WHETHER THIS METHOD OF IDENTITY OF THIS MAN , MAKES THE WARRANT , SOMEHOW MAKES IT INVALID.

NO, BECAUSE IT COULD BE UNDER ANY CIRCUMSTANCES THAT , IF THEY FOUND M R . FIRE SON IN THIS CASE, IN THIS CASE , THEY HAPPENED TO FIND HIM AS A RESULT OF A TRAFFIC STOP . AN OFFICER COULD KNOW THAT MR . FRIERSON KNOWS THAT THERE IS A WARRANT OUT FOR HIM AND SIMPLY PASS HIM IN THE STREET.

WOULD IT BE ANY DIFFERENT , IF HE ASKED HIM FOR HIS DRIVERS LICENSE AND IT TURNS OUT IT IS AN EXPIRED DRIVERS LICENSE OR SOMETHING LIKE THAT . AND NOW HE ARRESTS HIM FOR DRIVING WITH AN EXPIRED LICENSE OR SUSPENDED LICENSE , AND IT IS OBVIOUS ON THE FACE OF THE , WOULD THAT ARREST BE PROPER , IF IT WAS AN ILLEGAL DETENTION?

THAT WOULD BE , IT COULD BE PROPER UNDER WONG SUN , UNDER THE ANALYSIS THAT THE INTERVENING CIRCUMSTANCE

I THOUGHT WE RULED ON THAT ISSUE RECENTLY, THAT IS THAT , YOU COULDN'T IF SOMEBODY WAS , MAYBE

DIAZ?

MAYBE DRIVING WITH A SUSPENDED LICENSE , IF THE ORIGINAL STO P WAS ILLEGAL , THAT THEY COULDN'T ARREST THEM AT THAT POINT FOR , IS THAT NOT A CASE

WOULD THAT BE THE DIAZ CASE?

NO. I DON'T THINK IT WAS DIAZ. IT SOUNDS FAMILIAR TO ME.

IT IS THE FELLOW THAT THE POLICE OFFICER SAID, YEAH, I RECOGNIZED HIM. HE USED TO DRIVE WITHOUT LICENSES ALL THE TIME AND I RECOGNIZED HIM FROM SEVERAL MONTHS AND HE PULLED HIM OVER.

RIGHT.

AND THAT IS THE FACTUAL SCENARIO.

MAYBE THAT WAS PERKINS. THAT SOUNDS LIKE THAT WAS PERKINS.

JUSTICE LEWIS IS NOT TALKING ABOUT PERKINS. JUSTICE LEWIS IS TALKING ABOUT A CAPITAL CASE.

HOW ABOUT IF , WHILE YOU ARE STANDING THERE AND YOU SMELL MARIJUANA O R HEAVEN FORBID, SOMETHING WORSE.

RIGHT.

AND IN TERMS OF US TRYING TO DISTINGUISH THESE SITUATIONS IN DRAWING LINES , WHERE WOULD YOU PLACE THE, YOU KNOW , WHILE YOU ARE STANDING THERE, THE ILLEGAL DETENTION, YOU SMELL THE MARIJUANA OR SOMETHING WORSE , WHICH SIDE OF THE LINE WOULD THAT BE ON?

WELL , THAT , I BELIEVE , COULD BE A STRONG ATTENUATE !!ING CIRCUMSTANCES . HOWEVER , I DON'T THINK WE SHOULD JUST LOOK AT THE ATTENUATE !!ING CIRCUMSTANCE IN A VACUUM. I THINK UNDER WONG SUN , ONE OF THE OTHER FACTORS IS WEHAVE TO LOOK AT THE POLICE MISCONDUCT, IF ANY. WE HAVE TO LOOK , WE CAN'T IGNORE THE CIRCUMSTANCES OF THE STOP. IF THERE WAS A CASE , AND I KNOW THIS WAS MENTIONED BY THE RESPONDENT , WHERE MR . FRIERSON WAS PULLED OVERRAN DOMLY OR FOR NO REASON WHATSOEVER, THEN WE HAVE A PROBLEM UNDER WONG SUN , BECAUSE WE ARE LOONING LOOKING AT THE PURPOSE AND WE ARE LOOKING AT THE PURPOSE AND FLAING RAINES AT THE OFFICIAL POLICE MISCONDUCT. I THINK THAT FACTOR HAS TO BE LOOKED AT , AND THAT FACTOR HAS TO BE LOOKED AT IN THIS CASE.

YOU SAID THREE FACTORS , BUT IT IS REALLY BROWN VERSUS, THE BROWN CASE THAT HE INFLUENCE YATES IT , AND THE RESPONDENT MAKES THE ARGUMENT THAT THOSE THREE FACTORS DO NOT APPLY TO THE WONG SUN SITUATION. DO YOU , THAT IS A PRETTY IMPORTANT ISSUE AS TO HOW THE COURT IS TO ANALYZE WHAT IS SO ATTENUATED AS T O DISSIPATE THE TAINT MEANS.

I BELIEVE THOSE FACTORS , THEY ARE NOT ANNOUNCED IN WONG SUN . IT IS THE FRUFT POISONOUS TREE RULE AND THEY ARE SAYING THERE IS NO BUT-FORTEST, AND LATER ON IN BROWN VERSUS ILLINOIS , THE FACTORS ARE DEVELOPED WHICH IS USED AS A GUIDELINE FOR THE COURTTO FIND OUT HOW MAY WE APPLY WONG SUN ?

AND I THINK THE ISSUE , WHEN THEY TALK ABOUT PRESENCE OF INTERVENING CIRCUMSTANCES, THE COURTS THAT HAVE DECIDED AN ARREST WARRANT, THEY HAVE ALMOST DECIDDED THAT IS PER SE AN INTERVENING CIRCUMSTANCE . WOULD YOU AGREE WITH THAT , THAT THEY SORT OF DECIDE IT IS A MATTER OF LAW .

