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## **Norris Riggs, Jr. V. State of Florida**

THE LAST CASE ON THIS MORNING'S CALENDAR IS RIGGS VERSUS STATE OF FLORIDA.

GOOD MORNING. MY NAME IS BRUCE TAYLOR AND I AM REPRESENTING THE PETITIONER, MR. NORRIS RIGGS, AND I DO NOT PRETEND TO HAVE THE ELOQUENCE OR FORCE IN MY ARGUMENTS THAT SOME ARE ABLE TO DISPLAY, SO I WILL TAKE THE LIBERTY OF BORROWING A LITTLE FROM SIR EDWARD KOCH WHO LIVED IN THE 17TH CENTURY, AND HE SAID THE HOUSE OF EVERYONE IS TO HIM AS HIS CASTLE AND FORTRESS AS WELL AS FOR HIS DEFENSE AGAINST INJURY AND VIOLENCE AS FOR HIS REPOSE. AND THAT GENERAL CONCEPT IS, OF COURSE, WHY THE FIRST DISTRICT IN THE EASON CASE WHICH HAS BEEN FOUND TO BE IN CONFLICT WITH THE SECOND DISTRICT'S OPINION IN THIS CASE STATED THAT THE 4TH AMENDMENT TO THE UNITED STATES CONSTITUTION SPECIFICALLY PROTECTS THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR HOMES. THEY GO ON TO SAY THAT THAT RIGHT IS SO UNEQUIVOCAL THAT ANY WARRANTLESS SEARCH OR SEIZURE INSIDE A HOME IS CONSIDERED PRESUMPTIVELY UNREASONABLE. NOW, I'M OBVIOUSLY NOT TAKING THE POSITION THAT THERE ARE NO CIRCUMSTANCES UNDER WHICH A WARRANTLESS ENTRY MAY BE MADE INTO A HOME.

WHAT ARE THE CIRCUMSTANCES?

THE CIRCUMSTANCES IN THIS CASE DO NOT SUPPORT A FINDING THAT THERE WAS AN EXIGENT CIRCUMSTANCE, JUSTIFIED ENTRY. THE CIRCUMSTANCES IN THIS CASE WERE THAT, AND THEY WERE, IN FACT, STRIKINGLY SIMILAR IN MANY WAYS TO THOSE IN THE EASON CASE. THERE WAS A CHILD, A VERY YOUNG AGE, FOUND WANDERING UNATTENDED IN AN APARTMENT COMPLEX IN THE EARLY MORNING HOURS. I THINK THE HOUR OF 3:00.

IT WAS NOT ONLY UNATTENDED. HOW OLD WAS SHE?

I SAID VERY TENDER YEARS. I THINK SHE WAS THREE.

WASN'T SHE NAKED?

SHE WAS ALSO NAKED AND DISORIENTED.

AND YOU WOULD AGREE THAT THAT ALONE IS GOING TO RAISE THE SIGNIFICANCE?

I WOULD SAY THAT THAT IS CERTAINLY A SOURCE OF CONCERN, BUT THAT IS NOT WHY THEY CLAIM TO HAVE SUBSEQUENTLY ENTERED MR. RIGGS' APARTMENT. BECAUSE CERTAINLY IT WOULD JUSTIFY THE POLICE COMING THERE, JUSTIFY TAKING THE CHILD AND PROTECTING THE CHILD.

THIS WAS AT 3:00 IN THE MORNING; IS THAT CORRECT?

AT 3:00 IN THE MORNING, YES, APPROXIMATELY.

LET ME ASK YOU A QUESTION REALLY THAT DEALS WITH OUR JURISDICTION, AND OTHER THAN RESOLVING ANOTHER SET OF FACTUAL CIRCUMSTANCES HERE, WHAT RULE OF LAW IS IT THAT THIS COURT SHOULD BE GRAPPLING WITH AND WHAT WOULD YOU HAVE US ARTICULATE AS THE RULE OF LAW, YOU KNOW, FOR INSTANCE SHOULD WE FIND IN YOUR FAVOR? I'M HAVING SOME

