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## **Lorenzo Golphin v. State of Florida**

MARSHAL: PLEASE RISE. HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING, LADIES AND GENTLEMEN, AND WELCOME TO THE FLORIDA SUPREME COURT. BEFORE STARTING, I WOULD LIKE TO WELCOME THE TEACHERS AND JUDGES OF THE JUSTICE TEACHING INSTITUTE, AND, ALSO, WE HAVE WITH US TODAY ANOTHER SET OF GUESTS, THE UNIVERSITY OF SOUTH FLORIDA STUDENTS ON CONSTITUTIONAL LAW AND POLITICS, ESCORTED BY PROFESSOR McLAUCHLIN. THANK YOU FOR BEING HERE, AND WITH THAT, WE WILL CALL OUR ONE AND ONLY CASE ON THE DOCKET THIS MORNING, GOLPHIN VERSUS STATE OF FLORIDA. ARE THE PARTIES READY?

YES, YOUR HONOR.

CHIEF JUSTICE: YOU MAY PROCEED.

THANK YOU. GOOD MORNING. MAY IT PLEASE THE COURT. MR. HEIDT. MY NAME IS NOEL PELELLA, AND I REPRESENT THE PETITIONER, LORENZO GOLPHIN, WHO PLED TO DRUG CHARGES AFTER A WARRANT AND SEARCH OF HIS PERSON AND HE WAS DENIED DUE PROCESS. THE FIFTH DISTRICT COURT AFFIRMED

IN THE HEARING BELOW ON THE MOTION TO SUPPRESS, WHO TESTIFIED?

TWO OF THE POLICE OFFICERS WHO WERE THERE.

OKAY. AND

MR. GOLPHIN TESTIFIED.

AND THE TESTIMONY BY THE OFFICERS, WAS THAT THIS WAS WHERE, THEY WERE GOING BY AND THEN STOPPED THEIR VEHICLE, GOT OUT, AND IT WAS RATHER, I FORGET THE EXACT WORDS, BUT NONCHALANTLY OR RELAXED, IN A RELAXED WAY, WALKED UP TO MR. GOLPHIN, WHO WAS THE ONLY ONE THAT REMAINED, OF THESE PEOPLE THAT WERE STANDING THERE OUTSIDE, ON THE SIDEWALK, CORRECT?

ACTUALLY, AT LEAST ONE PERSON AND MAYBE MORE REMAND.

RIGHT. AND THEN THEY HAD A CONVERSATION WITH HIM.

CONVERSATION WITH HIM AND ANOTHER FELLOW WHO WAS STANDING THERE.

AT ANY RATE, AFTER HEARING THIS TESTIMONY, AS TO HOW THIS ENCOUNTER TOOK PLACE, THE TRIAL COURT CAME TO THE CONCLUSION THAT THIS WAS A CONSENTUAL ENCOUNTER. CORRECT?

THAT'S CORRECT.

AND DID THAT , BASED UPON THE TESTIMONY THAT WAS PRESENTED .

THAT'S CORRECT.

O K A Y . AND SO WHERE WE ARE , AS A REVIEWING COURT, THEN, IS THAT WE ARE BOUND BY THE DETERMINATIONS MADE BY THE TRIAL JUDGE , AS TO THE CREDIBILITY OF THOSE WITNESSES THAT LED TO THE TRIAL COURT'S CONCLUSION.

THAT'S CORRECT.

LET ME ASK YOU SPECIFICALLY , WHEN THE OFFICER TESTIFIED , SHE ASKED FOR GOLPHIN'S IDENTIFICATION, WAS IT , I WANT YOUR DRIVERS LICENSE OR IDENTIFY YOURSELF AND LET ME SEE YOUR IDENTIFICATION. WAS THERE ANY TESTIMONY SPECIFICALLY ON THAT?

IT IS NOT ENTIRELY CLEAR , BUT MY IMPRESSION , AND FROM THE RECORD IS THAT THEY ASKED THREE QUESTIONS. THEY SAID WHAT ARE YOU DOING HERE, WHAT IS UP ? DO YOU LIVE IN THE AREA, AND DO YOU HAVE ANY IDENTIFICATION.

ALL RIGHT. SO AT THAT POINT , HE SAYS YES AND PRODUCES HIS DRIVERS LICENSE. IS THAT WHAT HAPPENED?

I DON'T KNOW IF IT WAS A DRIVERS LICENSE, BUT , RIGHT , APPARENTLY

THAT IS SORT OF IMPORTANT WHAT IT IS FOR THIS CASE.

MY RECOLLECTION FROM THE RECORD IS THAT IT WAS A FLORIDA I.D. CARD NOT A DRIVERS LICENSE , BUT I COULD BE WRONG ABOUT THAT.

THAT IS WHAT THE OPINION SAYS.

ALL RIGHT. DO YOU SEE THAT, NOW , AS I AM UNDERSTANDING THIS, BECAUSE WE ARE NOT HERE TO REVIEW THE SPECIFIC FACTS OF WHETHER THIS WAS A CONSENTUAL ENCOUNTER OR NOT. THE QUESTION IS , ONCE YOU ASKED FOR IDENTIFICATION , WHETHER THAT IS GOING TO TURN THE , WHAT WOULD BE A CONSENTUAL ENCOUNTER INTO A SEIZURE , SO DO YOU NOT SEE IT IMPORTANT AS TO WHAT TYPE OF IDENTIFICATION IS BEING ASKED FOR, IN LOOKING AT WHAT , I AM ASSUMING YOU ARE PROPOSING TO BE A BRIGHT-LINE RULE?

NO. BECAUSE YOU , ONCE HE SURRENDERS IT, WHETHER IT IS A DRIVERS LICENSE OR SOME OTHER FORM OF ID , HE SURRENDERED IT. NOW HE HAS BEEN SEIZED , AND THE QUESTION IS WHY WAS HE SEIZED. AND I DON'T THINK THAT WE CAN MAKE AN ASSUMPTION FROM THE FACT THAT HE TURNED IT OVER, WITHOUT ANY PROTEST , THAT THAT MAKES IT CONSENTUAL.

WELL , AT THE POINT , THEN , IT IS TURNED OVER , THE OFFICER LOOKS AT IT, AND THEN HOW IS THE , WHAT NEXT HAPPENS , UNTIL THE WARRANT CHECK IS DONE? IN OTHER WORDS, BASED ON THE FACTS MOST FAVORABLE TO THE STATE.

ON THE FACTS MOST FAVORABLE TO THE STATE , I BELIEVE WHAT HAPPENED AFTER THAT IS AT SOME POINT INITIALLY , NOT MR . GOLPHIN BUT THE FELLOW STANDING NEXT TO HIM , COMPLAINED THAT IT WAS POLICE HARASSMENT.

AGAIN, THAT IS NOT WHAT THE POLICE

AND THE QUESTIONING CONTINUED. WHILE THEY ARE HOLDING MR . GOLPHIN 'S LICENSE, THEY CONTINUE TO ASK HIM ABOUT HIS CRIMINAL HISTORY , DOES HE HAVE ANY OUTSTANDING

WARRANTS .

TAKE YOUR POSITION , THOUGH , IS IT YOUR POSITION THAT , ONCE HE HANDS OVER THE IDENTIFICATION CARD AND THE POLICE OFFICER TAKES POSSESSION OF IT , THAT AT THAT POINT IT TURNS FROM A CONSENSUAL ENCOUNTER TO A DETENTION?

YES , AND I BASED THAT ON BROWN VERSUS TEXAS.

THAT IS THE BRIGHT-LINE RULE YOU ARE TAKING OR ASKING FOR , INSTEAD OF TOTALITY OF THE CIRCUMSTANCES.