YES.

AND IT SOMEHOW SOUNDS LIKE YOU ARE BOTH ARGUING FOR MANNERS OF LAW ONE WAYOR ANOTHER, WHICH IS THAT THE ARREST WARRANT IS ALWAYS INTERVENING CIRCUMSTANCE OR THE ARREST WARRANT IS NEVER AN INTERVENING CIRCUMSTANCE.

NEITHER. THERE COULD BE CIRCUMSTANCES , I IMAGINE , WHERE MAYBE IT IS NOT , BUT WHERE WOULD THAT BE?

A TOTALLY INVALID RANDOM STOP.

YOU SAID EARLIER , WHERE IT IS A RANDOM STOP , AND I T WAS BAD FAITH CONDUCT ON THE PART OF THE POLICE , THAT ITWOULD NOT , THEN , BE , THE THIRD PRONG OF BROWN VERSUS ILLINOIS, WOULD PREVENT THAT FROM ATTENUATING.

WE HAVE THREE PRONGS BUT THE PRONGS SORT OF INTERACT WITH EACH OTHER FOR SURE. I CAN'T REALLY IMAGINE A MUCH MORE COMPELLING ATTENUATE !!ING CIRCUMSTANCE THAN AN ARREST WARRANT. THAT I S CERTAINLY VERY STRONG WHEN AN OFFICER FINDS AN ARREST WARRANT , HE NEEDSTO ACT ON IT, AND I WOULDASK THIS COURT TO ADOPT THE REASONING OF THE SPECIAL CONCURRENCE FROM JUDGE GROSS, WHICH U.S. VERSUS GREEN IS SEVENTH CIRCUIT FEDERAL CASE FROM 1977 DIRECTLY APPLIES ALL OF THESE PRINCIPLES TO A REMARKABLY

SIMILAR TRAFFIC STOP. WITH PERMISSION

OBVIOUSLY THE U.S. SUPREME COURT MAKES THE DECISION, WE HAVE GOT TO FOLLOW THAT DECISION. IT SEEMS LIKE THIS IS AN ISSUE THAT SHOULD HAVE BEEN OVER THE YEARS, IT HAS NEVER GONE UP TO THE U.S. SUPREME COURT HAS NOT SPOKEN ON THIS SITUATION AT ALL, THAT IS WHERE ILLEGAL STOP, ARREST WARRANT, AND THE FRUITS OF THE ARREST WARRANT.

THAT'S TRUE BUT I THINK WE HAVE ALL THE LEGAL TOOLS THAT WE NEED FROM THE U.S. SUPREME COURT, FROM WONG SUN AND BROWN, TO APPLY IT TO A TRAFFIC STOP, WHICH IS WHAT WE ARE ASKING THE COURT TO DO. IF I MAY RESERVE THE REST OF MY TIME FOR REBUTTAL. THANK YOU.

CHIEF JUSTICE: GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS MARCY ALLEN AND TODAY I HAVE THE PLEASURE OF REPRESENTING MR. ANT MY FRIERSON. WHAT WONG SUN AND BROWN VERSUS ILLINOIS WERE TALKING ABOUT WAS AN INTERVENING ACT OF FREE WILL.

WHAT DO YOU DO HERE? ONE OF THE THING THAT IS YOU GET SORT OF A MINDS EYE PICTURE IS THIS SAME SORT OF SCENARIO OCCURS, AND THE POLICE OFFICER YOU KNOW, GOT THE CAR STOPPED AND THE FELLOW STOPPED THERE, AND THEN HE LOOSE ACROSS THE STREET, AND THERE IS A HUGE BILLBOARD UP THERE, AND IT SAYS WANTED, DEAD OR ALIVE, OKAY, AND THERE IS THE GUY, YOU KNOW, FOR FIRST-DEGREE MURDER, AND HE DRIVES A GREEN VOLKSWAGEN OR WHAT I AM, THE, IN OTHER WORDS HERE WE ARE. NOW WE HAVE GOT A WARRANT OUT FOR A FIRST-DEGREE, SOMEBODY YOU KNOW, THAT HAS ESCAPED FROM PRISON FOR FIRST-DEGREE MURDER OR WHATEVER, AND YOU KNOW, THE POLICE OFFICER HAS GOT HIM RIGHT THERE SETTING IN FRONT, BECAUSE OF THE BROKEN TAILLIGHT OR YOU KNOW, THE OFFICER'S JUDGMENT ABOUT THAT. THERE IS SOMETHING, I AM HAVING DIFFICULTY THAT THE OFFICER CAN'T SAY, YOU KNOW, YOU ARE UNDER ARREST. LOOK OVER THERE. ISN'T THAT A PRETTY GOOD LIKENESS OF YOU? AND YOU ARE THE GUY THAT HAS ESCAPED FOR FIRST-DEGREE MURDER.

WELL, THAT WOULD BE INEVITABLE DISCOVERY, WHICH THE WARRANT, IF IT WERE EXECUTED ON ANOTHER DAY, WOULD BE INEVITABLE DISCOVERY. BUT

SO YOU SEND THE GUY DOWN THE ROAD AND DISCOVER HIM LATER?

NO, JUSTICE ANSTEAD, THE REALITY OF THE SITUATION IS WHEN YOU FIND THE TWO KILOS OF COCAINE IN THE CAR AFTER THE ILLEGAL STOP, YOU ARE NOT GOING TO GIVE THE KILOS OF COCAINE BACK TO THE GUY AND TELL HIM TO GO SELL THEM AT THE SCHOOLYARD. WHEN THIS PERSON STOPPED TO CHECK FOR A LIGHT, THE CASE DEALING WITH COMPUTER ERROR, YOU ARE NOT GOING TO SAY GET BACK IN YOUR CAR AND DRIVE WITH SUSPENDED LICENSE, SO OF COURSE THE OFFICER IS GOING TO ARREST HIM ON THAT INFORMATION. THE QUESTION BECOMES WHEN YOU GET INTO THE COURTROOM, WHAT EVIDENCE IS ADMISSIBLE IN THE COURTROOM AND WHAT EVIDENCE ISN'T, SO THE PRACTICALITY OF THE SITUATION IS, OF COURSE, IN EVERY SINGLE ILLEGAL STOP CASE, THE OFFICER IS NOT GOING TO GIVE THE GUY BACK THE DRUGS OR THE GUNS OR WHATEVER.