DIFFICULTY WHEN WE TALK ABOUT 4TH AMENDMENT LAW OR WHATEVER THAT WE END UP WHEN WE RESOLVE A CASE LIKE THIS THAT ALL WE HAVE DONE IS RESOLVE A CASE ON THE FACTUAL SPECTRUM AS OPPOSED TO ARTICULATING SOME RULE OF LAW WHICH IS SUPPOSED TO BE WHAT OUR PRIMARY RESPONSIBILITY IS. SO HELP ME WITH WHETHER THIS FALLS INTO THE CATEGORY OF, YOU KNOW, WHEN WE GET THROUGH WITH THIS CASE THE ONLY PERSON THAT IS REALLY GOING TO BE INTERESTED IS YOUR CLIENT IN TERMS OF RESOLVING IT BECAUSE WE WON'T BE DOING MUCH TO THE LAW, OTHER THAN GIVING OUR VIEW SORT OF OF WHICH SIDE OF THE LINE THIS CASE FALLS ON. SO HELP ME WITH WHERE IT REALLY IS APPROPRIATE FOR US TO EXERCISE OUR JURISDICTION.

THAT'S A LONG QUESTION AND IT IS GOING TO BE A LONG ANSWER.

I'M SORRY, BUT WE'VE GOT OBVIOUSLY --

THAT IS EXACTLY WHAT WE ARE HERE TO SAY WHAT SORT OF TEST IS USED IN APPLYING TO THESE FACTS. YOU KNOW, WHY AM I CONTENDING THAT THIS IS NOT A REASONABLE ENTRY INTO MY CLIENT'S HOME AND THE REASON IS NOTWITHSTANDING THE FACT THAT THIS CHILD WAS FOUND WANDERING NEAR THE APARTMENT COMPLEX, AT 3:00 IN THE MORNING NAKED AND APPARENTLY DISORIENTED, THERE WAS NOTHING TO SHOW AT LEAST I WOULD SUBMIT TO DRAW A CONNECTION BETWEEN THAT INCIDENT AND MY CLIENT'S APARTMENT. AND SO I --

I GUESS THE QUESTION, JUSTICE ANSTEAD WAS ASKING IS WHY SHOULD WE DECIDE THIS CASE? IF EVERYTHING DEPENDS ON THE PARTICULAR CIRCUMSTANCES OF THE CASE WHAT ARE WE GOING TO ADD TO THE LAW BY DECIDING THIS CASE AND IF SO, WHAT RULE WOULD YOU SUGGEST THAT COME OUT OF THIS CASE?

I'M GETTING TO THAT RIGHT NOW. THE RULE I WOULD SUGGEST IS THAT THERE HAS TO BE MORE THAN A MERE HUNCH OR SUSPICION THAT THERE IS SOMETHING WRONG IN THE APARTMENT OR HOUSE OR THE HOME THAT THE POLICE OFFICERS GO TO DECIDE TO ENTER UNDER WHAT THEY CLAIM TO BE EXIGENT CIRCUMSTANCES.

DON'T THE CASES ALREADY SAY THAT?

WELL, I DON'T THINK THERE HAS BEEN ANY CASE THAT IS DEALING WITH -- AND ONCE AGAIN THIS IS A LARGELY A FACT DRIVEN CASE.

I SUPPOSE YOU WOULD SAY FOR INSTANCE IF THE CHILD WAS FOUND STANDING OUTSIDE OF THIS PARTICULAR APARTMENT, THAT WOULD BE A WHOLE DIFFERENT CASE, OR IF IT WOULD INDEED HAVE HAD A BRACELET ON THAT SAYS PROPERTY OF APARTMENT 3B KIND OF THING THAT IT WOULD BE A WHOLE DIFFERENT CASE. SO --

THERE ARE TWO DIFFERENT FACTORS AT WORK HERE, TWO DIFFERENT DETERMINATIONS THAT CAUSE ACCORDING TO THEIR TESTIMONY THE POLICE TO ENTER THIS PARTICULAR APARTMENT. THE FIRST WAS THEY ASSUMED THE CHILD CAME FROM THAT APARTMENT. AND I HAVE REPEATEDLY ARGUED IN MY BRIEFS AND I WILL SAY SO AGAIN, I FEEL THAT THAT WAS NO MORE THAN AN EDUCATED GUESS ON THEIR PART, BECAUSE THE DOOR TO MY CLIENT'S APARTMENT WAS SLIGHTLY AJAR.

EXCEPT FOR THE FACT THAT IT WAS 3:00 A.M. AND THERE WERE NO OTHER DOORS OF APARTMENTS THAT WERE OPEN.

I DISAGREE WITH THAT.

