

The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.

Kimberly S. Sult v. State of Florida

MARSHAL: PLEASE RISE. PLEASE BE SEATED.

CHIEF JUSTICE: ALL RIGHT. WE APPRECIATE YOU ALL BEING READY ON SULT VERSUS STATE. IF YOU ARE READY TO GO, YOU MAY PROCEED.

THANK, YOUR HONOR. MAY IT PLEASE THE COURT. COUNSEL. JOHN TREVENA, ON BEHALF KIMBERLY SULT, THE PETITIONER. WE ARE HERE TODAY, TO ADDRESS THE CONSTITUTIONALITY OF FLORIDA STATUTE 843.085, THE UNLAWFUL DISPLAY OF THORS D IN DISH YAF LAW ENFORCEMENT AUTHORITY -- INDICIA OF LAW ENFORCEMENT AUTHORITY, WITH A QUESTION FROM THE SECOND DISTRICT COURT OF APPEAL THAT ASKS WHETHER OR NOT THIS STATUTE IS UNCONSTITUTIONAL, OVERBROAD, VAGUE, OR A VIOLATION OF THE RIGHT TO SUBSTANTIVE DUE PROCESS.

AS WE ADDRESS THE ISSUE TODAY, ARE WE CONCERNED WITH JUST SHIRT OR THE SHIRT AND THE PRESENTATION OF THE IDENTIFICATION TO THE OFFICER? WHICH WAS CHARGED?

I BELIEVE THAT BOTH ARE AT ISSUE HERE TODAY, AND I BELIEVE THAT BOTH WERE PART OF THE UNDERLYING CHARGE AT TRIAL. THE CIVILIAN IDENTIFICATION CARD WHICH HAD A SHERIFFS STAR AND EMBLEM, AS WELL AS THE WEARING OF A SHIRT THAT SAID SHERIFF ACROSS THE FRONT, YES.

WHAT DID THE COURT AM APPEALS RULE AND WHAT IS IN THAT CERTIFIED QUESTION TO US, AS FAR AS THE LEGAL ISSUES THAT HAVE BEEN PRESENTED TO US HERE?

YOUR HONOR, I BELIEVE THAT THE MOST COMPELLING ISSUE WITHIN THE SECOND DCA OPINION TO OBSERVE, IS THAT THE OPINION, ITSELF, CONCEDES, AND I AM QUOTING THE OPINION, THAT THE STATUTE MAY PROHIBIT AN INDIVIDUAL FROM WEARING A COMER SHALLLY -- COMMERCIAL SHIRT OR HAT IN PUBLIC, BUT THE STATUTE IS RATIONALLY RELATED TO ITS GOAL, BECAUSE IT REQUIRES THAT A REASONABLE PERSON COULD BE DECEIVED. IT IS OUR POSITION THAT THIS COURT HAS ALREADY RULED IN WEISCH, THAT SUCH A STATUTE IS CONSTITUTIONALLY INFIRM, WHEN IT INFRINGES ON CONSTITUTIONAL RIGHTS. HERE IN, WE HAVE A STATUTE THAT IS CLEARLY, BECAUSE IT IS UP TO THE DISCRETION --

WAIT A MINUTE. VAGUENESS HAS TO DO WITH SUBSTANTIVE DUE PROCESS. THE SECOND DISTRICT CASE IS IN CONFLICT WITH THE THIRD DISTRICT CASE, FIRST ON THE ISSUE WHICH IT SEEMS TO ME IS A THRESHOLD ISSUE, IS WHETHER THE STATUTE IS A CONTENT-BASED STATUTE, IMPLICATING THE FIRST AMENDMENT, BECAUSE ONLY THEN DO YOU GET INTO A STRICT SCRUTINY STANDARD, THE ISSUE ABOUT WHETHER IT IS VAGUE, BECAUSE IT HAS A REASONABLE PERSON STANDARD, IS THAT SORT OF A SECOND CHALLENGE, BUT WOULD YOU ADDRESS THE ISSUE AS TO WHY THE FIRST, WHY THE SECOND DISTRICT WAS WRONG IN FINDING THAT THIS, THAT CONTENT WAS ONLY INCIDENTAL TO THE STATUTE, AS OPPOSED TO THE THIRD DISTRICT, WHICH FOUND THAT IT WAS CONTENT-BASED?

CLEARLY WE DO AGREE WITH THE THIRD DISTRICT'S REASONING, AND I THINK WHAT IS MOST IMPORTANT ABOUT THAT OPINION, IS THAT IT TALKS ABOUT POST-911 WEARING OF SHIRTS AS A SYMBOLIC EXPRESSION OF SUPPORT FOR LAW ENFORCEMENT.

DOES THE STATUTE PROHIBIT A T-SHIRT THAT SAYS "THE POLICE ARE GREAT SUPPORT YOUR

LOCAL SHERIFF", T-SHIRTS OF THAT NATURE?

NO, IT DOES NOT.

AND DOES IT PREVENT A T-SHIRT THAT SAYS "GOVERNMENT STINGS THE POLICE ARE PIGS"?

NO, IT DOES NOT.

THE ONLY THING IT PREVENTS IS WEARING A SHIRT THAT SEEMS TO IDENTIFY THE WEARER AS A MEMBER OF A LAW ENFORCEMENT AGENCY, CORRECT?

CORRECT, YOUR HONOR.

HOW DOES THAT, THEN, INVOLVE SPEECH? ON YOU DOES THAT IMPLICATE FREE SPEECH CONCERNS?

IT ITCH INDICATES FIRST AMENDMENT CONCERNS, BECAUSE, AGAIN, IT IS A BIMBOL I CAN EXPRESSION OF SUPPORT. -- A SYMBOLIC EXPRESSION OF SUPPORT.

THERE ARE OTHER WAYS OF SHOWING THAT SUPPORT, INCLUDING THE WORDS OF POLICE, RIGHT? SUPPORT YOUR LOCAL SHERIFF. SUPPORT YOUR POLICE. AREN'T THOSE PERMISSIBLE WAYS OF SHOWING SUPPORT, SYMBOLIC WAYS OF SHOWING SUPPORT?

THERE ARE ALSO RESTRICTIVE WAYS OF SHOWING SUPPORT, AND WE BELIEVE CONSTITUTIONALLY IMPERMISSIBLE RESTRICTIONS, BECAUSE THE STATUTE DOES NOT PROHIBIT THE SALE OF THE ITEMS. LAW ENFORCEMENT AGENCIES PROFIT FROM THE SALE AND DISTRIBUTION OF THE PARAPHERNALIA.

WHAT ABOUT SECTION THREE OF THE STATUTE? I AM SORRY. GO AHEAD, JUSTICE WELLS.

LET'S BREAK THIS DOWN AND COME BACK, THOUGH, TO JUSTICE ANSTEAD'S INITIAL QUESTION. THE SECOND DISTRICT'S OPINION, LET'S, LET ME READ THAT SENTENCE FROM IT THAT I AM CONCERNED ABOUT YOUR DISCUSSING, AND THAT IS INDIVIDUALS WHO WEAR, WITHOUT AUTHORIZATION, FULL LAW ENFORCEMENT UNIFORMS OR DISPLAY LAW ENFORCEMENT BADGES, ARE NOT ENTITLED TO FIRST AMENDMENT PROTECTION FOR THEIR CONDUCT. THAT IS THEIR STATEMENT.

CORRECT.