SO YOU ARE SAYING HERE, IF THIS HAD BEEN AN OUTSTANDING ARREST WARRANT FOR MURDER, THAT HE WAS DISCOVERED, IN OTHER WORDS, THEY CHECKED THE COMPUTER, AND IT IS, ARREST, HE HAD BEEN ARRESTED AND HE WAS ON THE RUN FOR FIRST-DEGREE MURDER. THIS CASE.

I UNDERSTAND.

CAN THEY GO AHEAD AND TRY HIM FOR FIRST-DEGREE MURDER?

OF COURSE THEY CAN TRY HIM , BECAUSE THAT IS JURISDICTIONAL, WHETHER OR NOT

SO YOU JUST CAN'T USE THE FRUITS OF THE ARREST TO PROSECUTE HIM FOR A SEPARATE CRIME?
IS THAT WHAT YOU ARE SAYING?

CORRECT. THAT IS WHAT I AM SAYING , BECAUSE I THINK THAT IS THE REALISTIC ANALYSIS,
BECAUSE LET'S GO BACK TO WONG SUN , CAN WHICH I LOVED THE CASE ABOUT THE LAUNDRY.

THE REASON IS NOT BECAUSE THE ARREST ON THE WARRANT , IF THERE IS ANYTHING
WRONG WITH IT, IT IS BECAUSE THE PRECEDING STOP AND FINDING OUT THAT THIS IS THE FELLOW
THAT YOU HAVE BEEN LOOKING FOR FOR , IS, THAT IS WHAT CAUSES THE EXCLUSIONARY RULE
TO CIRCLE THROUGH AND KNOCK OUT WHATEVER IS DISCOVERED DURING THE WARRANT
ARREST.

CORRECT. BECAUSE I THINK , LET'S GO BACK TO WONG SUN AND BROWN VERSUS ILLINOIS ,
BECAUSE WHAT THE COURTS WERE TALKING ABOUT , YOU TOY, THE GUY IN THE LAUNDRY AND
THEY STORM IN AND THEY GET HIM , AND HE MAKES STATEMENTS I GOT THE DRUGS FROM YI ,
AND YI HAS THE DRUGS, AND THEN YOU HAVE WONG SUN, AND THEY GO AN ARREST WONG SUN,
TOO , BUT HE GOES HOME AND FIRST HE SEES THE MAGISTRATE THEN HE GOES HOME , THEN HE
COMES BACK BLINGT THE UNITED STATES SUPREME COURT SAID YOU SUPPRESS TOY'S STOP
BECAUSE IT

BUT ALL OF THAT IN WONG HAS TO DO WITH WHAT IS GOING ON AND WHAT IS FOUND , AT
THE TIME THAT THERE , THAT THEY ARE BUSTING THROUGH THE DOOR OF THE LAUNDRY , IN THE ,
AND WHAT THEY ARE DOING IN EFFECTING THAT SEARCH AND SEIZURE. IT DOESN'T HAVE TO DO
WITH AN OUTSTANDING WARRANT!

OKAY. SO, THEN , LET'S MOVE TO BROWN VERSUS ILLINOIS , BECAUSE BROWN VERSUS ILLINOIS IS
VERY ANALOGOUS. YOU HAVE THE MIRANDA WARNINGS. YOU WOULD THINK, IF A WARRANT IS
GOING TO ATTENUATE THE TAIN, WELL , THEN , MIRANDA WARNINGS ARE THE SAME THING. THE
SUPREME COURT DISAPPROVED A BRIGHT LINE PER SE RULE. THEY SAID YOU DON'T JUST LOOK AT
MIRANDA WARNINGS AND SAY, WELL , OKAY , NOW THE STATEMENT IS VOLUNTARY FOR
PURPOSES OF THE FIFTH.

YOU DON'T SEE ANY DIFFERENCE BETWEEN A WARRANT AND MIRANDA WARNINGS? I MEAN , THE
OFFICER IS FACED , IN A SITUATION WHERE THERE IS A WARRANT , WITH A PERSON THAT HAS AT
LEAST THERE HAVE BEEN SOME PROBABLE CAUSE OR ESTABLISHED THAT THIS PERSON HAS
COMMITTED SOMETHING ELSE. SOME OTHER KINDS OF OFFENSE. MIRANDA WARNINGS ARE,
REALLY , JUST , REALLY , PROPHYLACTIC ESTABLISHMENT , TELLING PEOPLE WHAT THEIR RIGHTS
ARE. I MEAN, I CAN'T SEE HOW YOU CAN ANALOGIZE THOSE TWO AS INTERVENING
CIRCUMSTANCES!