THERE WERE OTHER DOORS?

THERE WAS NO EVIDENCE ONE WAY OR THE OTHER AS TO WHETHER -- WE CANNOT SAY THERE WERE NO OTHER DOORS.

THE DISTRICT COURT MADE THAT STATEMENT, CORRECT?

I DON'T RECALL SEEING THAT IN THEIR OPINION. I KNOW THAT THAT WAS STATED IN THE JURISDICTION.

THERE WAS EVIDENCE THAT THE LIGHTS WERE ON IN THIS APARTMENT AT 3:00 IN THE MORNING.

THEY DON'T -- MY RECOLLECTION IS THEY DID NOT SEE A LIGHT UNTIL THEY ENTERED AND THEN THEY SAW THE LIGHT IN WHAT TURNED OUT TO BE THE LAUNDRY ROOM OF THAT APARTMENT, AND THEY OPENED THAT DOOR.

WELL, THE DISTRICT COURT SAID ON THE SECOND FLOOR OF THE THREE-STORY COMPLEX ALL OF THE APARTMENT DOORS WERE CLOSED EXCEPT ONE.

BUT THEY DIDN'T SAY IF THAT WAS THE ONLY ONE IN THE COMPLEX. WE DON'T EVEN KNOW HOW THEY --

I WANT TO GO BACK TO SOMETHING AND THIS IS BECAUSE WE HAD AN EMERGENCY CASE YESTERDAY ABOUT SO MANY OF THESE CASES WE SEE ARE, YOU KNOW, POLICE OFFICERS STOPPING PEOPLE IN THE CARS AND YOU KIND OF QUESTION, WELL, DID THEY REALLY HAVE TO STOP THEM AND THEY FIND SOMETHING. HERE IS THIS CHILD WHO IS DIS OR AND SHE IS NAKED, O -- DISORIENTED AND WE KNOW SHE CAME FROM THAT APARTMENT COMPLEX. WE KNOW THERE ARE TWO POSSIBILITIES. WELL, SHE IS IN THE APARTMENT COMPLEX. THAT'S A REASONABLE INFERENCE. IS THAT HER MOTHER HAS BEEN OR CARETAKER HAS FALLEN ILL AND IS, YOU KNOW, OR HAS BEEN ATTEMPTED MURDER OR SOMETHING HAPPENED TO THAT CAREGIVER, SO THE POLICE HAVING BEEN FACED WITH THAT, NOT KNOWING SPECIFICALLY WHAT APARTMENT TO GO TO, SUPPOSED TO SAY, WELL, I WILL JUST TAKE HER BACK TO THE STATION AND, YOU KNOW, WE'LL WORRY ABOUT IT WHEN SOMEONE COMES UP WHEN WE FIND OUT THAT THERE IS SOMEBODY MISSING? THE 4TH AMENDMENT DEALS WITH WHAT, YOU KNOW, WHETHER IT IS UNREASONABLE AND WHETHER AN EMERGENCY EXISTED, AN EMERGENCY EXISTED, A REASONABLE LIKELIHOOD THAT SOMETHING WAS WRONG WITH THAT CARETAKER. I MEAN, WHOEVER THE CARETAKER WAS, THAT SOMETHING WAS WRONG WITH THE CARETAKER, YOU DON'T LET FOUR-YEAR-OLDS RUN AROUND NAKED AT 3:00 IN THE MORNING, CORRECT?

WELL, I CERTAINLY DON'T.

WITH AN OBJECTIVE VIEW OF THAT.

NO REASONABLE PERSON.

AND NO REASONABLE POLICE OFFICER WOULD THINK THAT THE PROPER APPROACH WOULD BE TO LEAVE THE APARTMENT COMPLEX AND BRING THE CHILD BACK TO THE POLICE STATION. THEY WOULD MAKE EFFORT TO FIND OUT WHERE THE CHILD CAME FROM. NOW, THEY WENT ALONG ON THIS FLOOR, AND THEY KNOCKED AND THEY SEE THIS ONE DOOR THAT IS SLIGHTLY AJAR. THEY PAT. THEY DON'T FIRST BARGE IN. THEY KNOCK AND THERE IS NO RESPONSE. THAT GIVES FURTHER CONCERN THAT SOMETHING IS WRONG INSIDE, AND I GUESS AT THAT POINT I DON'T SEE WHERE UNDER THE CIRCUMSTANCES OF THIS CASE THAT THEY DID ANYTHING THAT OUGHT TO GIVE US PAUSE OR CONCERN FOR THE PRIVACY OF OUR CITIZENS IN THE HOME.