I AM NOT SAYING THAT EVERY TIME SOMEBODY TURNS OVER THEIR LICENSE OR IDENTIFICATION , THAT IT CONSTITUTES A DETENTION , BUT IN THIS CASE IT CERTAINLY WAS.

SO ARE YOU ASKING FOR TOTALITY OF THE CIRCUMSTANCES OR BRIGHT LINE?

ABSOLUTELY , TOTALITY OF THE CIRCUMSTANCES.

SO WHAT DOES THE OFFICER GET TO DO WITH THE ID? THE PERSON VOLUNTARILY GIVES THE OFFICER THE ID. ARE YOU, THEN , SAYING

I AM NOT SURE WE CAN SAY IT IS VOLUNTARY. LET'S ASSUME , OKAY.

LET'S ASSUME THAT HE VOLUNTARILY GIVES THE OFFICER THE ID. WHAT DOES THE OFFICER DO , SIMPLY LOOK AT IT TO SEE IF THE PICTURES MATCH OR WHAT?

THAT'S RIGHT , BECAUSE WHAT ARE THEY THERE FOR? I DON'T KNOW WHY HE ASKED FOR IDENTIFICATION IN THE FIRST PLACE. THE OFFICERS ALL SAID AND THE TRIAL COURT MADE A FACTUAL FINDING, THAT THERE WAS NO REASON TO BELIEVE THAT ANY OF THESE MEN WERE INVOLVED IN CRIMINAL ACTIVITY.

DON'T WE HAVE CASE LAW OUT THERE THAT SAYS JUST ASKING A CITIZEN FOR ID IS NOT A SEIZURE?

I DON'T BELIEVE SO. I THINK WHAT THE CASES SAY IS THAT THE POLICE DON'T VIOLATE THE FOURTH AMENDMENT BY APPROACHING A CITIZEN ON THE STREET AND ASKING THEM IF THEY ARE WILLING TO ANSWER QUESTIONS, AND THEN PROCEEDING FROM THERE. NOBODY, THERE IS NO EVIDENCE THAT THAT IS WHAT HAPPENED HERE. THEY WALKED UP TO HIM AND THEY SAY, WHAT ARE YOU DOING HERE. DO YOU LIVE HERE. AND DO YOU HAVE ANY ID.

SO IT IS YOUR POSITION THAT , BEYOND THAT , THE POLICE CAN DO NOTHING.

WELL , ONCE , WHAT IS THEIR PURPOSE FOR DOING THAT IN THE FIRST PLACE? SO ONCE HE TENDERS HIS ID , AND THEY SAY, OKAY , IT MATCHES HIS PICTURE , NOW , WHAT ELSE DO WE HAVE TO DETAIN HIM FOR? JUST LIKE MR . BROWN IN BROWN VERSUS TEXAS. HE REFUSED TO GIVE HIS ID , BUT IT IS YOUR PATH HERE .

IS IT YOUR POSITION THAT , UNDER THE UNITED STATES SUPREME COURT CASES.

YES.

ON SEARCH AND SEIZURE , THAT YOU CANNOT ASK A CITIZEN FOR THEIR IDENTIFICATION IN A CONSENSUAL ENCOUNTER?

NO. I AM NOT SAYING , AGAIN , I AM NOT ADVOCATING A BRIGHT-LINE RULE THAT SAYS , EVERY TIME YOU TURN OVER YOUR IDENTIFICATION , THAT YOU HAVE BEEN SEIZED. BUT UNDER THESE

CIRCUMSTANCES, HE HAD NO REASON TO BELIEVE THAT HE WAS FREE TO GO.

BUT UNDER THESE CIRCUMSTANCES, ACCORDING TO YOUR BRIEF, THAT APPROXIMATELY TWO MINUTES AFTER HIS ID WAS SURRENDERED, AFTER THE OFFICER RAN HIS NAME TO CHECK FOR OUTSTANDING WARRANTS, THE PETITIONER STATED HE MIGHT BE SUBJECT OF A COUNTING WARRANT.

HE MIGHT. HE WASN'T SURE. THAT'S CORRECT.

BUT THIS WAS ALL SOMETHING THAT HE VOLUNTEERED.

NO. I DON'T BELIEVE SO, YOUR HONOR, BECAUSE WHEN THE POLICE STOPPED HIM AND SAY, WHAT ARE YOU DOING HERE, DO YOU HAVE SOME IDENTIFICATION, DO YOU LIVE IN THE AREA, AND HE ANSWERS ALL THOSE QUESTIONS, AND THERE IS NO EVIDENCE THAT HE DIDN'T. NOW, WHAT REASON DO THEY HAVE TO HOLD HIM? HE HAS DONE WHAT THEY ASKED.

WOULD YOU FOLLOW-UP ON THAT, THEN, A MINUTE AGO YOU SAID THAT, ONCE THEY CHECKED HIS IDENTIFICATION AND ESTABLISHED IT WAS HIM OR WHATEVER, THAT AFTER THAT, AND HOLDING THE DRIVER'S LICENSE OR THE IDENTIFICATION, WHATEVER IT WAS, THAT IT BECAME AN ILLEGAL DETENTION?

ABSOLUTELY.

MY QUESTION TO YOU, REALLY, IS, WOULD YOU FOLLOW-UP ON THAT. WHY DID IT BECOME AN ILLEGAL DETENTION AFTER THAT?

BECAUSE ONCE THEY HAVE ESTABLISHED HIS IDENTITY, THEY HAVE NO REASON TO DETAIN HIM ANY FURTHER. THEY EITHER HAVE TO GIVE HIM HIS LICENSE BACK OR TELL HIM OR ASK HIM, SIR, WOULD YOU MIND SUBMITTING TO SOME FURTHER QUESTIONING, BECAUSE AS I SAID, WE START FROM THE POSITION WHERE THEY APPROACHED HIM FOR NO REASON WHATSOEVER.

GO TO BROWN VERSUS TEXAS AND TELL US WHAT THE CIRCUMSTANCES WERE IN THAT CASE AND WHAT THE HOLDING OF THE U.S. SUPREME COURT WAS IN THAT CASE.

THEY WENT UP TO MR. BROWN AND AN OTHER FELLOW IN A MALL, AND THE FIRST, AND THE SECOND FELLOW WALKED AWAY JUST LIKE IN OUR CASE. MR. BROWN REMAINED. THEY SAID WHO ARE YOU OR, YOU KNOW, IDENTIFY YOURSELF AND HE REFUSED, AND THEY ARRESTED HIM FOR REFUSING TO IDENTIFY HIMSELF. JUST LIKE IN OUR CASE, THE STATE'S POSITION NOW IS THE FACT THAT THIS OTHER FELLOW WALKED AWAY, INDICATES THAT MR. GOLPHIN, IN TENDING TO RENEW HIS LICENSE, THAT IT WAS VOLUNTARY, BECAUSE HE DIDN'T PROTEST.

COULD YOU MAKE SOME ARGUMENT ALONG THOSE LINES THAT THERE WAS A SECOND PERSON WHO ATTEMPTED TO WALK AWAY AND WAS NOT ALLOWED TO WALK AWAY?

NOT IN OUR CASE. IN BROWN, THE SECOND FELLOW WALKED AWAY. NOBODY STOPPED HIM, AND THE SAME THING HAPPENED HERE. SOMEBODY WALKED AWAY. ONE OR TWO FELLOWS WALKED AWAY AND THEY DIDN'T STOP HIM. AND IN OUR CASE, SOME, MR. GOLPHIN PROTESTED THAT IT WAS POLICE HARASSMENT.

IS IT YOUR CONTENTION THAT IT WAS ILLEGAL BECAUSE THE POLICE DETAINED HIM FOR OTHER PURPOSES THAN TO DETERMINE

BROWN VERSUS

IS THAT WHAT YOUR POSITION IS?