WELL , THAT IS MY POINT , IS THAT , IF YOU ARE GOING TO LOOK AT THE OVERALL THING , WHAT
THE UNITED STATES SUPREME COURT WAS TALKING ABOUT , WAS VERBAL ACTS , AND SO THAT IS
WHY THE ANALYTICAL FRAMEWORK THAT THEY STARTED IN WONG SUN AND THEY USED
BROWN , MADE SENSE, BECAUSE THEY WERE LOOKING AT ALL OF THESE DIFFERENT
CIRCUMSTANCES. THEN YOU GET TO THIS PHYSICAL EVIDENCE THING, AND IF YOU LOOK AT THE
LIBBY CASE, WHICH WILL KIND OF DOVETAIL ME INTO THE JURISDICTIONAL THING, LIBBY IS A
CASE OUT OF THIRD DISTRICT COURT OF APPEAL , WHICH HAD PHYSICAL EVIDENCE AND
STATEMENTS, AND THIS WAS IN THE '70s, A AND IN THAT CASE, WHAT THEY FOUND IT WAS AN
ILLEGAL STOP. THEY USED BROWN VERSUS ILLINOIS ANALYSIS , TO DETERMINE THAT THE
STATEMENTS WERE NOT THE RESULT OF AN INTERVENING ACT OF FREE WILL , AND THEREFORE
THE TAIN WAS NOT ATTENUATED . THEN THEY WANT WENDT

HOW CAN YOU GET TO THE POINT

I HIM TRYING .

I AM HAVING DIFFICULTY SEEING YOU NOT HAVING TO CROSS THIS BRIDGE , OF WHETHER OR NOT THIS IS AN ILLEGAL ARREST ON THAT WARRANT.THAT IS HOW CAN AN ARREST O N THIS WARRANT , BE ILLEGAL?

OKAY. WELL , WE COULD LOOK AT ALL THE FACTORS O F THE WARRANT , WHICH WOULD, THEN , TAKE IN , IF WE ARE GOING TO DO A FACTOR ANALYSIS, THEN W E NEED TO LOOK AT ALL OF THE FACTORS , INCLUDING THE FACT THAT THIS WARRANT WAS NOT VALID AS TO MY CLIENT, AND IT WOULD BE ILLEGAL FICTION TO JUST VIEW THIS CASE A S DEALING WITH A VALID WARRANT, WHEN I N FACT , M Y CLIENT DID NOTHING TO CAUSE THAT WARRANT TO BE ISSUED . THIS I S NOT

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LET'S START WITH THE PROPOSITION OF A LEGAL WARRANT. THAT IS, IF WE HAVE A VALIDLEGAL WARRANT , THAT IS DISCOVERED UNDER THESE CIRCUMSTANCES , WOULDNT YOU HAVE TO ARGUE THAT THE ARREST UNDER THAT WARRANT , WAS ILLEGAL , IN ORDER TO AVOID THE USE O F THE FRUITS OF A SEARCH , PURSUANT TO THAT ARE AES? AND I AM HAVING , HOW WOULDYOU , HOW WOULD YOU MAKE THE ARREST, UNDER A VALID AND LEGAL WARRANT , ILLEGAL UNDER THESE CIRCUMSTANCES?

THEN WE ARE GOING BACK TO WHAT THIS COURT DID IN PERKINS , WHAT THIS COURT DID IN DIAZ AND WHAT THIS COURT DID IN MOOTHY. AND IN MY MIND I SEE NO DIFFERENCE BETWEEN A COMPUTER SAYING THERE IS A WARRANT FOR THE PERSON'S ARREST VERSUS THE PERSON IS DRIVING UNDER A SUSPENDED LICENSE , BECAUSE TO ME THOSE TWO THINGS ARE DIRECTLY ANALOGOUS .

WITH A WARRANT, YOU HAVE A WARRANT ISSUED BY AN IMAGE STRAIGHT, DIRECTING A LAW ENFORCEMENT OFFICER TO PICK THE PERSON UP. IT IS A WARRANT FROM AN IMAGE STRAIGHT. THAT IS A WHOLE LOT DIFFERENT FROM A RECORD OF A DRIVERS LICENSE SUSPENSION,IS IT NOT OR NOT?

THE DRIVERS LICENSE COULD HAVE BEEN SUSPENDED BECAUSE THE JUDGE SAID WHEN YOUDEALT IN COCAINE , YOUR LICENSE IS SUSPENDED FOR TWO YEARS AND YOU SHALL NOT DRIVE .

IN THIS CASE THE LAW ENFORCEMENT OFFICER HAS A WARRANT FROM THE MAGISTRATE , DIRECTING THAT OFFICER TO ARREST THE PERSON , SO THEREIS LESS DISCRETION I WOULD ASSUME .

NOT NECESSARILY BECAUSE THE LICENSE IS OFTEN SUSPENDED AS THE RESULT OF COURT ACTION , IT I S NOTNECESSARILY BECAUSE OF TOO MANY POINTS, SO WE DON'T NECESSARILY KNOW THE BASIS , BUT THE POINT IS , IN WHITE AND CHANDLER , WHICH WERE THE COMPUTER ERROR CASES, IN THOSE CASES YOU HAD A A FACIALLY VALID WARRANT , AND IT WAS ONLY UNTIL YOU GOT TO COURT LATER ON , WHEN YOU ASSORTED IT ALL THROUGH , THAT IT WAS DETERMINED , SO , YES , YOU HAVE A FARBLLY VALID WARRANT.OF COURSE THE A FACIAL LY VALID WARRANT. OF COURSE THE OFFICER IS GOING TO ARREST THE PERSON.

BUT ISN'T THAT A SEPARATE ISSUE FROM THE ISSUE THAT WE ARE FACED WITH TODAY , WHEN WE ARE TALKING SIMPLY ABOUT IF THE CIRCUMSTANCES GIVING RISE TO THE TRAFFIC STOP , TURN OUT TO BE INSUFFICIENT , BUT THAT DURING THAT TIME YOU DISCOVER A VALID WARRANT , AND NOW , WE ARE TALKING ABOUT A SUBSEQUENT ARREST ON THAT WARRANT , AND THE SEARCH INCIDENT TO THAT SUBSEQUENT ARREST. AREN'T THESE TWO SEPARATE ISSUES, REALLY , THAT

YOU ARE

I DON'T SEE HOW YOU COULD LOOK AT THEM SEPARATELY IN THIS PARTICULAR CASE , BECAUSE I DON'T THINK THAT YOU CAN JUST , I DON'T MEAN YOU PERSONALLY , JUDGE , BUT I DON'T THINK THAT ONE CAN JUST COMPLETELY IGNORE THIS WARRANT. IF WE ARE GOING TO DO A FACTOR ANALYSIS , AND CERTAINLY THE CIRCUMSTANCES OF THE WARRANT ARE A CRITICAL FACTOR, THE WARRANT WAS NOT FOR MY GUY. HE DID NOT DO ANOTHER CRIME. HE DID NOT COMMIT ANOTHER CRIME.