NOW, WHAT IS YOUR POSSESSION ON THAT STATEMENT, PRECISELY, AND WHAT CASE LAW DOES THAT STATEMENT VIOLATE?

THERE SHOULD BE AN INTENT, A SPECIFIC INTENT TO DECEIVE SOMEONE, MORE THAN JUST WEARING OF THE UNIFORM, THE BADGE, OR ANY COLORABLE IMITATION THERE OF.

WHAT SPECIFIC CASE HAS SAID THAT THEY ARE NOT, THAT ARE NOT, THAT THERE ARE, THEY ARE ENTITLED TO FIRST AMENDMENT PROTECTION FOR WEARING THAT INSIGNIA?

NONE, OTHER THAN RODRIGUEZ, WHICH WAS DECIDED IN JULY. THE ALICIA CASE, HOWEVER THAT, IS CITED IN OUR BRIEF, DOES SUPPORT PROPOSITION THAT WEARING THE UNIFORM, IN AND OF ITSELF, IS NOT A CRIMINAL OFFENSE UNDER THE IMPERSONATION OF A LAW ENFORCEMENT OFFICER STATUTE, UNDER THAT ANALYSIS, SO IN THAT CASE, THERE HAS TO BE AN INTENT, A SPECIFIC INTENT TO DECEIVE, AND WE BELIEVE THAT THE STATUTE CAN BE EASILY CURED, WITH AN INTENT REQUIREMENT. IT DOES NOT, IT IS NOT A SITUATION WHERE THE GOVERNMENT IS PREJUDICE BY HAVING AN INTENT REQUIREMENT WITHIN THE STATUTE. IT IS THE GENERAL

PUBLIC THAT IS PREJUDICED BY NOT HAVING THE INTENT REQUIREMENT IN THE STATUTE, BECAUSE THESE ITEMS ARE WIDELY AVAILABLE --

AND WE, BY INTERPRETATION IN GRAFT THAT SPECIFIC INTENT INTERPRETATION ONTO THIS STATUTE?

IT IS OUR INTERPRETATION THAT IT SHOULD BE SPECIFIC INTENT.

CAN WE DO IT?

I BELIEVE YOU HAVE THE AUTHORITY, ALTHOUGH IS RARELY DONE BY THE SUPREME COURT. WE WOULD ASK THAT THE COURT IN THIS SITUATION, REVERSE THE FINDING OF THE SECOND DCA AND ALLOW THE LEGISLATURE TO AMEND THE STATUTE, BUT UNDER THE FACTS OF THIS CASE, AND THE WAY THAT THE STATUTE IS DRAFTED, WE BELIEVE THAT IT IS CONSTITUTIONALLY INFORM, BUT I DO BELIEVE THE COURT DOES HAVE THE POWER TO ALTER THE STATUTE.

CAN YOU ADDRESS THE STANDING ISSUE OF YOUR CLIENT, BECAUSE AT LEAST FOR THE VAGUENESS PURPOSES, A DEFENDANT WHOSE CONDUCT IS CLEARLY PRESCRIBED BY THE CORE OF THE STATUTE, HAS NO STANDING TO ATTACK, AND IN THIS CASE, WE HAVE ADMITED IS NOT SIMPLY THE WEARING OF A T-SHIRT, AND IT DOESN'T SIMPLY SAY SHERIFF, IT SAYS PINELLAS COUNTY SHERIFFS DEPARTMENT PURCHASED, WHILE SHE WAS AN EMPLOYEE ALLEGEDLY AT A PLACE THAT WOULD HAVE REQUIRED IDENTIFICATION, AND SHE NOT ONLY WORRY THE SHIRT BUT PRESENTED THE IDENTIFICATION, AND THAT DUAL PRONG RAISES SOME CONCERNS WITH ME AS FAR AS THE STANDING QUESTION.

YES, YOUR HONOR. WELL, EVEN THE SECOND DCA FOUND STANDING FOR A FACIAL REVIEW OF THE STATUTE, WHETHER OR NOT IT IS CONSTITUTIONAL ON ITS FACE.

BUT ONLY, THE ONLY WAY YOU CAN BRING A FACIAL CHALLENGE WOULD BE UNDER THE FIRST AMENDMENT.

THAT'S RIGHT.

NOT UNDER THE ISSUE OF WHETHER IT WAS OVERBROAD BECAUSE IT INCLUDED CONDUCT THAT COULD BE INAPPROPRIATE.

CORRECT EXACTLY, WHICH DISTINGUISH HE IS OUR CASES THAT WE HAVE CITED IN OUR BRIEF FROM WHAT THE ATTORNEY GENERAL HAS CITED IN SUPPORT OF THEIR POSITION, BECAUSE THEY CITE DP AND OTHER CASES THAT DON'T REALLY DEAL WITH WHERE THERE IS A FIRST AMENDMENT IMPLICATION. IT IS OUR BELIEF THAT THERE IS A FIRST AMENDMENT IMPLICATION AND THAT --

BUT IF WE FIND THAT THERE IS NOT A FIRST AMENDMENT IMPLICATION HERE IN THE MERE WEARING OF THIS KIND OF PARAPHERNALIA, WHERE DOES THAT LEAVE YOU, IF YOU DON'T HAVE A STRICT SCRUTINY TEST TO PASS IN THIS PARTICULAR CASE?

YOU CAN ON --.

HOW WOULD THE STATUTE BE VIOLATIVE OF THE OVERBREADTH?

EVEN IN A RATIONAL BASIS TEST, WE BELIEVE THAT THE STATUTE VIOLATES THE CONSTITUTION, BECAUSE YOU HAVE A SITUATION, AGAIN, WHERE THESE ILLUSTRATE ELMS ARE COMMERCIAL -- WHERE THESE ITEMS ARE COMERLY AVAILABLE. -- COMMERCIALY AVAILABLE. THESE ITEMS HAVE A SPECIFIC STATUTE. THE ANALYSIS, THE DA SAYS IT IS A SPECIFIC INTENT CRIME BUT THE PERSON HAS TO DON THE PAR HE WILL, UNDER -- THE APPAREL, BY PUTTING ON THE HAT, THE

SHIRT OR OTHERWISE.

DOESN'T THAT HAVE A REASONABLE DEGREE OF IMPERSONATING AN OFFICER?

IT SAYS IT COULD NOT THAT IT DOES. THAT IS POTENTIALLY TROUBLESOME LANGUAGE FOR THE PETITIONER, IN THAT IT COULD. HOW --

FROM WHAT I UNDERSTAND HERE, YOUR CLIENT, ACTUALLY, WHEN ASKED WHETHER SHE WAS, WHO SHE WAS, SHE SAID, IA, I AM ONE OF YOU, AND SHE GIVES A BADGE. I MEAN, THAT IS DIFFERENT THAN GENERALLY, WHETHER SOMEBODY WAS JUST WEARING A SHIRT THAT THEIR BROTHER GAVE THEM AND THEY ARE IN A 7-ELEVEN, AND THEY ARE ARRESTED BECAUSE THEY ARE WEARING THAT SHIRPLT BUT IT WAS THE SHIRT THAT -- THAT SHIRT.