BROWN VERS US TEXAS SAYS YOU CANNOT DETAIN SOME BODY, STRICTLY FOR THE PURPOSES OF DETERMINING THEIR IDENTITY. ' I AM TRYING TO DETERMINE THE ISSUE HERE WITH REFERENCE TO CONSENT, BECAUSE YOU SEEM TO BE CONCEIVING THAT THERE MAY HAVE BEEN A CONSENT TO TALK TO THE POLICE TO BEGIN WITH , AND EVEN

NO , I AM NOT . I AM SORRY , IF I GAVE THAT IMPRESSION.

LET'S ASSUME THAT IF I GAVE THAT IMPRESSION.

LET'S ASSUME THAT THE EVIDENCE SUPPORTS THE DETERMINATION THAT THE INITIAL DISCUSSION WITH POLICE AND PRODUCING IDENTIFICATION , WAS CONSENTUAL.

ALL RIGHT.

HOW DOES THAT AFFECT YOUR POSITION? DO YOU NEED THAT AS A BASIS TO MAKE YOUR ARGUMENT THAT THE FURTHER DETENTION WAS ILLEGAL , OR DO YOU STILL HAVE GROUNDS

NO. WHETHER OR NOT , I THINK THE SITUATION IS MORE LIKE FLORIDA VERSUS ROYER , WHERE MR . ROYER , DIDN'T PROTEST AT ALL, WHEN THEY ASKED HIM FOR HIS IDENTIFICATION AND HIS TICKET AND THEY HELD HIM. HE DIDN'T PROTEST AT ALL. HE FOLLOWED THEM TO A ROOM , WHERE THE INTERROGATION TOOK PLACE AND THEY EVENTUALLY OBTAINED CONSENT TO SEARCH HIS LUGGAGE, AND THAT WAS FOUND. WHETHER OR NOT IT STARTED OUT AS A CONSENTUAL ENCOUNTER , IT WAS AN UNLAWFUL DETENTION, BECAUSE THEY HAD NO REASON TO HOLD HIM , ONCE HE HAD IDENTIFIED HIMSELF. AND AT THAT POINT , BECOMES THEIR OBLIGATION TO INFORM HIM , YOU KNOW , OKAY , YOU KNOW , THIS SEEMS TO CHECK OUT. WOULD YOU MIND ANSWERING SOME MORE QUESTIONS.

JUSTICE LEWIS HAS A QUESTION.

HOW WOULD YOU DEAL WITH OR DISCUSS THE DELAROSA DECISION FROM THE LEFT CIRCUIT THAT APPLIES THE FLORIDA SUPREME COURT PRECEDENT IN THIS AREA THAT WAS SOMEWHAT AFTER THE THOMPSON CASE , AND IT SEEMED TO BE MAY BE A LITTLE CONFLICT , BUT IT IS , ALSO , AN ENCOUNTER. IT IS BEHIND THE GATE. COULD YOU TALK ABOUT THOSE. YOU SEEM TO BE ARGUING , ALMOST , JUDGE CLERK'S DISSSENT.

I HAVE TO CONFESS , I AM EMBARRASSED BUT I AM NOT FAMILIAR WITH THE FACTS IN THOSE CASES. I AM SORRY .

LET ME GO BACK TO, THEN , IF YOU ARE NOT FAMILIAR WITH THE FACTS OF THOSE CASES, I JUST WANT , THE ISSUE THAT IS IMPORTANT TO ME IS TO UNDERSTAND THAT YOU HAVE AGREED THAT HE VOLUNTARILY GAVE OVER HIS IDENTIFICATION.

NO. I AM SORRY IF I GAVE THAT IMPRESSION.

WE ARE SAYING THAT WE ARE GOING TO TAKE AS GIVEN, WHAT THE JUDGE HAS SAID , THAT IT WAS VOLUNTARILY GIVEN OVER.

OKAY.

AND THAT THAT IS APPROPRIATE FOR THE POLICE TO BE ABLE TO SAY LET ME SEE YOUR IDENTIFICATION, TO SOMEBODY ON THE STREET. THEY CAN WALK AWAY BUT THAT THAT IS AN APPROPRIATE QUESTION TO ASK. IS THAT CORRECT?

THAT IS AN APPROPRIATE QUESTION TO ASK.

AN APPROPRIATE QUESTION FOR POLICE TO BE ABLE TO GO OVER TO ANY CITIZEN , BECAUSE THIS WOULD BE ANY CITIZEN, AND SAY , EXCUSE ME , I WOULD LIKE TO TALK TO YOU AND I WOULD LIKE TO JUST SEE YOUR IDENTIFICATION .

THE QUESTION , AS I READ IT FROM , AND TO ANSWER JUSTICE LEWIS, YOUR QUESTION , I FAMILIARIZED MYSELF WITH THE UNITED STATES SUPREME COURT CASES , BECAUSE THOSE ARE THE ONES THAT I FELT ARE CONTROLLING HERE, BECAUSE OF THE DECISION IN FLORIDA THAT SAYS THE UNITED STATES SUPREME COURT DECISIONS ARE CONTROLLING AND FOURTH AMENDMENT QUESTIONS, BUT I THINK THE QUESTION THAT IS PROPER IN THOSE CIRCUMSTANCES , ABSENT ANY REASONABLE BELIEF , THAT THERE IS CRIMINAL ACTIVITY AFTER AN OTHER , I S WOULD ACTIVITY AFOOT , IS WOULD YOU MIND ANSWERING SOME QUESTIONS AND PROCEEDING FROM THERE. EITHER NO , OR , WELL , THEN

WOULD YOU MIND , I WOULD LIKE TO , WHAT IS YOUR NAME , AND MAY I SEE SOME IDENTIFICATION.

AFTER THEY HAVE ANSWERED THE QUESTION ABOUT WOULD YOU MIND ANSWERING SOME QUESTIONS.

SO WHAT MADE , WHAT DO YOU CONTEND MADE THE GIVING OF THE ID IN THIS CASE , INVOLUNTARY ? YOU SAID IT WAS NOT VOLUNTARY.

RIGHT.

YOU WERE ASKED A QUESTION. YOU SAID THE GIVING OF THE ID WAS NOT VOLUNTARY. WHAT MADE IT INVOLUNTARY?

BECAUSE THEY STARTED OUT , NOT BY SAYING EXCUSE ME, SIR, WOULD YOU MIND ANSWERING A FEW QUESTIONS, BUT WHAT ARE YOU DOING HERE, AND DO YOU LIVE AROUND HERE , WHICH IMPLIES THAT NOW IS HE THE SUSPECT IN SOME KIND OF INVESTIGATION , BUT REALLY THERE IS NO INVESTIGATION.

BUT CIRCUMSTANCES WHERE YOU HAVE THESE PEOPLE, WHAT TIME OF THE DAY, THIS WAS NIGHT , RIGHT?

ELEVEN O'CLOCK AT NIGHT.

ELEVEN O'CLOCK AT NIGHT , PEOPLE HANGING OUT IN AN AREA KNOWN FOR DRUGS AND PROSTITUTION AND THOSE KINDS OF THINGS, AN OFFICER CANNOT COME UP TO A CITIZEN AND SAY WHAT ARE YOU DOING HERE OR WHO ARE YOU OR ANY OF THAT?

MY UNDERSTANDING OF THE CASE LAW IS THEY FIRST HAVE TO ESTABLISH CONSENT FOR THE ENCOUNTER , THAT BEING IN A HIGH CRIME AREA IS NOT REASONABLE

WHICH CASE DO YOU SAY ESTABLISHES CONSENT TO THE ENCOUNTER. WHICH ONE ARE YOU RELYING ON?

PONCE , BROWN VERSUS TEXAS .

HOW IS IT REFLECTED? IT MUST BE A YES, I AGREE?