IN THIS CASE THAT WE ARE REFERRING TO IS THE SHERIFFS RECORDS AND THE DEPARTMENT OF MOTOR VEHICLE RECORDS , BUT DIDN'T THE COURT IN CONNECTION WITH THOSE , FIND THAT BECAUSE OF THE OFFICIAL MISCONDUCT , IS THAT A DIFFERENCE THAT WE ARE DEALING WITH HERE, BECAUSE HERE IT IS AN INDIVIDUAL THAT GIVES THE WRONG INFORMATION , IT JUST WAS NOT DETECTED. IS THAT A DIFFERENCE?

I DON'T SEE IT AS A DIFFERENCE, BECAUSE LAW ENFORCEMENT IS RESPONSIBLE FOR DISSEMINATING ACCURATE INFORMATION. JUSTICE SANDRA O'CONNOR IN HER CONCURRING OPINION IN ARIZONA VERSUS EVANS , POINTED OUT THAT , WITH THE INCREASE IN TECHNOLOGICAL ADVANCES THAT IS AVAILABLE TO LAW ENFORCEMENT, BECOMES INCREASED RESPONSIBILITIES , AND MAYBE 20 YEARS AGO , WE COULD SAY THAT YOU KNOW WHAT , WHAT HAPPENED IN THIS CASE IS OKAY. BUT WE HAVE AN HISTORICAL FACT. WE ARE LIVING IN A SOCIETY TODAY, WHERE IDENTITY THEFT OCCURS DAY IN AND DAY OUT. WE, ALSO, ARE LIVING IN A SOCIETY WHERE TECHNOLOGY MAKES IT FEASIBLE FOR LAW ENFORCEMENT TO DISSEMINATE ACCURATE INFORMATION.

NOW, IN THIS CASE WE ARE REALLY TALKING ABOUT THE SUPPRESSION OF THE GUN, AREN'T WE?

THAT IS IT.

OKAY. NOW, AS A RESULT OF A TRAFFIC STOP.

RIGHT.

IF WE WERE TO ASSUME THAT THE TRAFFIC STOP HAD BEEN A VALID TRAFFIC STOP , HE WOULD HAVE GOTTEN SOME KIND OF TICKET OR COULD THERE HAVE BEEN A SEARCH OF THAT VEHICLE , PURSUANT TO THE TRAFFIC STOP?

HE WOULD HAVE JUST WRITTEN A.M. CITATION AND LET HIM GO. HE WOULD HAVE SHOWN UP IN COURT.

SO THE SEARCH , REALLY, IS ONLY APPLICABLE , BECAUSE THIS GUY HAD AN OUTSTANDING ARREST WARRANT.

BECAUSE SOMEBODY USED HIS NAME.

AND SO THE ACTUAL SEARCH OF THE VEHICLE , REALLY , DOES IT REALLY HAVE ANYTHING TO DO WITH THE ACTUAL STOP OF THE VEHICLE?

YES. IT DOES , BECAUSE THE VEHICLE WAS

BUT YOU ALREADY SAID HE COULDN'T HAVE DONE THAT SEARCH, JUST PURSUANT TO THE STOP.

RIGHT. BUT HE WOULDN'T HAVE BEEN IN THE POSITION TO FIND OUT THE WARRANT AND YOU DON'T KNOW IF THE GUN WOULD HAVE BEEN THERE ON SOME OTHER DAY , SO IT IS JUST ALL FOR US.

THE GUN WAS IN HIS WAISTBAND , AND YOU DON'T KNOW WHETHER IT WOULD HAVE BEEN THERE ON ANOTHER DAY. IT IS ALL FORTUITOUS . IT IS A TEXTBOOK LAW CASE.

YOU ARE SAYING AS TO IF SOMETHING IS SO AT HE WAITED AS TO DISSIPATE THE TAIN T O F THE ILLEGAL STOP .

WE HAVE A NUMBER OF FACTORS TO LOOK AT NOT JUST THREE.

THREE ANALYTICAL FACTORS , AND YOU SAID ON THE INTERVENING CIRCUMSTANCES , I THINK THIS IS IMPORTANT , BECAUSE YOU ARE SAYING, IF WE LOOK AT THE CASES OUT OF THE SUPREME COURT, WHEN THEY TALKED ABOUT INTERVENING ACT , THEY WERE TALKING ABOUT AN INTERVENING ACT OF FREE WILL AND NOT JUST SOMETHING LIKE AN ARREST WARRANT?

CORRECT.

AND WHERE , IS THERE ACTUAL STATEMENT IN THOSE CASES THAT SAYS INTERVENING ACT IS ONE OF FREE WILL?

YES. THEY DO .

LET'S GET BACK TO WHAT THE CASE ACTUALLY SAYS .

> I WISH I HAD , OKAY. IN ORDER FOR THE , AND THIS IS FROM BROWN, I N ORDER FOR THE CAUSAL CHAIN BETWEEN THE ILLEGAL ARREST AND THE STATEMENTS MADE SUBSEQUENT THERE TO, TO BE BROKEN, IT MUST BE SUFFICIENTLY A N ACT OF FREE WILL TO PURGE THE PRIMARY TAIN T, AND THAT IS AT PAGE 602 OF THE U.S. CITING.