BUT IT WAS THE SHIRT THAT STARTED IT. IT WAS THE WEARING OF THE SHIRT THAT STARTED THAT CONTACT WITH LAW ENFORCEMENT, AND REGARDLESS OF IT, EVEN IF THE COURT FINDS THE CONDUCTOR ALLEGED CONDUCTOR DISPLAY OF THE BADGE EGREGIOUS, LOOK AT RODRIGUEZ. PLEASE, WHAT FACTS COULD YOU HAVE MORE INFLAMMATORY THAN RODRIGUEZ, WHEN YOU HAVE SOMEONE ON A MOTORCYCLE WEARING A BADGE THAT SAYS "POLICE", AND WHEN STOPPED --

YOU ARE IN YOUR FIRST AMENDMENT ISSUE HERE, AND YOU ARE CONCERNED ABOUT REBUTTAL. I AM CONCERNED ABOUT WHETHER THE TEST OF AN IN EXPRESSIVE AMOUNT OF CONDUCT, OR WHETHER THIS IS AN EXPRESS-BASED CONDUCT IN STATUTE.

CHIEF JUSTICE: THE MARSHAL HAS SAID THAT YOU ARE IN YOUR REBUTTAL, SO YOU MIGHT WANT TO PAUSE.

THANK YOU.

GOOD MORNING. MAY IT PLEASE THE COURT. COUNSEL. I AM JOHN KLAWIKOFSKY WITH THE ATTORNEY GENERAL'S OFFICE. I DID PROVIDE A SUPPLEMENTAL REPLY BUT AS OF FRIDAY IT WAS STILL PENDING IN THE THIRD DISTRICT AND I AM ASSUMING THAT THEY ARE AWAITING THIS COURT'S OPINION IN THIS CASE, BUT I AM AWARE THAT RODRIGUEZ IS WITHIN THE ANALYSIS TODAY.

WHAT ARE THE ISSUES THAT ARE BEFORE US TODAY?

TODAY ON A CERTIFIED QUESTION FROM THE SECOND DISTRICT, IS THIS STATUTE OVERBROAD? IS IT UNCONSTITUTIONALLY VAGUE, DOES IT VIOLATE SUBSTANTIVE DUE PROCESS? THAT ARE THE THARBS THE SECOND DISTRICT --

DOES THE OVERALL PART OF IT ADDRESS THE FIRST AMENDMENT ISSUE?

YES.

SO COULD YOU, I AM NOT FAMILIAR ENOUGH WITH SOME OF THE CASES THAT TALK ABOUT WHETHER A STATUTE SOMETIMES ONLY HAS INCIDENTAL FIRST AMENDMENT VERSUS IT IS, IMPLICATES FIRST AMENDMENT. WHY DON'T WE MAKE SURE THAT WE ARE CORRECTLY STATING THE LAW FOR ALL CASES. HOW DO YOU DISTINGUISH BETWEEN WHY THIS ISN'T A FIRST AMENDMENT --

WHAT THE SECOND DISTRICT OPINION DID DO IS THE SECOND DISTRICT APPLIED A RATIONAL BASIS ANALYSIS AS THE TRIAL COURT DID.

RIGHT. BUT IF IT IS FIRST AMENDMENT, YOU AGREE IT IS SUBJECT TO STRICT SCRUTINY.

IF IT IS FIRST AMENDMENT. HOWEVER, WHAT THE SECOND DISTRICT SAID AT THE END OF THE SICKT SECOND DISTRICT OPINION -- AT THE END OF THE SECOND DISTRICT OPINION, THEY SAID BECAUSE IT IS FIRST AMENDMENT, WE ARE GOING TO APPLY A HEIGHTENED SCRUTINY.

THEY DIDN'T TALK ABOUT ANY CASES ABOUT THE U.S. SUPREME COURT IS LOOKING AT IT, WE ARE LOOKING AT IT, HOW DO YOU LOOK AT A STATUTE AND DECIDE --

THE ONBEIN CASE OUT OF THE U.S. SUPREME COURT, THE DRAFT CARD BURNING CASE, TALKS ABOUT AN INTERMEDIATE SCRUTINY, AND IT SAID WHEN A STATUTE INVOLVES AN INCIDENTAL AMOUNT AND IS A CONTENT NEUTRAL STATUTE, THAT MAY INFRINGE ON FIRST AMENDMENT, YOU CAN APPLY A HEIGHTENED SKRULT ANY, A MIDDLE -- SCRUTINY, A MIDDLE LEVEL SCRUTINY, AND THE O'BRIEN CASE OUT OF THE U.S. SUPREME COURT DOES DISCUSS THAT.

I THOUGHT THE QUESTION HERE IS REALLY HOW DO WE DETERMINE WHETHER OR NOT IT IS REALLY INCIDENTAL OR WHETHER OR NOT IT ACTUALLY IMPLICATES THE FOURTH AMENDMENT?

I BELIEVE I ARGUED IN MY BRIEF AND ARGUED WITH THE SECOND DISTRICT THAT THERE IS NO FIRST AMENDMENT VIOLATION HERE. THERE IS NO RIGHT, THERE IS NO FIRST AMENDMENT RIGHT TO WEAR AN AUTHORIZED OFFICIAL UNIFORM FROM A LAW ENFORCEMENT OFFICER, BECAUSE THE ONLY LANGUAGE THAT IS INVOLVED IN THAT, THE ONLY EXPRESSING THAT IS INVOLVED IN WEARING SUCH A SHIRT IS "I AM AN AUTHORIZED POLICE OFFICER." YOU HAVE NO FIRST AMENDMENT RIGHT WITH THAT.

WAIT A MINUTE. THEY ARGUE IN THEIR BRIEF, AND IT CERTAINLY IS EVIDENT AS YOU WALK AROUND THE STREETS, THAT PEOPLE ARE WALKING AROUND WITH ALL SORTS OF INDICATIONS THAT THEY ARE NYPD OR SHERIFFS OR SCOTLAND BEYOND A REASONABLE DOUBT OR, I MEAN, ALL OF THOSE ARE WORDS, AND CERTAINLY THEY HAVE AN IMPLICATION OF THE FIRST AMENDMENT.

THEY CAN HAVE AN EXPRESSION INVOLVED, SURE, AND THAT IS WHY THE STATUTE ALLOWS FOR A REASONABLE PERSON, COULD DECEIVE A REASONABLE PERSON. THE STATUTE DOES INCLUDE THAT, AND IN THIS PARTICULAR CASE, THIS WAS --

BUT WE GOT A FIRST, BEFORE WE GET TO THAT, WE GOT TO DETERMINE WHETHER THIS IS A CONTENT-BASED --

THIS IS A CONDUCT BASED, ACTUALLY, THE STATUTE DOES ALLOW.

I THINK THAT GETS DOWN TO WHAT WE NEED TO KNOW IS WHAT IS THE CASE THAT SAYS THAT WHAT WE ARE DEALING WITH AS A SECOND -- AS THE SECOND DISTRICT SAID, IS NOT ENTITLED TO PROTECTION FOR THEIR CONDUCT? WHY IS THIS CONDUCT, RATHER THAN EXPRESSION, WHERE IT SAYS SCOTLAND BEYOND A REASONABLE DOUBT, ON MY SHIRT?

IT IS CONTENT NEUTRAL. AS JUSTICE CANTERO MENTIONED, YOU CAN WEAR A SHIRT THAT SAYS "I HATE THE PINELLAS COUNTY SHERIFFS OFFICE." THAT STATUTE DOES NOT INDICATE SPEECH IMPLICATION.