YES. FLORIDA VERSUS ROYER, I THINK IT IS CLEAR FROM FLORIDA VERSUS ROYER , THAT YOU FIRST HAVE TO ESTABLISH THAT THE PERSON AGREES TO THE DETENTION .

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL. I JUST WANT TO REMIND YOU OF THAT. BEFORE I

CALL FOR THE RESPONDENT, I JUST WANTED TO BRING TO EVERYONE'S ATTENTION WHAT MIGHT BE OBVIOUS, WHICH IS THAT JUSTICE CANTERO IS NOT WITH US THIS MORNING. THAT IS BECAUSE HE HAS EXPERIENCED A DEATH IN HIS FAMILY, AND HE HAD TO GO DOWN TO MIAMI, BUT HE WILL BE PARTICIPATING IN THE ORAL ARGUMENT, THROUGH WATCHING THE VIDEOTAPE AND WILL BE PARTICIPATING IN THE DELIBERATIONS. ALL RIGHT. YOU MAY PROCEED.

MAY IT PLEASE THE COURT. MY NAME IS WESLEY HEIDT AND I REPRESENT THE STATE, RESPONDENT IN THIS CASE. THE FIRST POINT THE STATE WOULD LIKE TO MAKE IS THE FACT THAT THIS CASE AROSE BELOW, AT THE TRIAL LEVEL, BASED UPON CONFLICT WITH BAYAS OUT OF THE WITH BAEZ OUT OF THE FOURTH DISTRICT COURT OF APPEAL. THE DEFENSE ATTORNEY ASSERTED BAEZ AND ARGUED BAEZ AND ASSERTED CONFLICT AND DETERMINED THE TRIAL COURT'S RULING. THIS COURT REVERSED BAEZ IN ITS NOVEMBER OPINION, SO IT IS THE STATE POSITION THAT THIS COURT HAS NO JURISDICTION AND SHOULD AFFIRM THE FIFTH DISTRICT COURT OF APPEAL.

THE BAEZ THAT CAME FROM THIS COURT HAS SOMEWHAT ALTERED THE RATIONALE OR LEGAL PRINCIPLE INVOLVED, DUE TO THE NATURE AND TOTALITY OF THE CIRCUMSTANCES, WAS IT NOT?

BAEZ WAS AN INTERESTING OPINION IN WHICH THIS COURT REVERSED THE FOURTH, FOLLOWING THE PRIOR TO LINE RULE AND FOLLOWING WITH THE TOTALITY OF THE CIRCUMSTANCES AND, IN THAT SITUATION, FOUND THAT TOTALLY, IT IS MY UNDERSTANDING, SUPPORTED THE FINDING OF THE FACT THAT THERE WAS NOT A DETENTION IN THAT SITUATION.

MAY I PROPOUND THIS INQUIRY TO YOU. IS THERE A DISPUTE IN THE RECORD THAT THERE WAS A K-9 UNIT ON THE SCENE?

NOT ACCORDING TO THE STATE. IF YOU LOOK AT THE RECORD BELOW, THE SUPPRESSION HEARING INVOLVED THREE WITNESSES. IT WAS THE TWO OFFICERS WHO INITIALLY ENGAGED THE PETITIONER, THE DEFENDANT IN THIS CASE, AND THE PETITIONER, HIMSELF, TESTIFIED, AND WHEN YOU REVIEW THE TESTIMONY OF THE HEARING, THE OFFICER'S TESTIMONY WAS QUITE A BIT DIFFERENT THAN WHAT THE PETITIONER SAID. THE OFFICER SAID THEY WERE ON ROUTINE PATROL. SAW A GROUP OF FOUR, FIVE OR SIX INDIVIDUALS. PULLED OVER ON THE OFFICER'S SIDE OF THE ROAD. PULLED UP, PARKED, WALKED UP AND CASUALLY ENGAGED IN A CONVERSATION. IT WAS NOT JUST THREE QUESTIONS AND HE WALKED UP AND IMMEDIATELY STARTED GRILLING THEM. THERE WAS LAUGHTER AND JOKING BACK AND FORTH. THIS HAPPENS ROUTINELY ON THE STREETS OF AMERICA EVERYDAY.

WAS THE DISPUTE AT WHAT POINT THAT THE K-9 CAME ON THE SCENE?

THE PEOPLE SAID THEY BROUGHT A DOG UP AND THEY COULDN'T LEAVE AND IT IS NOT CREDIBLE.

I UNDERSTAND THE CREDIBILITY ISSUES AND JUSTICE WELLS CERTAINLY BROUGHT THAT HOME THIS MORNING, BUT YOU SAY THERE IS NO DISPUTE THAT A K-9 UNIT WAS BROUGHT ON THE SCENE. THAT IS AN ESTABLISHED FACT, I WOULD ASSUME, NOT A CREDIBILITY ISSUE.

I WOULD DISAGREE WITH THAT. THE OFFICER WHO WAS RESPONSIBLE FOR THE K-9 UNIT WAS MALE. THE TWO OFFICERS WHO INITIALLY ENGAGED THE PETITIONER WERE FEMALE, SO THERE WAS TESTIMONY BY THE TWO, BOTH OFFICERS THAT, HE CAME. NOW, ADMITTEDLY

IT IS UNDISPUTED. THE OFFICERS TESTIFIED THAT A K-9 UNIT CAME TO THE SCENE.

THEY NEVER REFERENCED. THE MALE OFFICER CAME AND FRISKED HIM, PURSUANT TO THE WARRANT. WHETHER THE K-9 WAS THERE, IS NOT CLEAR.

HE WAS ON THE SCENE. I DIDN'T MEAN IN THE CA R.

YES. THERE WAS A K-9 UNIT SOMEWHEREIN THE VICINITY.

IS THERE A DISPUTE AS TO WHEN?

YES. BOTH OFFICERS WERE ASKE D THAT QUESTION IN THE RECORD AND GAVE TESTIMONY THAT HE WAS CALLED UP AFTER THE WARRANT WAS DISCOVERED.

ONLY AFTER THE WARRANT.

THAT IS THE TESTIMONY BUTPURSUANT TO THE TESTIMONY, IT IS I N DI RECT.

AT SOME POINT , THE OFFICERS ASKED FOR IDENTIFI CATION , AND WHAT IS THE STATE 'S POSITION AS TO EXACTLY WHAT DID THE OFFICERS SAY TO THE DEFENDANT? ABOUT THE IDENTIFICATION .

THEY

SAID MAY I SEE SOME IDENTIFICATION, OR HOW WAS - -

AGAIN , THE ARGU MENT BY THE DEFENSE BELOW WAS SIMPLY HANDING THE IDENTIFICATION OVER PUR SUANT TO A SE IZURE AND STOP. THEY ASKED WHAT LANGUAGE WAS U SED AND THEY ASKED WHAT HEWAS DO ING THERE , SPECIFICALLY THE PETITIONER AND THE OFFICER ASKED WHAT HE WAS UP TO AND DID HE HAVE ANY IDENTIFICATION. HE PRO DUCED A FLORIDA IDENTIFICATION CARD.