YOU SAID THAT IF WE ARE GOING TO USE THE U.S. SUPREME COURT PRECEDENT, THIS COULD NOT FIT INTO AN ARREST WARRANT UNDER THAT CIRCUMSTANCE , COULDN'T FIT INTO AN INTERVENING CIRCUMSTANCE.

CORRECT.

SO THAT WOULD BE AS A MATTER OF LAW NOT TRYING TO DO IT ON A FACT-SPECIFIC BASIS.

CORRECT.

NOW, IS IT THAT YOU NEED TO HAVE , IN ORDER TO BE S O ATTENUATE !!ED, YOU HAVE GOT TO HAVE , HOW DID THE THREE FACTORS WORK? IN OTHER WORDS YOU HAVE GOT TIME , WHICH WOULD MEAN THAT YOU, IN THIS CASE , IT IS PRETTY SIMULTANEOUS , YOU DON'T HAVE

CORRECT.

OKAY . UNDER YOUR READING OF THE BROWN CASE, YOU WOULD NOT HAVE AN INTERVENING ACT.

CORRECT.

SO THAT IS NUMBER TWO .

CORRECT.

THREE, IF WE ACCEPT THAT IT WAS A GOOD FAITH STOP , IN OTHER WORDS HE WAS RIGHT BEHIND HIM. WE DON'T HAVE FLAGRANT MISCONDUCT, SO DO YOU NEED , IN OTHER WORDS , HOW DO THOSE THREE FACTORS WORK? DO YOU NEED TO HAVE ALL THREE OF THOSE? DO YOU NEED TO HAVE, IF THE STATE CAN PROVE THAT THERE WAS NO FLAGRANT MISCONDUCT, IS THAT ENOUGH

TO PROVE AT ENUATION, OR DO YOU NEED , WITH NO INTERVENING CIRCUMSTANCE, AND NO TIME LAPSE , THEN , EVEN IF THEY ARE ACTING IN GOOD FAITH , YOU STILL HAVE TO FIND IT FRUIT OF THE ILLEGAL TREE, UNDER WONG SUN?

THE ONLY GUIDANCE THAT I GOT TO ANSWER THAT QUESTION, IS OUT OF BROWN, ITSELF , WHICH AT 604 SAID NO SINGLE FACT IS DISPOSITIVE. SO I THINK IT

SO THE WEIGHING PROCESS

AND IF I MIGHT POINT THIS COURT TO ITS MOOTHY DECISION, IN MOOTHY , THIS COURT FOUND , TALLY THIS COURT FOUND ALL THREE , O NO , IT FOUND THAT THERE WAS A CONTEMPORANEOUS BAD STOP , SO THERE WAS ONE , IT FOUND THAT THERE WAS NO INTERVENING CIRCUMSTANCES BETWEEN THE STOP AND THE DISCOVERY OF THE FIRST GUN , BECAUSE THERE WAS ANOTHER GUN AND A LOT OF OTHER STUFF IN THAT CASE, AND THIS COURT FOUND THAT THERE WAS NO EVIDENCE OF BAD MOTIVE TO STOP THE DEFENDANT. SO THIS

IS THAT THE CASE WHERE THE POLICE OFFICER KNEW THE GUY FROM BEFORE HE WENT TO PRISON AND THEN AFTER HE GOT OUT OF PRISON , HE HADN'T SEEN HIM FOR A COUPLE OF YEARS?

YES. THAT WAS THE FIRST-DEGREE MURDER CASE AND THE COURT SUPPRESSED EVERYTHING.

COULD I BACKTRACK WITH YOU FOR A SECOND , BECAUSE THIS WHOLE DISCUSSION ASSUMES THAT THE INITIAL STOP WAS ILLEGAL. IS THE TRAFFIC STOP GOVERNED BY TERRY VERSUS OHIO , IS IT REASONABLE SUSPICION?

IN THIS, NO , SUBJECTIVE , OBJECTIVE , WHAT JUSTICE WELLS WAS TALKING ABOUT, IN LAND AND HOLE AND, AND IN DOCTOR AND HOLLAND, AND IN DOCTOR.

IS IT PROBABLE CAUSE OR REASONABLE SUSPICION?

PROBABLE CAUSE TO BELIEVE THE PERSON COMMITTED THE TRAFFIC OFFENSES , BECAUSE IF I JUST CAN BACKTRACK, IN DOCTOR , THE CASE CITED IN THE 1990 , THE STATE WAS DOING EXACTLY WHAT THEY WERE DOING HERE, WHICH IS THAT YOU CAN STOP SOMEONE BECAUSE THE OFFICER WANTS TO CHECK THE EQUIPMENT , BECAUSE HE HAS REASON TO BELIEVE THAT THE EQUIPMENT IS DEFECTIVE , BUT YOU KNOW WHAT JUSTICE PARIENTE POINTED OUT IS THIS OFFICER NEVER CHECKED TO SEE IF THAT TURN SIGNAL WAS WORKING. WE DON'T KNOW THAT.

IF YOU CAN STOP A CAR TO MAKE SURE THAT THE EQUIPMENT IS DEFECTIVE , IN THIS CASE WE HAD A BROKEN TAILLIGHT . AT LEAST THE RED PART OF IT WAS CRACKED. AND THE DEFENDANT DID NOT PUT ON HIS TURN SIGNAL , SO AT LEAST AN OFFICER LOOKING AT THAT CAN SAY THE LIGHT MAY BE OUT! AND THEREFORE HE MAY BE VIOLATING THE LAW. LET ME STOP HIM AND CHECK. AND WHY ISN'T AN OFFICER , AS A RESULT I KNOW PROCEDURE , ONCE HE MAKES A TRAFFIC STOP , HAVE IN CASES HELD SPECIFICALLY , THAT AS PART OF THAT, AN OFFICER IS JUSTIFIED IN RUNNING A CHECK FOR WARRANTS, ONCE HE HAS THE PROBABLE CAUSE TO MAKE THE TRAFFIC STOP , HE DOESN'T HAVE TO - - TO MAKE THE TRAFFIC STOP, HE DOESN'T HAVE TO DO ANYTHING ELSE. WHAT HE WANTS TO DO FIRST IS CHECK FOR WARRANTS.