WELL, HERE IS -- LET ME RESPOND TO THAT AND ALSO TO JUSTICE WELLS' QUESTION ABOUT THE UNLOCKED DOORS OR THE DOORS THAT WERE ALL SHUT. ONLY ON THAT FLOOR. ONCE AGAIN, WE DON'T KNOW HOW MANY OTHER APARTMENTS WERE IN THAT COMPLEX. I WOULD SUBMIT TO

YOU IT WAS A VERY LARGE COMPLEX BECAUSE THIS WAS APARTMENT 1434.

BUT I GUESS THAT THE QUESTION GOES BACK TO, DO WE WANT THEM TO SAY LET'S GO NOW, WE BETTER GET SOMETHING FROM THE APARTMENT MANAGER, THERE ARE 50 APARTMENTS, WE ARE GOING TO DO SOME PLAN HERE, WE ARE GOING TO CALL BACK. IF IT IS TRULY, IF THIS IS WHAT IT GOES BACK TO IF IN THE OBJECTIVE MIND OF THE POLICE OFFICERS THERE WAS AN EMERGENCY AFFECTING NOT THE CHILD BUT THE CARETAKER, THEN THEIR ACTIONS HAVE TO BE VIEWED DIFFERENTLY. IF -- NOW, YOU KNOW, YOU MIGHT HAVE HAD I GUESS A STRONGER CASE WOULD BE IF THE DEPARTMENT -- APARTMENT THEY WENT INTO DIDN'T HAVE ANYTHING TO DO WITH THE CHILD, I MEAN WAS, QUOTE, IF IT WAS A LUCKY HUNCH OR A LUCKY THING AT LEAST IT WAS THE CHILD'S CAKE TAKER AND YOU WERE TRYING TO SUPPRESS THE EVIDENCE AND THEY HAD NOTHING TO DO WITH THE CHILD AND MAYBE WE WOULD FEEL EMOTIONALLY A LITTLE DIFFERENT ABOUT IT, BUT SEEING THAT IT SEEMED TO BE A REASONABLE CONCLUSION THAT THEY REACHED.

WELL, YOU JUST SAID SOMETHING EXTREMELY SIGNIFICANT, AND YOU SAID THAT THAT WOULD LEAD THEM TO FURTHER BELIEVE THAT THERE WAS SOMETHING WRONG WITH THE CARETAKER OF THIS CHILD, BUT ONCE AGAIN I GET BACK TO THE POINT WHERE IS -- HOW HAVE THEY CONNECTED THE DOTS BETWEEN THE CARETAKER OF THE CHILD AND THAT APARTMENT? OTHER THAN ON THAT ONE FLOOR, THAT ONE BUILDING THEY NOTICED THAT THAT DOOR WAS NOT LOCKED.

WELL, I GUESS THE ALTERNATIVE WOULD BE THAT THEY SAY, OKAY, THERE'S THE DOOR THAT'S SLIGHTLY AJAR. WE'LL PUT A LITTLE MARKER ON THAT DOOR AND WE WILL CONTINUE TO GO THROUGH THE REST OF THE APARTMENT COMPLEX TO SEE IF -- WE'LL KNOCK ON EVERY OTHER DOOR AND IF EVERY OTHER DOOR IS CLOSED THEN WE WILL GO BACK TO THAT DOOR. IS THAT WHAT YOU WOULD EXPECT TO BE DONE IN THE MEANTIME? WHAT IF THEY WERE HAVING A SEIZURE AND IN THAT TIME SOMETHING HAPPENED TO THE CARETAKER?

WELL, LET'S LOOK AT IT THE OTHER WAY. WHAT IF THEY SIMPLY DIDN'T WANT TO BE DISTURBED WHICH IS APPARENTLY EXACTLY WHAT THE CASE WAS.

DIDN'T THE POLICE GO FURTHER HERE, THAT IS THAT THEY DIDN'T JUST SEE THE DOOR AJAR AND GO IN, ALL RIGHT, AND THAT ORDINARILY --

THEY KNOCKED.