NOW , AT THAT POINT , LET ME GO BACK TO WHAT I AM CONCERNED ABOUT , IS WHETHER A FORMER BAIT AND S WITCH WHET HER A FORM O F BAIT AND SW ITCH CARD , WHICH IS THAT IT MAY BE REASONABLE TO SAY, AND WE ARE WRITING IF WE W RITE ON THIS , SORT OF FOR WHAT YOU WOULD CONDONE AS FAR AS POLICE OFFICER CON DUCT , TO SA Y THAT, SINCE THERE WAS NO SUSPICION OF ANY CRIMINAL ACTIVITY , AND THAT IS ESTABLISHED, THAT POLICE OFFICERS COULD GO UP TO INDIVIDUALS WHER EVER THEY AREIN THIS STATE , COUNTRY , ANDJUST SAY, I WOULD LIKE TO SEE IDENTIFICATION. AND WE WOULD SAY THAT T HEY CAN WALK AWAY , BUT THEY MAY SAY , YES, I AM GOING TO PROD UCE M Y IDENTIFICATION. BUT THEY DIDN'T SAY I WOULD LIKE TO SEE YOUR IDENTIFICATION , BECAUSE I WOULD LIKE TO COND UCT A WARRANT CHECK. IN OTHER WORDS NOW WE ARE TALKING NOT ABOUT WHAT IS GOING ON. THIS IS FUNNY THAT THEY ARE HANGING HERE AT ELEVEN O'CLOCK.I D ON'T HAVE SUSPICIOUS US BEHAVIOR. BUT I AM REALLY CURIOUS ABOUT WHAT ELSE , MAYBE THAT THEY HAVE BEEN INVOLVED IN SOMETHING IN THE PA ST, SO HOW COULD , WOULDN'T IT BE A DIFFERENT SITUATION , IF THEY HAD SAID , I WOULD LIKE TO SEE YOUR IDENTIFICATION , BECAUSE I WANT TO CONDUCT A WARRANT SEARCH OR WARRANT CHECK, BUT HERE, THAT DIDN'T HAPP EN. THEY, THEN , RETAINED THE IDENTIFICATION, AND NOW THEY ARE CONDUCTING A WARRANT SEARCH, S O AT THAT POINT , WOULDN'T THIS ENCO UNTER GO FROM BEING A CONSENTUAL ENCOUNTER , TO A DETENTION ?

NO. THIS IS A CONTINUATION OF THE CONSENTUAL NATURE. THEY SIMPLY ASKED FOR IDENTIFICATION.

WELL , BUT, THEY DIDN'T SAY I WOULD LIKE TO SEE IDENTIFICATION, SO THAT I CAN RUN A WARRANT CHECK.

NO. THE RECORD DOES NOT REF LECT .

SO ARE WE SAYING POLICEOFFICERS CAN GO UP TO ANYBODY IN THIS COUNTRY AND ASK FOR

IDENTIFICATION AND THEN RETAIN IT FOR A PERIOD OF TIME, FOR THEM TO CONDUCT A WARRANT CHECK?

I BELIEVE THAT IS WHAT WE ARE SAYING.

THAT IS WHAT WE WOULD BE SAYING.

THE COURT HAS ALREADY SAID THAT. THE TRIAL COURT BELOW RELIED UPON LIGHTBOURNE, THE FIFTH DISTRICT COURT OF APPEAL REFERENCED LIGHTBOURNE, AND WHEN YOU READ LIGHTBOURNE, OFFICER MCGOWAN APPROACHED THE PARK CAR, ASKED THE DEFENDANT A FEW SIMPLE QUESTIONS AS TO THE ADDRESS AND REASON FOR HIS LOCATION, AND RAN A ROUTINE CHECK AND THIS COURT FOUND IT TO BE A PERRY STOP, AND NOT UNDER SUSPICION.

SO UNDER POPPELL, BECAUSE LIGHTBOURNE WAS WRITTEN BEFORE POPPELL, RETAINING IDENTIFICATION TO CONDUCT A WARRANT CHECK, DOES NOT CONVERT A CONSENSUAL ENCOUNTER INTO A NEXT LEVEL ENCOUNTER.

AGAIN, YOU LOOK AT THE TOTALITY OF THE CIRCUMSTANCES, WHICH IS WHAT THE TRIAL COURT DID, AND HE FOUND IT TO BE CONSENSUAL. SIMPLY HANDING OVER A DRIVERS LICENSE, THERE HIS CASE AFTER CASE CITED IN THE STATE'S BRIEFS, TALKING, REFERENCING THE FACT THAT ASKING FOR IDENTIFICATION, LOOKING FOR IDENTIFICATION, DOES NOT RISE TO

IS IT BECAUSE THE PERSON COULD FEEL, WHEN YOU HAVE THAT IDENTIFICATION WHICH YOU NEED, THAT THEY COULD NOW SIMPLY WALK AWAY AND BE ON THEIR WAY?

AGAIN, THIS WAS IDENTIFICATION CARD OF A PEDESTRIAN. THIS WAS NOT A DRIVERS LICENSE. I THINK IT GOES IN TO THE TOTALITY. THIS IS NOT A SITUATION OF A STOPPED CAR WITH A PARKED CAR AND A SITUATION WHERE YOU NEED TO DRIVE OFF.

LOOKING AT THE CIRCUMSTANCES AND THE FACT THAT IT WAS A PEDESTRIAN, WHAT IF IT WAS THE FACT THAT HE HANDED OVER HIS DRIVERS LICENSE AND WAS A PEDESTRIAN. DOES IT MATTER THAT IT WAS FLORIDA IDENTIFICATION CARD, WHICH I AM NOT EXACTLY SURE WHAT THOSE ARE.

THIS CAME OUT IN CROSS-EXAMINATION OF THE DEFENDANT THAT THE ADDRESS ON THERE WAS A 1995 ADDRESS. HE DID NOT LIVE THERE, SO IT WAS AN INCORRECT ADDRESS.

WHY DOES IT MAKE ANY DIFFERENCE THAT IT WAS AN IDENTIFICATION CARD OR A DRIVERS LICENSE? THEY ARE RETAINING SOMETHING THAT THE DEFENDANT OWNS. THEY HAVE SOMETHING THERE. WOULD YOU COME BACK AND ADDRESS, HOW DO WE DEFINE WHETHER OR NOT THERE IS A DETENTION OR NOT, AT THE TIME THAT THEY ARE QUESTIONING THE PERSON ON THE STREET, THAT IS, HOW DO WE DETERMINE WHETHER IT IS A DETENTION OR A VOLUNTARY ENCOUNTER?

LIKE WE ALREADY DO.

I DON'T NEED TO KNOW HOW WE ALREADY DO. WHAT I NEED IS AN EXPLANATION, NOW, AS TO HOW DO WE, WHAT IS THE FORMULA THAT WE HAVE SET OUT IN CASE LAW?

I THINK ANYTHING THAT IS CONSENSUAL. AS SOON AS HE ASKED, CAN I LEAVE, AS SOON AS HAVE N'T WE SAID THAT WE VIEW IT FROM THE STANDPOINT OF AN OBJECTIVE TEST?

YES, SIR.

AND THAT IS THAT, IF A, ON AN OBJECTIVE BASIS, IF A CITIZEN WOULD REASONABLY BELIEVE

THAT HE WASN'T FREE TO LEAVE, THEN , IT IS A DETENTION . IS THAT CORRECT?

IF A REASON ABLE PERSON BELIEVES THEY ARE NOT FREE TO LEAVE , YES.

SOME BODY THAT HAS NOW GIVEN THE POLICE THE DRIVERS LICENSE OR OTHER FORM OF IDENTIFICATION , DO YOU BELIEVE THAT THAT PERSON WOULD FEEL THAT THEY WERE FREE TO LEAVE , WITHOUT RECOVERING THAT IDENTIFICATION OR DRIVERS LICENSE?

THEY COULD ASK FOR THE IDENTIFICATION BACK , AND IF IT IS NOT, THEN AT THAT POINT , YOU WOULD HAVE A DETENTION .

WHY IS THE BURDEN ON THE CITIZEN ON THE STREET , TO HAVE TO ASK FOR THE IDENTIFICATION BACK , IF THE ONLY REASON THAT THE IDENTIFICATION IS ASKED FOR TO BEGIN WITH , IS JUST TO SEE IF THEY HAVE IDENTIFICATION? WHY IS THE BURDEN ON THE CITIZEN IN THAT ENCOUNTER , TO HAVE TO REQUEST THAT BACK , IN ORDER TO BE UNDETAINED OR WHATEVER, BEFORE THEY LEAVE? WHY ISN'T THE BURDEN ON THE POLICE, NOW , TO JUSTIFY , BEYOND THE REQUEST FOR THE IDENTIFICATION, TO HAVE IDENTIFICATION? NOW , TO DO SOMETHING ELSE.