WHAT IF IT SAID THAT YOU CANNOT WEAR SOMETHING THAT HAS A STATEMENT ON IT, I AM JUST HAVING A HARD TIME UNDERSTANDING HOW THAT IS NOT A CONTENT-BASED STATUTE. NOW YOU ARE SAYING IT IS CONTENT NEUTRAL, BUT IT REALLY ISN'T SAYING THAT ANY OFFICIAL, THAT INDIVIDUALS ARE PROHIBITED FROM WEARING ANY OFFICIAL GASH. THEY CAN'T -- GARB. THEY CAN'T WEAR ARMY UNIFORMS. THEY CAN'T WEAR WHATEVER IT IS, THAT THIS IS SPECIFICALLY ADDRESSED TO THEY CAN'T WEAR CERTAIN TYPES OF --

WHICH COULD DECEIVE A REASONABLE PERSON, CORRECT.

LET'S LEAVE THE DECEIVE PART. LET'S DEAL WITH, FIRST, WHETHER IT IS A FIRST AMENDMENT STATUTE.

YOU HAVE NO FIRST AMENDMENT RIGHT TO WEAR AN AUTHORIZED UNIFORM FROM THE PINELLAS COUNTY SHERIFFS OFFICE.

BUT LET'S NOT GET BELOW THAT LEVEL, AS JUSTICE PARIENTE SAID. IF THE STATUTE SAYS THAT YOU ARE NOT ALLOWED TO WEAR A SHIRT WHICH SAYS "FLORIDA GATOR" ON THE FLORIDA STATE CAMPUS, WOULD "FLORIDA GATOR" BE A CONTENT-BASED PROHIBITION?

WELL, THAT IS A TOTALLY DIFFERENT REALM, AND THAT WOULD BE CONTENT BASED, SURE, BUT THIS STATUTE IS NOT CONTENT BASED. THIS IS CONDUCT, AND THERE IS NO FIRST AMENDMENT RIGHT IMPLICATED HERE. THE SECOND DISTRICT AGREED AND THAT IS WHY THEY APPLIED THE RATIONAL BASIS TEST. THE THIRD DISTRICT APPLIED STRICT SCRUTINY.

WOULD THE STATUTE PROHIBIT A GROUP OF KINDERGARTEN CHILDREN FROM GOING TO A RALLY AND WEARING SHIRTS THAT SAY "NYPD" OR "POLICE"?

OF COURSE NOT. AS A MATTER OF FACT ON THE DAY OF OUR ARGUMENT IN LAKELAND, I HAD MY SON IN A NYPD SHIRT, AND IT WOULD BE RIDICULOUS, IT WOULD NOT BE REASONABLE TO OUTLAW SUCH --

WHAT THEY HAVE IS AN ADDITIONAL PHRASE THERE WHICH COULD DECEIVE A REASONABLE PERSON, BUT THE REASON THAT IS IMPORTANT IS BECAUSE THE THIRD DISTRICT, IN RESPONDING THAT IT WAS CONTENT BASED, SAID THAT, ONCE YOU DO THAT, YOU CAN'T PROHIBIT IT, BUT YOU MUST USE -- YOU CAN PROHIBIT IT, BUT YOU MUST USE MEANS THAT ARE NARROWLY TAILORED TO THE END.

CORRECT. THE STATUTE IS NOT OUTLAYING -- OUTLAWING SUCH CONTENT. WHAT THIS STATUTE IS ALLOWING IS FOR AN OFFICER WHO SEES AN INDICIA AUTHORITY, THAT OFFICER CAN GO AND INVESTIGATE IT. YOU CAN'T TELL JUST LIKE SEEING A SHIRT OR WHATEVER, INDICIA AUTHORITY, THAT THE PERSON COULD BE AUTHORIZED TO WEAR IT. WHAT HAPPENED IN THIS CASE IS THEY THOUGHT THERE WAS A UNIFORM VIOLATION HERE. THESE OFFICERS INVESTIGATE WHAT HAD THEY THOUGHT WAS A UNIFORM VIOLATION AND THEY FOLLOWED UP. THERE WAS AN INVESTIGATION. THERE WAS QUESTIONING.

SO, BUT, YOU AGREE THAT THERE IS NO INTENT REQUIRED TO DECEIVE.

NO. THE STATUTE, THIS STATUTE IS TO BE READ FROM THE POINT OF VIEW OF THE CITIZEN IN AN EMERGENCY SITUATION AND FROM OFFICERS, IT IS IN THE RECORD THE LEGISLATIVE INTENT ALSO DISCUSSES THESE SHIRTS WERE DESIGNED SO OFFICERS AFTER THE ST. PETE RIOTS COULD EASILY IDENTIFY EACH OTHER, ANT SHIRT, THE PICTURES -- ANT SHIRT, THE PICTURES OF THE SHIRT ARE IN THE -- AND THE SHIRT, THE PICTURES OF THE SHIRT ARE IN THE RECORD SHOWING A GIANT "SHERIFF" ON THE FRONT.

IF SOMEBODY WAS GIVEN A HAT AND THEY ARE WEARING IT. LET'S SAY THEY ARE 25 AND HAVE A LOW IQ AND THEY JUST THOUGHT THAT WAS REALLY NEAT TO BE ABLE TO WEAR THAT, THEY COULD BE HELD CRIMINALLY RESPONSIBLE.

NO. ABSOLUTELY NOT.

WHY NOT?

BECAUSE THIS STATUTE ONLY ALLOWS AN OFFICER THAT MAYBE HAS REASONABLE SUSPICION

TO INVESTIGATE IT, AND I WOULD SUBMIT THAT THESE OFFICERS HAD A REASONABLE REASON TO INVESTIGATE MS. SHULT, AND IF THIS WOMAN SAID I THREW ON MY HUSBAND'S SHIRT AND MY HUSBAND IS A PROIFER POLICE OFFICER. I DON'T THINK WE WOULD -- IS A POLICE OFFICER, AND I DON'T THINK WE WOULD BE HERE DOO. SHERIFFS ARE A GENERIC GROUP.

CORRECT.

WE HAVE HAD SHERIFFS FROM ENGLAND AND IT GOES WAY BACK, AS FAR AS SHERIFFS ARE CONCERNED, SO LET'S SAY WE HAVE SOMEBODY HERE THAT JUST MOVES FROM WASHINGTON STATE, AND IN WASHINGTON STATE, THEY BOUGHT A SHIRT THAT HAS, LIKE YOU ARE TALKINGS ABOUT, BIG BLOCK LETTERS THAT SAY "SHERIFF".

BUT THIS SHIRT ALSO HAD THE BADGE.

I REALIZE THAT, BUT, AND NOW THEY HAVE MOVED TO FLORIDA AND THEY HAVE A WHOLE RACK OF T-SHIRTS FROM THE STATE OF WASHINGTON THAT SAY SHERIFF, AND THEY MOVE TO SOMEPLACE THAT HAS RECENTLY HAD PROBLEMS, AND YOU KNOW, THAT HAD THESE SHIRTS LIKE THAT, SO THEY PUT ON THEIR, THEY LOVE THEIR SHERIFF AND THINK IT MAKES A STATEMENT ABOUT THEM AS PART OF THEIR PERSONALITY.

I UNDERSTAND.

AND SO WHAT I AM LEADING TO IS HOW CAN WE SAY THAT THIS ISN'T CONTENT BASED, IF IT SAYS SOMETHING LIKE SHERIFF, THAT IS THAT, AS PART OF THIS EXPRESSION, SORT OF A PERSONAL EXPRESSION --

IT IS CONTENT NEUTRAL THOUGH. IT ISN'T PROHIBIT YOU FROM FREE SPEECH.