YOU WOULD EXPECT IF THERE IS SOMEBODY IN THERE THAT'S ALL RIGHT, AT LEAST AND HOW DID THE DISTRICT COURT CHARACTERIZE THE KNOCKS?

WELL, THE TESTIMONY OF ONE OF THE OFFICERS, AND I GUESS EVERYONE IS ENTITLED TO RELY ON THAT IN THE MOST FAVORABLE LIGHT TO THE STATE WAS THAT HE KNOCKED LOUDLY AND CONTINUOUSLY.

THREE DOZEN TIMES.

HE SAID IT COULD HAVE BEEN AS MANY AS 50.

WOULDN'T THAT THEN SORT OF REINFORCE THEIR CONCERN THAT, YOU KNOW, MY GOODNESS, AN ORDINARY PERSON IF YOU TAKE THAT DESCRIPTION THREE DOZEN TIMES THAT, YOU KNOW, THE PERSON IF SOMEBODY IS IN THERE THAT THEY WOULD ORDINARILY RESPOND TO THAT UNLESS THERE IS A PROBLEM. SO NOW THEY HAVE SORT OF CORROBORATED CHILD OUTSIDE, DOOR SLIGHTLY AJAR, THREE DOZEN LOUD POUNDINGS ON A DOOR AND NO RESPONSE, YOU KNOW, WE'VE GOT SOMETHING TO BE CONCERNED ABOUT HERE, AND, YOU KNOW, THERE ARE NO SUGGESTIONS IN THIS CASE THAT THE POLICE ARE JUST RANDOMLY NOW THAT THEY HAVE A

CHILD OUT THERE SAYING, WELL, GEE, THIS IS A GREAT OPPORTUNITY FOR US TO SEE IF ANYBODY IN THIS APARTMENT COMPLEX IS DOING DRUGS. WE WILL JUST GO IN EVERY APARTMENT AND TAKE A LOOK NOW THAT WE'VE GOT THIS TICKET, YOU KNOW, TO DO THAT IN THE FORM OF A LOST CHILD. IT IS A VERY FOCUSED KIND OF THING AND THEN THERE ARE FURTHER INQUIREYS, SO TO SPEAK, BY THE KNOCK, JUST HARDEN THEIR BELIEF THAT SOMETHING IS WRONG HERE.

I SEE THAT I AM NOW IN MY REBUTTAL TIME SO I WILL TRY TO ANSWER THAT BRIEFLY. FIRST OF ALL I STILL SUBMIT THERE IS NO CONNECTION BETWEEN -- NO STRONG CONNECTION BETWEEN THE CHILD AND THAT APARTMENT AND A CITIZEN CERTAINLY HAS A RIGHT TO NOT ANSWER THE DOOR TO THE POLICE IN THE MIDDLE OF THE NIGHT AND SUBSEQUENT FACTS PROVE THAT THERE REALLY WAS NOTHING WRONG WITH ANYONE IN THIS APARTMENT.

OF COURSE IF YOU REALLY WANTED TO BE LEFT ALONE AT 3:00 IN THE MORNING YOU WOULDN'T HAVE YOUR DOOR OPEN, WOULD YOU?

WELL, WHO KNOWS UNDER WHAT CIRCUMSTANCES THAT IT GOT OPEN.

ISN'T IT IS A REASONABLE INFERENCE, THOUGH, THAT THE CHILD WANDERED OUT LEAVING THE APARTMENT DOOR OPEN?

BASED ON WHAT WE NOW KNOW, YES, IT IS, BUT THEY DIDN'T KNOW THAT WHEN THEY WENT IN THERE.

WE ARE NOT TALKING ABOUT A PERSON UNRELATED TO THE CHILD. IN FACT, THE CARETAKER OF THE CHILD WAS IN THIS APARTMENT?

THAT IS IN FACT TRUE. AS I SAID, FORTUNE FAVORED THEM. ONE OTHER THING BEFORE I SIT DOWN ABOUT THE KNOCKING, ALTHOUGH THEY KNOCKED CONTINUOUSLY I DON'T THINK THE TESTIMONY WAS EVER IF YOU DON'T COME TO THE DOOR WE ARE COMING IN. SO I WOULD THINK THAT WOULD BE --

THEY KNOCKED BUT THEY DIDN'T ANNOUNCE?

THEY SAID THEY ARE POLICE BUT THEY DIDN'T SAY, WE ARE COMING IN.

PUT AWAY YOUR MARIJUANA.