BECAUSE FIRST OF ALL , THIS OFFICER , THIS COURT REJECTED THE ARGUMENT THAT SECTION 316.110, WHICH IS THE ONE THAT ALLOWS THE STOP TO CHECK FOR EQUIPMENT , ALLOWS THE OFFICER TO CHECK MALFUNCTIONING EQUIPMENT , EVEN IF THE EQUIPMENT DOES NOT REQUIRE , OKAY , THE TURN SIGNAL WAS NOT REQUIRED , IMPOSES NO SAFETY HAZARD.

BUT HERE WE HAVE A COMBINATION OF THINGS THAT WEREN'T PRESENT IN THOSE CASES , WHICH IS THE CRACKED TAILLIGHT AND THE FACT THAT HE DIDN'T PUT ON HIS TURN SIGNAL , AND COULDN'T THAT MAKE A REASONABLE OFFICER TO BELIEVE THAT HE MAY BE VIOLATING THE

LAW , BY HAVING A BROKEN TAILLIGHT , AND WHY ISN'T HE JUSTIFIED IN STOPPING TO DETERMINE WHETHER , IN FACT , HE WAS VIOLATING THE LAW?

OKAY.THE TAILLIGHT HAD NOTHING DO WITH IT BECAUSE IT WAS DAYTIME.IT WAS THE BREAK LIGHT. THE BREAK LIGHT WAS DETERMINED BY THE TRIAL COURT AS A FINDING OF FACT THAT IT WAS OPERABLE , SO THE ONLY THING HE WOULD HAVE BEEN CHECKING TO SEE IF IT WASN'T WORKING , BECAUSE HE SAW THE BRAKE LIGHT WORK. IT CAME ON. IT LIT UP.

BUT THE OFFICER SAID THAT THE BLINKER LIGHT DIDN'T COME ON WHEN HE TURNED LEFT.

THE BLINKER LIGHT IS SEPARATE FROM THE BRAKE LIGHT.

WHAT DO YOU MAKE OF THE LANGUAGE IN DOCTOR , WHICH SAYS THE TRIAL JUDGE HELD THE STOP PERMISSIBLE, BECAUSE THE OFFICER DETERMINED IN HIS OWN MIND ON THAT EVENING, THAT THE LEFT REAR TAILLIGHT WAS OUT. THIS COURT GOES ON AND SAYS REASONABLE SUSPICION , HOWEVER, IS NOT JUDGED BY A SUBJECTIVE STANDARD BUT RATHER BY AN OBJECTIVE ONE , CITING TO TERRY.

RIGHT.

IT SEEMS TO ME TO ME IN DOCTOR, THIS COURT AT LEAST IMPLIED, THAT REASONABLE SUSPICION WAS THE TEST AS OPPOSED TO PROBABLE CAUSE . ISN'T THAT RIGHT? A BUT THIS COURT, THEN , WENT ON TO SAY IN DOCTOR , THAT THEY REJECTED , THIS COURT REJECTED THE ARGUMENT THAT 316.110 ALLOWS POLICE TO STOP AND CHECK FOR MALFUNCTIONING EQUIPMENT, EVEN IF THE EQUIPMENT IS NOT REQUIRED. ONCE AGAIN , HE WASN'T REQUIRED TO TURN ON THE SIGNAL. HE HAD NO REASON TO BELIEVE THAT THE SIGNAL LIGHT WASN'T WORKING BECAUSE THERE WAS A CRACK IN THE BRAKE LIGHT SECTION. THEY ARE TWO COMPLETELY DIFFERENT SECTIONS AND I KNOW I AM OUT OF TIME , BUT I JUST WOULD LIKE TO SAY THIS COURT SHOULD NOT TAKE JURISDICTION, AND THAT IS BECAUSE FAUST AND WIG FALL WERE BOTH CONSENSUAL ENCOUNTER CASES. THANK YOU.

CHIEF JUSTICE: FOUR MINUTES. THANK YOU. COUNSEL.

THANK. JUST A FEW POINTS ON REBUTTAL. I DIDN'T MENTION TOO MUCH ABOUT THE DOCTOR DECISION , OUR FIRST POINT ON APPEAL. WE BELIEVE THAT THE COURT IMPROPERLY APPLIED DOCTOR , AND DOCTOR , IT SEEMS LIKE THE CASES ARE SIMILAR BECAUSE THE DAMAGE IS RELATIVELY THE SAME , BUT IN THIS INSTANT CASE , THE OFFICER HAD REASONABLE CAUSE TO BELIEVE THAT THE EQUIPMENT WAS NOT IN WORKING ORDER IN DOCTOR

HOW DO YOU RESPOND TO YOUR OPPOSING COUNSEL'S STATEMENT THAT RIGHT NOW IT IS TWO DIFFERENT THINGS. IT WASN'T THE TURN LIGHT THAT WAS BROKEN AND CRACKED. IT WAS THE BRAKE LIGHT, SO THE FACT THAT HE DIDN'T PUT ON HIS TURN SIGNAL WOULD NOT LEAD AN OFFICER TO BELIEVE THAT THE TURN LIGHT WASN'T WORKING. IT WAS THE BRAKE LIGHT THAT WAS CRACKED.