SO THE PERSON FROM WASHINGTON THAT WEARS THE SHERIFF SHIRT, I TAKE IT THAT THEY, THAT, WOULD THEY BE VIOLATING THIS STATUTE?

WELL, THIS STATUTE HAS THE REASONABLE PERSON STANDARD, AND I BELIEVE THAT I BRIEFED REASONABLE PERSON IS AN EVOLVING STANDARD. WHAT IS REASONABLE --

WHAT IS THE STANDARD THAT THE REASONABLE PERSON IS SUPPOSED TO BE APPLIED TO HERE? IN OTHER WORDS THAT A REASONABLE PERSON WHAT?

THAT A REASONABLE PERSON BELIEVES YOU ARE AUTHORIZED TO WEAR THIS INDICIA OF AUTHORITY.

NOW YOU JUST SAID THE REASONABLE PERSON WOULD BE AN EVOLVING STANDARD. NOW, DOESN'T THAT, IN ITSELF, START TO SAY THAT THERE --

ABSOLUTELY.

I GUESS WHAT I AM CONCERNED ABOUT IS I AM NOT SURE I UNDERSTAND WHY THE STATE WOULD WANT TO CRIMINALIZE SOMETHING WHICH COULD BE INNOCENT BEHAVIOR, WHEN SIMPLY BY PUT AGO SPECIFIC INTENT REQUIREMENT ON IT, YOU HAVE SAVED IT FROM, IN THIS CASE YOU WOULD HAVE A VERY GOOD ARGUMENT THAT SHE WAS TRYING TO DECEIVE, AT THE POINT THAT SHE PUT THIS OUT OF HER OFFICIAL --

IF YOU REQUIRE --

LET ME FINISH, AT THE POINT WHEN SHE TOOK OUT HER OFFICIAL IDENTIFICATION, BUT WE ARE BEING ASKED A BROADER QUESTION, WHICH IS WHETHER, ON ITS FACE, THE STATUTE

UNCONSTITUTIONAL.

IF THIS COURT REQUIRES AN INTENT IN THIS STATUTE, THIS IS A MISDEMEANOR CRIME, IF YOU REQUIRE AN INTENT, THIS WOULD BE MORE AKIN TO THE FELONY 843.08, FALSELY IMPERSONATING AN OFFICER. WHAT THIS STATUTE IS TRYING TO DO AND IT IS IN THE RECORD THAT THERE WAS LEGISLATIVE FINDINGS, WHAT THIS STATUTE IS TRYING TO DO IS IT IS TRYING TO ALLOW THE POLICE TO PREVENT SOMEBODY FROM PORTRAYING THEMSELVES BEFORE THEY CAN -- THE AL TREVENO CASE SAYS MERELY IMPERSONATING AN OFFICER IS NOT A CRIME. YOU HAVE TO GO FURTHER IN AN ACT. WHAT THIS DOES IS PREVENTING SOMEBODY FROM ACTING AS A LAW ENFORCEMENT OFFICER, BEFORE THEY COMMIT ANY HARM?

AS I SEE IT, THERE ARE TWO DISTINCTIVE SET OF PROHIBITIONS IN THE STATUTE. ONE IS PREVENTING ANYBODY FROM WEARING AN AUTHORIZED UNIFORM OF AUTHORITY. I ASSUME THAT THE POLICE DEPARTMENT AND ALL OF THESE DEPARTMENTS HAVE UNIFORMS THAT PEOPLE WEAR AND THAT WOULD BE AN AUTHORIZED INDICIA OF AUTHORITY. THAT PARTICULAR POLICE UNIFORM. BUT THEN THE STATUTE GOES ON AND TALKS ABOUT THE THING THAT IS JUST HAVE SHERIFF ON IT OR POLICE ON IT OR HIGHWAY PATROLMAN ON IT, WHICH COULD BE ANY KIND OF SHIRT THAT IS REALLY NOT AN AUTHORIZED PART OF A UNIFORM, CORRECT?

CORRECT. BUT THAT SECOND PART OF THE STATUTE, ALSO, SAYS WHICH COULD DECEIVE A REASONABLE PERSON INTO BELIEVING OR AUTHORIZED, AND THAT IS MORE RODRIGUEZ THAN OUR CASE, BECAUSE IN ARE RIGEZ WE HAD A -- BECAUSE IN RODRIGUEZ, WE HAD A SHERIFFS SHIRT.

MY QUESTION TO YOU WOULD BE THIS, AS TO WHETHER OR NOT THIS STATUTE, THESE TWO PARTS OF IT, CAN BE SEVERED, WHETHER WE CAN SAVE THE PART THAT TALKS ABOUT THE AUTHORIZED INDICIA OF AUTHORITY, THAT IS THE OFFICIAL POLICE UNIFORM, VERSUS SOME OTHER T-SHIRT THAT MIGHT BE AVAILABLE TO THE PUBLIC THAT MIGHT HAVE SHERIFFS DEPARTMENT ON IT, ET CETERA. EYE BELIEVE THE COURT, IN THE SMITH CASE, I BELIEVE --.

I BELIEVE THE COURT, IN THE SCHMIDT CASE, I BELIEVE THE COURT HAD THE AUTHORITY TO SEVER COUNTS AND SECTIONS THAT ARE VIOLATIVE, BUT I WOULD STILL SUBMIT THAT THE STATUTE AS A WHOLE WITH A REASONABLE PERSON STANDARD IS NOT UNCONSTITUTIONAL, BUT OF COURSE THIS COURT CAN, ACTUALLY THIS COURT MUST GIVE IT A READING THAT MAKES IT CONSTITUTIONAL.

WHERE DOES THAT LEAD US, THOUGH, YOU KNOW, WE ARE GOING TO GET THE IMAGE HERE FOR, OR I GET IN MY VIEW SCREEN WHEN YOU SAY THAT, THAT I HAVE GOT AN IMAGE OF A MUSCULAR YOUNG MAN IN HIS MIDTWENTIES, YOU KNOW, WEARING A BLACK T-SHIRT AND A PAIR OF BLACK TROUSERS, AND FILLING OUT A T-SHIRT, YOU KNOW, THAT SAYS SHERIFF OR "POLICE". AND THEN I HAVE GOT AN IMAGE OF ELDERLY WOMAN WHO IS WEARING A LONG SKIRT OR BONNET AND SHE HAS GOT ON THE T-SHIRT THAT YOU KNOW, JUST SORT OF HANGS ON HER FRAME, AND SO I TAKE IT THAT, UNDER THAT SCENARIO, THE MUSCULAR YOUNG MAN THAT VIOLATES THE STATUTE BUT THE ELDERLY LADY -- --

I DISAGREE IT WOULD BE VIOLATING.

-- THAT WEARS THREE SIZES TOO LARGE WOULD NOT, BECAUSE --

IT IS NOT GOING TO BE REASONABLE TO HAVE A REASONABLE SUSPICION OF THE OLD LADY. HOWEVER, IT COULD BE REASONABLE FOR A HOYER OFFICER WHO KNOWS THAT -- FOR AN OFFICER WHO KNOWS THAT IS AN AUTHENTIC SHIRT, IT COULD BE REASONABLE FOR HIM TO HAVE A REASONABLE SUSPICION AND TO GO AND ASK REASONABLE QUESTIONING. THAT IS WHAT HAPPENED IN THIS CASE.

IT SAYS COLORFUL IMITATION.

BUT COLORFUL IMITATION MEANS WITH INTENT TO DEFRAUD, WITH INTENT TO DECEIVE. IF YOU LOOK UP THE DICTIONARY MEANING OF COLORFUL, WITH FRAUD, FRAUDULENT INTENT TO DECEIVE.