TURN OFF THE LIGHTS.

MAY IT PLEASE THE COURT.

WHY ARE ALL OF THESE CASES ALWAYS WHEN THEY COME IN THEY FIND MARIJUANA?

IT IS VERY POPULAR APPARENTLY. MAY IT PLEASE THE COURT, MY NAME IS MARILYN BECCUE AND I REPRESENT THE STATE OF FLORIDA. WHILE THE STATE DISAGREES WITH THE FIRST DISTRICT COURT OF APPEALS ANALYSIS AND CONCLUSION IN EASON THIS CASE DOESN'T PRESENT ANY PRINCIPLE OF CONFLICT.

IT SEEMS LIKE EASON IS ALMOST IF YOU HAD TO TAKE A, QUOTE, STRONGER CASE IN EASON THE CHILD POINTS TO THE FRONT DOOR.

YES, EXACTLY.

AND SO THERE IS MORE OF A CONNECTION IN EASON WITH THE APARTMENT.

WELL, I THINK THE PROBLEM IN THIS CASE IS THE CHILD WAS DESCRIBED AS BEING DISORIENTED. SHE DIDN'T KNOW WHERE SHE WAS, LET ALONE WHERE HER CAREGIVER WAS. AT LEAST THE CHILD IN EASON LIVED THERE, HE KNEW HE LIVED THERE AND HE KNEW MOMMY IS IN THE APARTMENT COMPLEX.

AND HE DIDN'T KNOW THAT THE MOMMY WAS OKAY OR NOT.

CORRECT.

I GUESS IT SEEMS THAT AGAIN IF I WERE LOOKING AT THE TWO CASES I MIGHT SAY EASON IS STRONGER ON THE FACTS OF THE STATE AND YET IT CAME OUT A DIFFERENT WAY. SO I GUESS TO ME THEY BRING UP IRRECONCILABLE PRINCIPLES, BECAUSE IN EASON THEY REALLY FOCUS ON EVERYTHING WAS OKAY WITH THE CHILD, BUT WHAT THE PRINCIPLE LAW COMING OUT OF THIS CASE AND THAT SEEMS TO BE IN CONFLICT IS THE STATE SHOULD HAVE AN INTEREST IN THE SAFETY AND HEALTH OF THE CAREGIVER AS WELL AS THE CHILD.

CORRECT. AND THE STATE SUBMITS THAT EASON WAS INCORRECTLY DECIDED ON THAT BASIS BUT THEY DID NOT CONSIDER THE TOTALITY OF THE CIRCUMSTANCES. THEY STOPPED AT THE POINT OF THE SAFETY OF THE CHILD, BUT IN THIS CASE IT IS STILL A TOTALITY OF THE CIRCUMSTANCE TEST.

I GUESS MY CONCERN IS A JUDGE IN MIAMI-DADE COUNTY WHO HAS THE EXACT CIRCUMSTANCES OF THIS CASE AND HAS RIGGS VERSUS STATE FROM THE 2ND AND EASON FROM THE 1ST, HOW DOES HE DECIDE THE CASE?

WELL, HE SHOULD APPLY THE TOTALITY OF THE CIRCUMSTANCE TEST, AND YOU CAN DISTINGUISH EASON IN THAT SENSE BECAUSE IN THAT CASE THEY DIDN'T LOOK AT THE CIRCUMSTANCES PAST THE SAFETY OF THE CHILD. WHEN YOU HAVE A FOUR-YEAR-OLD CHILD WHO IS NAKED AND IT IS JANUARY AND EVEN IN, YOU KNOW, POLK COUNTY IT GETS A LITTLE CHILLY IN JANUARY. AT 3:00 IN THE MORNING WALKING IN A PARKING LOT ANY RATIONALE, REASONABLE PERSON WOULD ASK WHY IS THIS CHILD WALKING AROUND THE PARKING LOT?

HOW FAR IS IT? I MEAN, OBVIOUSLY YOU WOULD BE MAKING THE SAME ARGUMENT IF THE -- IF MR. RIGGS WAS NOT THE CARETAKER OF THIS CHILD.

CORRECT.

IN OTHER WORDS THAT WAS REASONABLE FOR THEM TO ENTER THIS APARTMENT. IT IS STATED IN THE RECORD OR WHEN THEY KNOCKED AND POUNDED THAT THERE WAS POLICE, OTHER PEOPLE CAME OUT. SHOULD THEY HAVE AT THE VERY LEAST, DID THEY TALK TO THE OTHER PEOPLE TO SAY DOES THIS LITTLE CHILD LIVE IN THIS?