IT WAS, THE OFFICER ACTUALLY TESTIFIED IT WAS IN THE SAME AREA WHERE THE TURN SIGNAL WOULD BE AND THE TURN SIGNAL WASN'T BEING USED ALTHOUGH IT WASN'T LEGALLY REQUIRED , ONE MIGHT EXPECT IT TO BE USED AND IT WAS DAMAGE TO THAT AREA. ALSO THE FACT THAT IT WAS WHITE LIGHT EMANATING FROM THE TAILLIGHT IN THIS CASE , WHERE IT SHOULD HAVE BEEN RED LIGHT , WHICH IS ALSO A VIOLATION , THAT IN ITSELF IS A TRAFFIC INFRACTION .

HOW DO YOU SAY , AGAIN , THE LEFT SIGNAL SHOULD HAVE BEEN USED EVEN THOUGH IT IS NOT A VIOLATION , HE IS IN THE LANE AND EVEN THOUGH HE WOULD BE GOING STRAIGHT AHEAD THERE , IS A RIGHT HAND TURN TRAFFIC SIGNAL .

ABSOLUTELY.

AND THEN THE TAIL, THE BRAKE LIGHT HAS SOME LIGHT EMITTED BUT IT IS ALSO STILL NOT TOTALLY WHITE LIGHT. THERE IS A PART , IT IS ONLY PARTIALLY CRACKED.

IT IS SPARSELY CRACKED T WASN'T REMOVED - - IT WAS PARTIALLY KRAKTED FORM IT WASN'T REMOVED CRACKED. IT WASN'T REMOVED , BUT THE OFFICER HAD REASONABLE STANDARD TO BELIEVE THAT IT MIGHT NOT BE WORKING.

WE SAID REASONABLE STOP. AGAIN, IF SOMEBODY IS CHASING SOMEBODY WHO I S GOING 80 MILES AN HOUR DOWN A ONE-WAY STREET AND PULLSHIM OVER AND HE REALLY GOT A TRAFFIC HAASORD , AND THE PERSON, ABOUT WHAT THAT OFFICER IS GOING TO DO AS OPPOSED TO PULLING PEOPLE OVER WHO HAVEN'T VIOLATED THE LAW , FOR A CONCERN OVER EQUIPMENT , I T MEANS DO YOU SEE THAT QUALITATIVE LY WE SHOULD LOOK AT THE CIRCUMSTANCES OF THIS STOP?

YES , AND THAT IS WHAT I AM ASKING THE COURT TO DO IS APPLY THE TEST, WHICH IS WHAT THE FOURTH DISTRICT DIDN'T DO IN BOTH CASES.

IF WE QUASH THE FOURTH DISTRICT'S CASE , OPINION IN THIS CASE , THERE IS A SERIES OF CASES THAT THEY HAVE CITED , CELINA WAS WITH ANONYMOUS TIP , DOES IT REQUIRE ALL OF THESE CASESTO BE QUASHED?

CLEARLY NOT BECAUSE THE NATURE OF THE STOP WAS DIFFERENT IN SOME OF THOSE CASES.

NATURE OF THE STOP WOULD GO TO THE THIRD FACTOR UNDE RBROWN?

EXACTLY.

BUT YOU WOULD HAVE TO SAY , AND WHAT ABOUT THE RESPONSE OF WHETHER A N INTERVENING ACT HAS TO BE ONE OF THE DEFENDANT'S FREE WILL. DO YOU DISAGREE WITH THAT?

I DISAGREE WITH. THAT I DON'T THINK IT IS LIMITED TO. THAT IT CERTAINLY CAN BE. I DON'T THINK IT IS LIMITED TO. THAT.

WHEN BROWN USED THAT TEST .

I THINK IN CIRCUMSTANCES IT WAS FREE.

BUT THERE ARE NOT ANY CIRCUMSTANCES OUT OF THESUPREME COURT WHICH INTERPRET WHAT IS SO ATTENUATE !!ED AS TO DISSIPATE THE TAINT OF THE ORIGINAL ARE AES?

NO. WE HAVE U.S. VERSUS GREEN BUT NOT OUT OF THE SUPREMECOURT.ALSO JUST AN IMPORTANT POINT, THE BASIS FOR A TRAFFIC STOP , THE STANDARD IS REASONABLE SUSPICION , BECAUSE IT IS GOVERNED BY TERRY, BECAUSE WHAT WE ARE TALKING ABOUT IS A DETENTION WHEN YOU MAKE A TRAFFIC STOP , PROBABLE CAUSE , OF COURSE , THAT GETS INTO THE ARREST, WHICH IS WHAT WE HAD IN THIS CASE , BUT I WANT TO BE CLEAR ON THIS POINT THAT THE STANDARD IS REASONABLE SUSPICION TO MAKE A STOP. THAT IS WHAT IS IN THE STATUTES , AND

HOW DOES THAT HELP WITH THE FAUST SITUATION? I MEAN, IT COMES BACK IN MY MIND TO WHETHER OR NOT WE HAVE JURISDICTION ON THIS CASE.

RIGHT.

BASED ON WHAT THE COURT LIMITED DISCUSSION IN THE FAUST CASE.

NUMBER ONE, I WANT TO CLEAR UP THAT POINT OF LAW ON ITS OWN MERIT. NUMBER TWO , I THINK IT , FAUST USED THE LANGUAGE PROBABLE CAUSE, BECAUSE I THINK THE BOTTOM LINE WAS , WHAT THE FAUST COURT WAS SAYING IS THAT HERE WE HAVE AN ILLEGAL STOP. THAT IS THE PRINCIPLE , THE LEGAL NUGGET WE GET OUT OF FAUST IS THAT IT IS AN ILLEGAL STOP. I SEE MY TIME HAS RAN. I THANK THE COURT FOR THE TIME. I ASK THIS HONORABLE COURT TO REVERSE THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL.

CHIEF JUSTICE: THANK YOU BOTH FOR EXCHANGE. WE WILL STAND IN RECESS NOW, UNTIL NINE O'CLOCK TOMORROW MORNING.

MARSHAL: PLEASE RISE.