IF YOU LOOK FOR THE INTENT OF COLORFUL IMITATION.

CORRECT.

. FBI WHICH YOU SEE THEM IN MOVIES WHICH JUST SAYS "FBI" ON THE BACK OR "S.W.A.T. TEAM", AND YOU CAN BUY THAT, BUT YOU CAN'T BUY SOMETHING THAT IS BEING SOLD COMMERCIALY TO OTHER THAN LAW ENFORCEMENT OFFICERS ON THE SHOULDER AND WEAR IT, IF YOU ARE A BIG GUY.

ACTUALLY THEY ASKED OFFICER DAVIS, WOULD HE HAVE ARRESTED MS. SULT, THEY SHOWED A FLORIDA HIGHWAY PATROL SHIRT THAT THEY BOUGHT ON THE INTERNET AND THEY ASKED WOULD SHELF BEEN ARRESTED FOR THAT AND HE SAID NO.

BUT NOW WE ARE TALKING ABOUT WHETHER AN OFFICER, WHAT DECISIONS AN OFFICER IS GOING TO BE MAKING ABOUT WHETHER -- AN OFFICER --

I UNDERSTAND THAT BUT THAT MAY BE THE PROBLEM WITH WHY THIS STATUTE ISN'T NARROWLY TAILORED, BECAUSE YOU ARE NOW GIVING, NO, IT WOULDN'T BE IF THEY BOUGHT SOMETHING THAT SAID "FBI" BECAUSE IT IS JUST A COLORFUL IMITATION. THE PERSON THAT BOUGHT IT WOULD HAVE HAD TO DEFRAUD THE POLICE, BUT IF YOU BUY SOMETHING INNOCENTLY THAT IS AVAILABLE, THAT IS AN OFFICIAL HILLSBOROUGH COUNTY SHERIFFS DEPARTMENT, HE HAVE EVEN THOUGH -- EVEN THOUGH IS AVAILABLE AND EVEN THOUGH THEY ARE SELLING IT AND EVEN THOUGH THEY ARE MAKING MONEY, YOU BETTER NOT WEAR IT, IF YOU ARE SOMEBODY THAT SOMEONE ELSE MIGHT THINK IS A LAW ENFORCEMENT OFFICER.

THIS STATUTE MERELY ALLOWS THE OFFICE TO INVESTIGATE THAT, AND THAT IS ALL THE OFFICERS DID IN THIS CASE. THEY INVESTIGATED WHAT THEY THOUGHT WAS A UNIFORM VIOLATION.

I THOUGHT WE WERE TALKING ABOUT SOMEONE WHO WAS BEING CHARGED WITH A CRIME HERE.

THERE WAS NO CRIME BEING CHARGED YET IN THIS CASE.

BUT WE HAVE TO, YOU SEE, WE HAVE PARTICULAR FACTS OF THIS CASE.

SURE.

AND THEY COLOR, OF COURSE, BUT WE ARE TRYING, WE HAVE TO INTERPRET, YOU KNOW, THE STATUTE. WE REALIZE WE HAVE DIFFERENT CIRCUMSTANCES HERE.

CORRECT.

WHERE, APPARENTLY ON INQUIRY, YOU HAVE EVIDENCE BELOW THAT THIS WOMAN SAID I AM -- SHE HAD AN I.D. CARD.

-- I MEAN --

EVEN IN RODRIGUEZ --

WHAT WE ARE CONCERNED ABOUT IS THIS POTENTIAL WITH REFERENCE TO THE INNOCENT WEARER OF A SHIRT LIKE THIS AND WHETHER OR NOT THEY, UNDER THIS STATUTE, TECHNICALLY WOULD BE GUILTY OF VIOLATING THE STATUTE.

YOU KNOW, MY OPPOSING COUNSEL MAY CONTRADICT ME ON HIS REBUTTAL, BUT I KNOW OF NO REPORTED CASES WHERE THEY HAVE PROSECUTED JUST SHIRT ALONE.

SO YOU WOULD URGE, AT THE VERY LEAST, AN INTERPRETATION OF THIS STATUTE, THAT WOULD REQUIRE SOME INTENT TO DEFRAUD OR WHATEVER.

NO. I WOULD ASK THIS COURT TO COME OUT WITH AN OPINION THAT STATES THAT THIS STATUTE AUTHORIZES, SINCE IT IS A MISDEMEANOR, IT HAS TO OCCUR IN THE PRESENCE OF THE OFFICER, SO THIS STATUTE AUTHORIZE AN OFFICER WHO BELIEVES HE IS SEEING A VIOLATION OF THE STATUTE, TO GO AND QUESTION THAT PERSON.

WELL, IN THIS CASE, IF THE DEFENDANT HAD NOT PRODUCED THE ID, SHE STILL HAD ON THE OFFICIAL SHIRT, CORRECT?

CORRECT.

AND SHE STILL COULD HAVE BEEN PROSECUTED UNDER THIS STATUTE, ISN'T THAT CORRECT?

SHE COULD HAVE. I DON'T BELIEVE SHE WOULD. BUT SHE COULD HAVE.

THAT IS THE QUESTION HERE, IS, SEE, COULD HAVE BEEN PROSECUTED, NOW, WHETHER THIS OFFICER WOULD HAVE CITED HER FOR THAT, IS NOT REALLY THE QUESTION, BUT AN OFFICER COULD HAVE CITED HER FOR THIS. ISN'T THAT CORRECT?

YES. SHE VIOLATED THE STATUTE. BEFORE SHE PRODUCED THE I.D. CARD, SHE VIOLATED IT WHEN SHE SAID, YES, I AM, I WORK FOR YOU.

CAN I GET BACK TO WHAT JUSTICE LEWIS WAS ASKING, BECAUSE I AM NOT SURE I UNDERSTAND EXACTLY, MAKING SURE I UNDERSTAND YOUR ANSWER TO HIM. WE HAVE THE AUTHORIZED IN DISHIA, WHICH ARE THESE SHIRTS THAT ARE BEING SOLD COMMERCIALY, AND YOU ARE NOT DISPUTING --

PINELLAS COUNTY SHIRTS ARE NOT, BUT THEY WERE ABLE TO PROFFER ON FLORIDA HIGHWAY PATROL OVER THE INTERNET, YEAH.

BUT IT SAYS ANY COLORABLE IMITATION THERE OF.

COLORFUL IMITATION.

SO THAT IF THE PERSON ISN'T BUYING THE IMITATION, YOU ARE SAYING THAT IF THEY BOUGHT IT WITH THE INTENT TO DEFRAUD, THAT IT WOULDN'T FIT UNDER THE STATUTE?

I DIDN'T KNOW WHAT COLORFUL MEANT -- COLORABLE MEANT UNTIL I WENT TO THE DICTIONARY. BUT IT WAS A COLORABLE CLAIM. COLORABLE INTENT TO --

YOU ARE NOT GOING TO REACH THE SELLER --

JUSTICE BELL ASKED THAT OF OPPOSING COUNSEL. THE STATUTE DOES, SUBSECTION THREE OF THE STATUTE DOES COVER THE SELLER OF THESE ITEMS, TOO, AND THERE ARE REQUIREMENTS IN SUBSECTION 3. THEY HAVE TO KEEP IN WRITING, THEY HAVE TO KEEP IT IN WRITING FOR TWO YEARS, SO SUBSECTION 3 DOES COVER IF YOU ARE SELLING THIS, IT IS ILLEGAL TO SELL IT TO.