AT THE POINT THEY ARE KNOCKING ON THE DOOR OF THAT APARTMENT THERE IS NOTHING IN THE RECORD THAT INDICATES THEY DID. BUT YOU HAVE TO REMEMBER UP UNTIL THAT POINT THEY HAVE THE INFORMATION ABOUT THE CHILD, SHE IS DISORIENTED, SHE IS NUDE, SHE HAS BEEN WANDERING IN THE PARKING LOT. THEY HAVE GONE THROUGH THE FIRST FLOOR AND EXHAUSTED THEIR INVESTIGATION THERE BECAUSE THEY DIDN'T HAVE ANY RESULTS.

WHAT DID THEY DO? KNOCKED ON DOORS?

AND STARTED TALKING TO PEOPLE, ASKING QUESTIONS.

SOME PEOPLE CAME OUT AND THEY ASKED, DO YOU KNOW THIS LITTLE GIRL?

CORRECT. THERE IS NO DIRECT TESTIMONY THAT THE DEPUTY DIDN'T SAY I SPECIFICALLY SPOKE

WITH EVERYBODY ON THE FIRST FLOOR AND THEY DENIED ANY RESPONSIBILITY FOR THIS CHILD, BUT IT IS A REASONABLE INFERENCE THAT THEY WOULDN'T HAVE GOTTEN TO THE SECOND FLOOR HAD THEY FOUND SOMEONE.

WOULD YOU AGREE IF THE DOOR WASN'T SLIGHTLY AJAR AND THEY JUST HAD DECIDED TO PICK OUT THIS APARTMENT MAYBE THEY KNEW THIS WAS A KNOWN DRUG DEALER AND THEY KNOCKED AND THEN THEY FORCIBLY ENTERED, WOULD THAT BE A DIFFERENT SITUATION?

ABSOLUTELY.

AND TELL ME WHY.

BECAUSE THE FACT THAT THE DOOR WAS OPEN FIRST OF ALL IS WHAT DROVE DEPUTY STRICKLAND TO THAT APARTMENT TO BEGIN WITH, AND IT IS REASONABLE FOR HIM TO CONCLUDE THAT IT IS MORE LIKELY THAT THE CHILD WALKED FROM THE APARTMENT WITH THE OPEN DOOR THAN IT IS THAT THIS FOUR-YEAR-OLD CHILD OPENED A DOOR, STEPPED THROUGH THE DOORWAY, TURNED AROUND, CLOSED THE DOOR, WALKED DOWN THE STAIRS AND THEN PROCEEDED TO WANDER AROUND THE PARKING LOT SO THE FACT THAT THE DOOR WAS OPEN IS SIGNIFICANT AND IMPORTANT BUT IT IS NOT THE ONE FACT THAT SHOULD DETERMINE WHETHER OR NOT THERE WERE EXIGENT CIRCUMSTANCES. YOU HAVE TO LOOK AT ALL OF THE FACTS AND YOU KNOW THE POUNDING ON THE DOOR, 36 TIMES, AND HAVING OTHER PEOPLE COME OUT FROM OTHER APARTMENTS, YES, GETTING NO RESPONSE FROM INSIDE THAT APARTMENT RAISES A CONCERN THAT THERE IS SOMETHING SERIOUSLY WRONG INSIDE THAT APARTMENT. AND THEY DID ANNOUNCE.

AM I CORRECT THAT THERE WERE LIGHTS ON IN THAT APARTMENT THAT THEY COULD SEE FROM THE OUTSIDE THAT THERE WERE LIGHTS ON?

YES, DEPUTY STRICKLAND TESTIFIED THAT HE COULD SEE THAT THE DOOR WAS AJAR AND IT WAS EARLY IN THE MORNING, 1:00 IN THE MORNING AND THERE WAS SOME LIGHT SHINING THROUGH. IT WAS THE ONLY ONE ON THE SECOND FLOOR THAT WAS OPEN.

IF THERE HAD BEEN SEVERAL DOORS OPEN ON THE SECOND FLOOR, WOULD THE POLICE HAVE BEEN JUSTIFIED IN GOING TO ALL OF THOSE DOORS?