WELL , TWO POINTS. FIRST OF ALL , THE ARGUMENT AS FAR AS THE LENGTH OF DETENTION WAS NEVER RAISED BELOW. THE ARGUMENT BELOW IS , YOU HAND OVER THE DRIVERS LICENSE AND THAT CREATES DETENTION , AND THERE IS NUMEROUS CASES THAT HOLD TO THAT.

SO THE ARGUMENT WASN'T ADVANCED THAT , BEYOND HOLDING THE LIES PHONES OTHER PURPOSES THAT, IT BECAME A DETENTION?

THE ARGUMENT BELOW IS BASED UPON BAEZ , HANDING OVER THE LICENSE AND REDUCED TO DETENTION , AND BECAUSE IT IS CONSENT , THE BURDEN IS THERE IS NO EVIDENCE BELOW THAT HE WAS TRYING TO LEAVE.

DON'T WE LOOK AT THE TOTALITY OF THE CIRCUMSTANCES IN THESE CASES? I MEAN, THAT IS THE TEST , RIGHT?

CORRECT.

WE DON'T LOOK AT ONE ISOLATED THING THAT OCCURRED.

AND YOU LOOK , THE TWO PEOPLE DO WALK AWAY . WHEN THEY FIRST PULL UP, ONE WALKS AWAY . A SECOND PERSON WHEN THEY WALK UP TO THE GROUP , WALKS AWAY . THE DEFENDANT , IT IS NOT HIS BURDEN. IT IS HIS BURDEN TO SAY THAT HE WANTS TO WALK AWAY , AND SIMPLY BECAUSE WALKING AWAY WOULD EVIDENCE THE FACT THAT HE DOESN'T WANT TO BE THERE. IF HE HAD DONE THAT AND THE OFFICER STOPPED HIM , WE HAVE A SITUATION LIKE

LET'S GO BACK TO BROWN VERSUS TEXAS. WHAT IS THE PRINCIPLE THAT COMES OUT IN BROWN VERSUS TEXAS?

THAT IS EXACTLY WHAT I JUST SAID. IF AN OFFICER WALKS UP TO A SITUATION AND THE INDIVIDUAL TURNS AND WALKS AWAY AND THE OFFICER SAYS , STOP , I AM NOT THROUGH WITH YOU YET. COME BACK. WE ARE STILL ENGAGING IN CONVERSATION .

THE PRINCIPLE IS THAT THE POLICE CANNOT DETAIN A CITIZEN AND DEMAND IDENTIFICATION , CORRECT?

WITHOUT REASONABLE SUSPICION .

CHIEF JUSTICE: JUSTICE WELLS HAS A QUESTION.

THE TOTALITY OF THESE CIRCUMSTANCES , AS I UNDERSTAND WHAT THE DISTRICT COURT'S OPINION IS BASED UPON , IS THAT THE TRIAL COURT HERE , AFTER HEARING THE EVIDENCE , MAKE A DETERMINATION THAT THIS WAS A CONSENTUAL SITUATION , AND THAT IT WAS CONSENTUAL THROUGH THE TIME THAT THE MAN SAID , THERE IS AN OUTSTANDING WARRANT ON ME . IS THAT

THAT IS WHAT THE TRIAL COURT FOUND AND THE FIFTH AFFIRMED, YES.

THAT IS WHAT THE FIFTH DISTRICT DETERMINED.

CORRECT.

SO THOSE ARE THE FACTS THAT WE ARE DEALING WITH IN THIS CASE .

CORRECT.

WOULD YOU DEAL WITH THE SCOPE OF TIME AND THE TOTALITY THAT WE ARE TALKING ABOUT. HERE IT APPEARS THAT A FAIR READING OF IT BASED UPON THE TRIAL COURT'S FINDINGS , THAT THE SEARCH OCCURRED THROUGH SOME TYPE OF RADIO COMMUNICATION STANDING IN THE PRESENCE OF THOSE INDIVIDUALS . IF THE SAME , THE IDENTICAL FACTS OCCUR BUT THE OFFICER GOES BACK TO THE VEHICLE AND REMAINS IN THE VEHICLE FOR 10 , 15 , 20 MINUTES , HE REALLY HAS , STILL , THE SAME FACTS WITH REGARD TO THE DELIVERING OF THE THING , THE IDENTIFICATION . BUT YOU ADD THOSE OTHER FACTORS ON TO IT , DOES THAT THEN CONVERT IT INTO A SEIZURE ? DO WE LOOK AT IT FROM A TIME FRAME , OR IS IT JUST MOMENT OF SURRENDER OF THE IDENTIFICATION?

IT CANNOT BE THE MOMENT , BECAUSE THERE ARE NUMEROUS CASES SAYING THAT YOU CAN HAND OVER IDENTIFICATION. JUST LIKE WHEN YOU CONSENT TO SOMEBODY TO SEARCH YOUR LUGGAGE, THAT CONSENT IS TO SEARCH THE LUGGAGE. AS SOON AS YOU SAY THE CONSENT IS OVER. I AM TIRE OF YOU SEARCHING MY LUGGAGE , IT ENDS. WE PUT THE BURDEN UPON THE DEFENDANT TO MAKE HIS CONSENT. AT THAT MOMENT THEY TURN THE DRIVERS LICENSE OVER. TIME IS A FACTOR AND IT IS THE TOTALITY OF THE CIRCUMSTANCES, BUT IN THAT SITUATION , OFCOURSE IN THIS SITUATION TO COME BACK WITH AN ACTIVE WARRANT , HIS TIMING WOULD BE UNTIL HE ANSWERED THE QUESTION WITH THE OFFICER, WITHIN A COUPLE OF MINUTES.

I GUESS THAT IS WHERE MY PROBLEM IS HERE , WHICH IS THAT YOU WOULD SAY, WELL , IF YOU GIVE YOUR CONSENT TO SEARCH LUGGAGE AND THEN IT LASTS FOR AS LONG AS THE , UNTIL YOU SAY STOP SEARCHING MY LUGGAGE , BUT HERE I WOULD LIKE TO SEE IDENTIFICATION , IT IS , SO AT THAT POINT HE GIVES IDENTIFICATION, LOOKS AT THE PERSON, IT IS THE SAME PERSON , WHATEVER, THAT THE POLICE OFFICER DOESN'T TESTIFY THAT THE FACT OF THAT IDENTIFICATION , THAT IT MIGHT HAVE BEEN FALSE, THAT THERE WAS A CONCERN BECAUSE OF THE IDENTIFICATION . SO AT THAT POINT , THE NATURE OF THE REQUEST , WHICH WAS , MAY I SEE IDENTIFICATION , NOW , THE OFFICER DECIDES I WANT TO USE THAT TO CONDUCT A WARRANT CHECK. SO I , MAYBE YOU DON'T , I SEE THAT AS , NOW , BECOMING A DIFFERENT LEVEL OF THE ENCOUNTER , HE DIDN'T SAY, WELL , NOW I HAVE THIS , WOULD YOU MIND WAITING HERE A COUPLE OF MINUTES. I WOULD LIKE TO RUN A WARRANT CHECK. AS I AM TO RUN A WARRANT CHECK. AS I SEE IT , HE TAKES IT FROM HIM AND STARTS THE TALK AND IS GOING BACK AND FORTH AND AT THIS POINT THE DEFENDANT MUST KNOW WHAT IS HAPPENING AND AT THAT POINT HE SAID I HAVE GOT A WARRANT AND, QUOTE , VOLUNTARILY , BUT DOESN'T IT CHANGE THE NATURE FROM SAYING I WANT TO SEE IDENTIFICATION, TO I AM RETAINING IT TO CONDUCT A WARRANT?