-- AN AUTHORIZED --

AN AUTHORIZED OFFICIAL. MY TIME IS UP. I WOULD ASK THIS COURT TO AFFIRM THE SECOND DISTRICT'S HOLDING THAT THE STATUTE CONSTITUTIONAL. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. COUNSEL, REBUTTAL, MR. MARSHAL. HOW MUCH TIME? ALL RIGHT. YOU RESERVED A LOT OF TIME THERE.

THANK YOU, YOUR HONOR.

HOW DO YOU SEE, IS THE O'BRIEN CASE DISTINGUISHABLE, AS FAR AS WHETHER THIS IS AN INCIDENTAL EFFECT ON FREE SPEECH? AS I RECALL, DRAFT BURNING, THAT IS THE CONDUCT THAT WAS BEING PUNISHED, BUT IS WEARING SOMETHING THAT HAS A MESSAGE ON IT, IS THAT, HAS ANY COURT HELD THAT TO BE NOT, NOT IMPLICATING FREE SPEECH OR, AGAIN, ARE THERE ANY OTHER CASES THAT YOU WOULD POINT US TO FROM THE U.S. SUPREME COURT?

NONE THAT I AM AWARE, YOUR HONOR, OTHER THAN THE VIRGINIA VERSUS BLACK CASE, ANOTHER RECENT DECISION THAT DEALT WITH THE CROSS BURNING CASE, AND THAT IS CITED IN THE RODRIGUEZ DECISION. IT IS ALSO IN SUPPORT OF THEIR FINDING THAT YOU CAN FIND THAT THE BURNING OF ACROSS MAY ACTUALLY HAVE SOME SYMBOLIC LEGITIMATE SYMBOLIC EXPRESSION, VERSUS THE STATE'S INTEREST IN SEEING THAT THAT KIND OF CONDUCT NOT BE DONE. SO THERE IS SUPPORT FOR THE PROPOSITION THAT THE UNITED STATES SUPREME COURT LEVEL, IN THE VIRGINIA VERSUS BLACK CASE.

SUPPORT FOR THE PROPOSITION THAT YOU NEED TO HAVE THE INTENT ELEMENT, TO THAT THIS STATUTE --

THAT IS OUR INTENT, YOUR HONOR. AGAIN, THIS POSITION HAS BEEN EASILY CURED BY THE ADDITION OF THE SPECIFIC INTENT TO DECEIVE SOMEONE, BECAUSE IF YOU DON'T HAVE THAT ELEMENT IN THE STATUTE, YOU HAVE ALL OF THESE ARGUMENTS ABOUT WHETHER OR NOT IT IS A COLORABLE IMITATION VERSUS DOES IT APPEAR TO BE AN AUTHORIZED UNIFORM --

DOESN'T THE PHRASE COLORABLE IMITATION MEAN TO SIMPLY ENCOMPASS PIRATED T-SHIRTS THAT ARE DUPLICATES, EXACT COPIES OF THE OFFICIAL T-SHIRT BUT JUST NOT MADE BY THE AUTHORIZED COMPANY, TO MAKE THOSE T-SHIRTS FOR THE DEPARTMENT?

I BELIEVE IT COULD.

WHAT IF SOMEBODY, AN ADULT 25-YEAR-OLD, BUILT-UP BOYD BUILDER, WORRY A SHIRT THAT SAID "POLICE" ON IT BUT THE WORD "POLICE" WAS WRITTEN IN CRAYON. WOULD THAT BE A VIOLATION OF THE STATUTE?

WELL --

WOULD THAT DECEIVE ANYBODY TO BELIEVE THAT THAT PERSON WAS AUTHORIZED TO BE A LAW ENFORCEMENT OFFICIAL?

THE PROBLEM THAT ARISES IS IT LEAVES IT UP TO THE INDIVIDUAL DISCRETION OF THE OFFICER. COUNSEL MENTIONS THE SITUATION ABOUT --

AREN'T THERE ABOUT 1,000 STATUTES IN FLORIDA THAT LEAVE IT TO THE INDIVIDUAL DISCRETION?

NOT WITH TERMINOLOGY "COULD DECEIVE" A REASONABLE PERSON. I HAVE SEARCHED AND SEARCHED AND SEARCHED.

DON'T OFFICERS HAVE TO DETERMINE ALL THE TIME, WHETHER A PARTICULAR STATUTE HAS BEEN VIOLATED AND INTERPRET THE STATUTE, IN AN INSTANT, TO DETERMINE WHETHER THERE WAS A VIOLATION OR NOT?

I THINK THAT GOES MORE TO PROBABLE CAUSE AND REASONABLE SUSPICION STANDARDS. I THINK WHAT WE ARE DEALING WITH HERE IS WHETHER OR NOT THE STATUTE, ITSELF, IS VOID FOR VAGUENESS, SIMPLY BECAUSE IT LEAVES TOO MUCH UP TO THE DISCRETION OF THE INDIVIDUAL OFFICER, IN MAKING A DETERMINATION AS TO WHETHER OR NOT IT FITS THE STATUTE. IF COUNSEL HAS DIFFICULTY AND TALKS ABOUT EVOLVING STANDARDS FOR THE STATUTE, AND HAS DIFFICULTY DESCRIBING TO THE COURT WHAT THOSE STANDARDS ARE OR SHOULD BE, JUST LEAVE IT UP TO THE POLICE OFFICER ON THE STREET. THAT IS ONE OF THE PROBLEMS WITH THE STATUTE AS IT STANDS. THE STANDARD OF SPECIFIC INTENT WOULD ELIMINATE THAT PROBLEM, BECAUSE THEN YOU HAVE TO HAVE EVIDENCE THAT THE PERSON INTENDED TO DECEIVE ANOTHER PERSON INTO BELIEVING THAT THAT PERSON WAS A LAW ENFORCEMENT OFFICER. IF YOU LEAVE IT THE WAY IT IS, A HALLOWEEN COSTUME VIOLATES THE STATUTE.

WHY WOULD A HALLOWEEN COSTUME VIOLATE? IF SOMEBODY WENT TO A HALLOWEEN PARTY WHERE EVERYBODY IS DRESSED UP AND WENT DRESSED UP AS A POLICE OFFICER, AND JUST STARTED DRINKING AND PARTYING WITH EVERYBODY ELSE, EATING CANDY, COULD SOMEBODY BE REASONABLY DECEIVED THAT THAT PERSON WAS A POLICE OFFICER?

WHEN THEY ARE DRIVING TO AND FROM IT, SURE, THAT --

I AM NOT SAYING DRIVING TO AND FROM IT, I AM SAYING AT THE HALL BEEN -- HALLOWEEN PERSON, DRESSED UP WITH ALL OF THE HALLOWEEN PERSONS?

COULD IT BE? THAT IS THE PROBLEM. THE QUESTION IS DID IT RECEIVE A REASONABLE PERSON?

IN BOTH RODRIGUEZ AND THIS CASE, IF THERE HAD BEEN AN INTENT TO DECEIVE ELEMENT, WOULDN'T THE INITIAL STOP OR INVESTIGATION, STILL BE APPROPRIATE, UNDER EITHER PERRY OR A, OR UNDER A PROBABLE CAUSE STANDARD?

DEPENDING ON WHAT THE OFFICER'S REASON WAS, YES, IT COULD BE.

HERE IT WAS HE THOUGHT SHE WAS ONE OF THEM AND SHE SAID, IA, I AM. HERE IS MY, HERE IS MY BADGE, AND CERTAINLY IT SOUNDS LIKE IN THAT OTHER ONE WITH RODRIGUEZ, HE DEFINITELY WANTS EVERYONE TO THINK OF HIM AS A POLICE OFFICER, SO IN TERMS OF THAT, YOU WOULD AGREE THAT BOTH THOSE CASES WOULD HAVE AUTHORIZED A STOP AND AN ARREST.

CERTAINLY IN THE RODRIGUEZ CASE, YES, AND IN THE ASSAULT CASE, WE CHALLENGED THAT ISSUE -- IN THE SULT CASE, WE CHALLENGED THAT ISSUE BOTH ON THE TRIAL LEVEL AND THE MOTION TO SUPPRESS LEVEL.

TELL US WHEN THE OFFICER WOULD NOT REALIZE A SPECIFIC INTENT READ INTO THE STATUTE. I GUESS YOU ARE SAYING HERE THAT THE STATE DOES NOT WANT US TO DO THAT, SO MAYBE THAT ALONE IS A PROBLEM, BUT HAVE WE READ SPECIFIC INTENT ELEMENTS INTO STATUTES TO SAVE THEM FROM UNCONSTITUTIONALITY?

I RECALL, IN READING SOME OF THE SUPREME COURT CASES, FLORIDA SUPREME COURT CASES, THAT THAT IS DONE, BUT WITH EXTREME RESERVATION.

WHAT IS THE STANDARD AS TO WHETHER IT IS DONE?

WHETHER OR NOT IT CURES THE INFIRMITY.

IT WOULD CURE THE INFIRMITY.

ABSOLUTELY IN THIS CASE.

THAT WOULDN'T HELP YOUR CLIENT, WOULD IT?

I STILL THINK IT WOULD, BECAUSE IN THIS SITUATION, THE CHARGE AS SHE WAS CHARGED, THE TAUGHT AS SHE WAS CHARGED, IS UNCONSTITUTIONAL -- THE STATUTE AS SHE WAS CHARGED, WOULD BE UNCONSTITUTIONAL, SO IT WOULD BE OUR POSITION THAT, WHILE SHE WAS CHARGED WITH IT AND AT THE TIME THAT SHE WAS CHARGED WITH IT THE STANDARDS THAT APPLIED AT THE CRIME LEVEL, WHICH IS THAT THIS IS A GENERAL OFFENSE, WOULD REQUIRE THE REVERSE OF THE SECOND DCA AND THE TRIAL FINDING.

THE ABS HA -- THE ANSWER THAT STATES THE POSITION IF WE WERE TO READ IN SPECIFIC INTENT THAT, REALLY MAKES IT I AM% NATURE AGO OFFICER, THE FELONY OFFENSE, AND THERE WAS AN INTENT TO, BY THE LEGISLATURE, TO DISTINGUISH BETWEEN THE MISDEMEANOR AND THE FELONY OFFENSE.

WELL, THERE MAY BE SOME DID YOUPLICITY IN THAT. -- DONE ILLICIT IN THAT. THE -- DUPLICITY IN THAT. THE IMPERSONATION IS OBVIOUSLY A MORE SERIOUS NIL OFFENSE. CLEARLY IT WOULD GIVE THE PROSECUTOR AN OPTION WHAT TO CHARGE, BASED ON THE PARTICULAR FACTS AND CIRCUMSTANCES, BUT COUNSEL RAISED THE ISSUE ABOUT WHETHER OR NOT ANYONE HAS BEEN DETAINED OR ARRESTED OR STOP OR IF THERE IS ANY CASES ABOUT JUST WEARING A HAT OR SOMETHING. I ACTUALLY REPRESENT ADD INDIVIDUAL THAT HAD A LAPD HAT AND THAT INDIVIDUAL WAS ARRESTED AND HANDCUFFED AND THE CHARGE WAS ULTIMATELY DROPPED, BUT THAT DOES PREVENT THOSE TYPES OF PROBLEMS THAT, IF SOMEONE WEARS A HAT OR SHIRT THAT SAYS LAPD OR NYPD IN THE STATE OF FLORIDA, THEY CAN BE STOPPED AN ARRESTED AND AND STOPPED AND QUESTIONED.

IF THE PERSON WAS CHARGED WITH THIS OFFENSE? BECAUSE SOMETIMES THEY WILL CHARGE MULTIPLE OFFENSES.

IT MADE NATIONAL NEWS. IT WAS THE ONLY ONE.

WHAT FREE SPEECH DOES THAT IMPLICATE, BECAUSE ONE THING IS WHETHER IT IS A STUPID STATUTE AND THE OTHER THING IS WHETHER IT IS UNCONSTITUTIONAL. RIGHT?

WELL, I THINK ONE ANSWERS THE OTHER, YOUR HONOR. I THINK THAT THE UNCONSTITUTIONALITY.

--

THE LEGISLATURE HAS THE RIGHT TO ENACT WHATEVER RIDICULOUS STATUTES THEY WANT, AS LONG AS THEY ARE CONSTITUTIONAL.

BUT I DON'T SEE HOW YOU CAN GET PAST --

SO MY QUESTION IS WHICH FREE SPEECH CONCERNS IS DOES THAT LAPD INCIDENT HAVE?

FREE SYMBOLIC EXPRESSION, AS IN THAT SPECIFIC ACT.

WHAT SYMBOLIC ACT WAS THAT?

THAT WAS ACROSS BURNING CASE.

I AM TALKING ABOUT WITH RESPECT TO LAPD.

WITH REGARD TO EXPRESSION, SOMEONE MAY PUT ON A HAT THAT SAYS LAPD, AS AN HONOR TO THOSE POLICE OFFICERS. YOU CAN SEE PEOPLE WALKING DOWN THE STREET AND THEY ARE SOLD, AND PEOPLE WALK DOWN THE STREET WITH CAPS, HATS, T-SHIRTS AND OTHERWISE.

THE QUESTION IS YOU ARE SAYING THAT ALL CITIZENS HAVE THE RIGHT TO WEAR INDICIA OF GOVERNMENTAL AGENCY BY YOUR ARGUMENT?

YES. I SAY THAT A PERSON HAS THE RIGHT TO WEAR "POLICE" OR WEAR A SHIRT OR CAP IF THEY WANT TO, THAT SAYS "NYPD", YES, UNLESS THEY HAVE A SPECIFIC INTENT TO DECEIVE SOMEONE AND INTO BELIEVING THAT THEY, THEMSELVES, ARE A LAW ENFORCEMENT OFFICER.

SO THAT THEY COULD DRESS UP AS GENERAL OF AN ARMED SERVICES.

IN THIS SITUATION THEY COULD DRESS UP LIKE ACHIEVE OF POLICE, AND UNLESS THEY HAVE THE SPECIFIC INTENT, AS STATED IN THE ALISHA CASE, IT IS NOT A CRIME, ACCORDING TO THE FOURTH CIRCUIT, IT IS NOT A CRIME TO SIMPLY PRETEND TO BE A LAW ENFORCEMENT OFFICER.

CHIEF JUSTICE: ALL RIGHT. THANK YOU BOTH VERY MUCH. THAT IS THE LAST CASE THAT WE HAVE THIS MORNING, SOUGHT COURT WILL STAND IN RECESS UNTIL NINE O'CLOCK TOMORROW MORNING.

MARSHAL: PLEASE RISE.