THE STATE'S POSITION IS NO. WHEN THE OFFICER TAKES THE IDENTIFICATION AND HANDS IT TO

OFFICER DECHAMPS. AND SHE SAID ARE WE GOING TO FIND ANYTHING, AND HE SAID NO , SO THAT DOESN'T ADDRESS THE DEFENSE AND THE QUESTION OF THE OFFICER AND THE EXACT TIME FRAME THERE , SO A COUPLE OF MINUTES IS REQUESTED.

SO THE QUESTION BEFORE THIS COURT IS WHETHER OR NOT THE RETENTION OF THE ID MADE THIS A SEI ZURE.

CORRECT.

AND SO IF THE , IF WE HAVE THE SAME KIND OF SITUATION AND IT TOOK PL ACE , S AY , IN A SHOPPING MA LL. THERE WERE FOUR PE OPLE STANDING AROUND IN THE SHOPPING MALL , AND THE POLICE GO OVER TO THEM AND START ACONVERSATION AND ASK WH O ARE YOU , WHAT ARE YOU DOING HERE , COU LD I SEE SOME ID. WE WOULD , AND THEN THEY WOULD RUN A WARRANT CHECK ON THESE PEOPLE, AND THAT WOULD STILL BE PRO PER . IS THAT YOUR ARGUME NT?

YES. THE OFFICERS CAN ALWAYS GO UP AND ASK QUESTI ONS , ASK FOR IDENTIFICATION.

SO ANY TIME, UNDER ANY CIRCUMSTANCES , THAT , WELL , ANY TIME A POLICE ENCOUNTER SOMEONE AND YOU GIVE THEM YOUR IDENTIFICATION, THE POLICE IS FREE TO RUN SEARCHES ON THE PEOPLE.

AND , A GAIN , I THINK THAT IS WHA T THE COURT HELD IN LIGHTBOURNE. IN LIGHTBOURNE , HE SIMPLY ASKED FOR IDENTIFICATION , AND THE FACTS REFLECT HE W A LKEDBACK AND RAN A COMPUTER CH ECK, A REC ORD CHECK. WE ARE TALK ING ABOUT A COUPLE OF MINUTE SPAN HERE AND NOT A LENGTHY

SO IS I T YOUR POSITION, AGAIN, I THINK THAT THE CITIZEN HAS TO ASK , TO SOMEHOWINFORM THE OFFICER THAT THEY WANT THEIR LICENSE BACK AND GO ON.

HE COULD ASK FOR IT BACK. HE COULD WALK AWAY AND LEAVE IT THERE.

FOR EXAMPLE LE T'S SAY THE OFFICER HAD ASKED FOR AN I .D. AND THEN GOT A C A LL OVER THE PHONE, UNRE LATED T O THE ENCOUNTER WITH THE CITIZEN, AND THAT DELAYED THE RETURN OF THE DRIVERS LICENSE , THAT THAT IS NO DIFFERENT THAN IF IT IS A WARRANTS CHECK. THE QUESTION IS , DOES THE CITIZEN F EEL FREE TO GO ABOUT THEIR BUSI NESS .

IF THEY FEEL DETAINED, WOULD A REASONABLE PERSON FEEL DETAINED IN THAT SITUATION.

THAT IS WHERE , I THINK YOU JUST SAID SOMETHING AB OUT , I CAN ASK FOR MY LICENSE BACK , I DIDN'T GIVE YOU CONSENT TO RUN A WARRANTS CHECK. YOU ASKE D FOR ID. I COULD HAVE GIVEN YOU MY Y MCA I HAD D, FOR THAT - - MY YMCA ID FOR THAT MA TTER , BUT THE NEXT THING YOU SAID IS , WOULD A REASONABLE PERSON STILL FEEL FREE TO WALK AWAY , LEAVING THEIR IDENTIFICATION? AND THAT IS WHERE I HAVE GOTSOME PROBLEMS. I GUES S WE ARE TALKING ABOUT THE WHOLE UNIVERSE OF REASONABLE PEOPLE , BUT I DON'T KNOW MANY PEOPLE THAT WOULD WANT TO HAVE A GOVERNMENT -ISSUED I I D AND SPECIFICALLY IF IT WAS A DRIVERS LICENSE, RET AINED BY THE POLICE, ANDFEEL THAT THEY ARE FREE TO LEAVE, AND JUST LEAVE YOUR CARD WITH THE , YOUR LICENSEWITH THE POLICE!

A CITIZEN HAS NUMEROUS OPTIONS , L IKE THE PEOPLE DIDIN THIS INSTANT SITUATION , WHEN YOU SEE THE OFFICERS WALKING UP, YOU CAN WALK AWAY. SOME OF THEM IN THIS SITUATION DID. YOU CAN ENGAGE IN THE CONVERSATION. WHEN THE QUESTIONS BECOME

WHERE DOES THE CITIZEN LEARN THAT THEY HAVE ALL THESE OPTIONS? THAT IS, DO WE ASK THEQUESTION IN THIS TOTALITY OF CIRCUMSTANCES ANALYSIS OF HOWTHE AVER AGE CITIZEN WOULD FEEL ? FOR INSTANCE, IF YOU WALKED OUT OF THE COURT HERE AND DOWN THE ST EPS

AND YOU WERE GOING TO GO ACROSS TO THE CAPITOL BUT YOU PAUSED AT THE WALKWAY , AND YOU BETTER PAUSE , BECAUSE THE CARS COME ALONG THERE AND LET ME TELL YOU , HELTER-SKELTER, AND THEN THE TALLAHASSEE POLICE OFFICER APPROACHED YOU WHILE YOU WERE PAUSING AND SAID EXCUSE ME , CAN I PLEASE SEE SOME IDENTIFICATION. OKAY. ARE YOU SAYING THAT THE AVERAGE CITIZEN WOULD NOT FEEL THAT THEY WERE BEING DETAINED AT THAT TIME , BY THE POLICE?

I AM SAYING THAT , AT THAT TIME YOU HAVE A CONSTITUTIONAL RIGHT TO WALK AWAY .

HOW DOES THE CITIZEN KNOW THAT? WHERE DOES THE AVERAGE CITIZEN GET THIS KNOWLEDGE THAT , WHEN THE OFFICER WALKS UP AND IN FULL UNIFORM , AND SAYS EXCUSE ME , MAY I PLEASE SEE YOUR DRIVERS LICENSE , YOU ARE SAYING THE AVERAGE CITIZEN WOULD KNOW IN THAT CIRCUMSTANCE, THAT THEY ARE FREE TO WALK AWAY . IS THAT CORRECT?

SEVERAL PEOPLE IN THIS CASE DID, SO OBVIOUSLY

I REALIZE THAT SEVERAL PEOPLE DID. OKAY. BUT WHERE DO WE GET THE INFORMATION THAT THE AVERAGE CITIZEN , UNDER THOSE CIRCUMSTANCES, WOULD KNOW THAT THEY HAD THE RIGHT TO WALK AWAY?

AGAIN , YOU LOOK AT THE TOTALITY OF THE SITUATION AND WHETHER THIS

WOULDN'T THE AVERAGE CITIZEN , MORE NORMALLY , THINK THAT THAT UNIFORMED POLICE OFFICER THAT ASKED FOR MY DRIVERS LICENSE , THAT THEY HAD AN OBLIGATION TO PAUSE AND GIVE THEM AND COOPERATE WITH THE POLICE?

I THINK THAT IS JUST WHAT HAPPENED. THE AVERAGE PERSON WOULD COOPERATE WITH THE POLICE OFFICER. THERE HIS CASE LAW TALKING ABOUT WE ARE NOT TALKING ABOUT AN AVERAGE GUILTY PERSON , SO IN THIS SITUATION THE DEFENDANT HAD COCAINE ON HIM. I HAVE NO IDEA WHETHER THE PEOPLE THAT WALKED AWAY DID. THIS DEFENDANT HAD PREVIOUS ENCOUNTERS WITH THE POLICE. HE HAD BEEN STOPPED JUST A FEW WEEKS EARLIER.

AND IT IS CLEAR FROM THE UNITED STATE SUPREME COURT , THERE IS AS RECENTLY AS LAST FALL, THAT IN AN ORDINARY COURSE, A POLICE OFFICER IS FREE TO ASK A PERSON FOR IDENTIFICATION, WITHOUT IMPLICATING THE FOURTH AMENDMENT .

IN THE HIIBEL CASE , THE SUPREME COURT CLEARLY SAID

WAS NOT THAT A REASONABLE SUSPICION CASE IN HIIBEL?

IT DEALS WITH STOP.

IT ALSO CITED TO DELGADO.

WHICH IS CITED IN THE STATE'S BRIEF. IT IS THE STATE'S POSITION THAT THE FIFTH DISTRICT COURT OF APPEAL WAS CORRECT AND THAT YOU SHOULD AFFIRM THE TRIAL COURT'S FINDING.

CHIEF JUSTICE: THANK YOU VERY MUCH .

THANK YOU, YOUR HONOR. I RESPECTFULLY DIFFER WITH MR . HEIDT , THAT A CITIZEN HAS ANY BURDEN WHATSOEVER, TO TRY AND EXTRICATE HIMSELF FROM AN UNLAWFUL DETENTION. BASICALLY , BOILED DOWN TO ITS ESSENCE , WHAT THE STATE'S ADVOCATING IS THAT THE POLICE CAN APPROACH ANY CITIZEN AT RANDOM , ABSENT ANY BELIEF WHATSOEVER, THAT THERE IS CRIMINAL ACTIVITY AFOOT , AND HOLD THEM TO VERIFY THEIR IDENTITY, THEIR

IMMIGRATION STATUS, WHETHER THEY HAVE SOME OUTSTANDING WARRANTS , AS LONG AS THE CITIZEN DOESN'T PROTEST, AND THE LAW SIMPLY DOESN'T SAY THAT.

YOU SAY "HOLD". HOW ARE THEY HELD? I THINK THAT IS THE CRITICAL QUESTION.

HE TURNED OVER HIS LICENSE. HE IS NOT FREE TO GO, WHEN HIS CONSENT, AS JUSTICE PARIENTE , POINTED OUT

IF , INSTEAD OF CHECKING FOR THE WARRANT , THE LAW ENFORCEMENT OFFICER HAD GOTTEN A CALL ON THE RADIO FROM DISPATCH RELATED TO SOMETHING DOWN THE ROAD OR WHATEVER AND WAS INTERRUPTED IN THE DISCUSSION WITH THE DRIVERS LICENSE, BUT THE DRIVERS LICENSE HAD BEEN HELD OVER , YOU ARE BASICALLY HAVE INDICATING A YOU ARE BASICALLY ADVOCATING A BRIGHT-LINE RULE THAT SAYS AT THAT POINT IT BECOME AS DETENTION.

IT BECOMES A DETENTION , UNLESS THE PERSON THAT WE ARE DEALING WITH, HAS AGREED TO REMAIN AND ANSWER QUESTIONS . ONCE HE SATISFIED THAT INITIAL BURDEN.

WHAT YOU ARE SAYING IS THE SYNTH, THE OFFICER HAS TO SAY , I HAVE GOT THE CITIZEN , THE OFFICER HAS TO SAY , I HAVE GOT YOUR DRIVERS LICENSE. DO YOU MIND IF I HOLD IT FOR A WHILE BEFORE I GIVE IT BACK TO YOU?

IT IS ONCE THAT IS A FOOT.

SO THE TOTALITY OF IT , ONCE THE LAW ENFORCEMENT OFFICER ASKS FOR AND RECEIVES THE DRIVERS LICENSE , THE EXPRESS CONSENT BY THE CITIZEN FOR THE OFFICER TO HOLD IT FOR ANY LENGTH OF TIME , THAT IT AUTOMATICALLY BECOMES A DETENTION.

IT DEPENDS WHY THEY ARE ASKING FOR THE LICENSE IN THE FIRST PLACE. IN LIGHTBOURNE AND BAEZ , WE ARE TALKING ABOUT A SITUATION IN HIBEL, WHERE REASONABLE SUSPICION EXISTS. LIGHTBOURNE AND BAEZ, WE ARE TALKING ABOUT EITHER A CITIZEN COMPLAINT OR AN OFFICER

THAT IS A DIFFERENT QUESTION. IF THERE IS REASONABLE SUSPICION, YOU CAN DETAIN THEM. YOU CAN STOP THEM AT LEAST.

BECAUSE THE CITIZEN IN THAT CIRCUMSTANCE, HAS THE EXPECTATION THAT, OKAY, I AM GOING TO GIVE HIM MY LICENSE. HE IS EITHER GOING TO WRITE ME A TICKET OR HE IS GOING TO LET ME GO. THAT IS NOT THE CASE HERE. FOR FOURTH AMENDMENT PURPOSES, MR. GOLPHIN WAS ESSENTIALLY SITTING IN HIS LIVING ROOM OR HE COULD HAVE BEEN ON THE PORCH OF HIS HOUSE RESPECT THE FRONT PORCH OF HIS HOUSE, AND NOW THE POLICE COME UP AND SAY DO YOU HAVE IDENTIFICATION, EXPLAIN YOUR PRESENCE HERE , PROVE TO ME THAT YOU ARE INNOCENT OF WRONGDOING, AND BY THE WAY , I AM GOING TO TAKE YOUR LICENSE AND SEE IF YOU HAVE ANY OUTSTANDING WARRANTS, AND WITHOUT EXPRESS CONSENT , IT IS CLEAR FROM MY READING OF THESE CASES, THAT THAT IS NOT PERMISSIBLE .

DID YOU RAISE THE ISSUE ABOUT , THAT THE NATURE OF THE ENCOUNTER CHANGED, WHEN THEY RETAINED THE LICENSE FOR THE PURPOSES OF RUNNING A WARRANT CHECK? YOU KNOW, IN OTHER WORDS , MR. HEIDT SAID THAT THE ISSUE OF THE TIME , THE LICENSE OR THE ID WAS RETAINED, WAS NOT AN ISSUE DISCUSSED OR RAISED BELOW? COULD YOU CLARIFY WHAT , EXACTLY , WAS RAISED BELOW .

MY RECOLLECTION IS THAT THE STATE'S POSITION WAS THAT IT WAS CONSENT FROM THE WORD GO , AND THE DEFENSE'S POSITION WAS THAT, NO , BASED ON BAEZ , UNDER THESE CIRCUMSTANCES , WHEN HE HANDED OVER HIS LICENSE , HE WAS EFFECTIVELY SEIZED.

SO YOU DIDN'T MAKE THE ARGUMENT ABOUT THE WARRANT.

ABOUT EXCEEDING THE SCOPE OF THE INITIAL CONSENT?

CORRECT.

I DON'T BELIEVE, MY RECOLLECTION, NO.

CHIEF JUSTICE: THANK YOU VERY MUCH. THANKS TO BOTH OF YOU, FOR AN INFORMATIVE ORAL ARGUMENT. WE HOPE THAT IT WAS ALSO HELPFUL FOR THE MEMBERS OF THE AUDIENCE. WITH THAT, THE COURT WILL BE IN RECESS.

MARSHAL: PLEASE RISE.