NOT NECESSARILY. I MEAN, I THINK IT IS IMPORTANT THAT THIS WAS THE ONLY DOOR ON THE SECOND FLOOR.

NO, I'M SAYING IF THERE HAD, IN FACT, BEEN SEVERAL DOORS PARTIALLY OPENED I THINK THEY SAID A COUPLE OF CENTIMETERS ON THAT FLOOR THAT THE POLICE WOULD HAVE BEEN JUSTIFIED IN GOING TO ALL OF THOSE THAT WERE PARTIALLY OPENED?

CERTAINLY GOING TO THEM AND KNOCKING ON THE DOOR THEY WOULD BE JUSTIFIED. WHETHER THEY WOULD BE JUSTIFIED IN ENTERING, GETTING NO RESPONSE WOULD BE A DIFFERENT STORY. IT WOULD DEPEND ON THE OTHER SURROUNDING CIRCUMSTANCES BUT IN THIS CASE, I MEAN THE FACT THAT THIS ONE DOOR WAS OPEN AND THEY ARE POUNDING AND YELLING, POLK COUNTY SHERIFF'S OFFICE AND GETTING NO RESPONSE IS WHAT REALLY ULTIMATELY, YOU KNOW, WAS THE CULL MAIN -- CULMINATION OF THE CONCERN.

WOULD YOU SHARE WITH US WHAT THE POLICE OFFICERS, THE SHERIFF'S DEPUTIES TESTIFIED WITH REGARD TO THE SIZE OF THE COMPLEX AND NOT INFERENCES BUT EXACTLY WHAT THEY DID TO ARRIVE AT THE DOOR THAT WAS ULTIMATELY ENTERED?

IT WAS A THREE-STORY COMPLEX AND DEPUTY STRICKLAND DID NOT KNOW EXACTLY HOW MANY APARTMENTS WERE IN THAT COMPLEX BUT HE TESTIFIED IT COULD HAVE BEEN AS MANY

AS 50.

RIGHT. AND WHAT DID HE DO?

WELL, INITIALLY HE WENT THROUGH THE FIRST FLOOR ASKING QUESTIONS AND HE WALKED UP AS HE SAID AS HE WALKED UP THE STAIRS TO THE SECOND FLOOR HE COULD IMMEDIATELY SEE THAT THIS DOOR WAS OPEN. SO THAT'S WHY HE, YOU KNOW, WENT DIRECTLY TO THAT DOOR INSTEAD OF STARTING AT THE BEGINNING AND WORKING HIS WAY DOWN AND CERTAINLY THERE IS NO OBLIGATION OF THE LAW ENFORCEMENT TO GO THROUGH THE ENTIRE COMPLEX FIRST AND THEN COME BACK BECAUSE THE WHOLE POINT IS THERE WAS A POTENTIAL EMERGENCY THAT NEEDS IMMEDIATE ACTION, AND, YOU KNOW, LAW ENFORCEMENT OFFICERS WHILE THEY ARE EXPECTED TO ACT REASONABLY IN THE FACE OF AN EMERGENCY THEY ARE EXPECTED TO ACT AND ACT PROMPTLY AND TO SAY THAT THE LAW REQUIRES THAT THEY GO THROUGH 50 APARTMENTS BEFORE THEY COME BACK TO THE ONE THAT'S OPEN WHERE IT IS PERFECTLY REASONABLE TO BELIEVE THE CHILD CAME OUT OF THAT APARTMENT AS OPPOSED TO ANYWHERE ELSE IS JUST A MISAPPLICATION OF THE LAW.

DID THE POLICE OFFICERS TESTIFY AS TO WHETHER THERE ARE STANDARD OPERATING PROCEDURES IN THIS CIRCUMSTANCE THAT THEY WERE FOLLOWING?

NO, THEY DIDN'T. THEY DID WHAT A REASONABLE POLICE OFFICER WOULD DO WHICH IS TRY TO FIND OUT WHY THIS CHILD IS WALKING AROUND THE PARKING LOT AT 4:00 IN THE MORNING WITH NO CLOTHES ON IN JANUARY, AND I THINK IT IS A VERY REASONABLE THING FOR ANYBODY WHO WANTS TO KNOW BUT PARTICULARLY A LAW ENFORCEMENT OFFICER, AND THAT'S REALLY THE QUESTION IS UNDER THE TOTALITY OF THE CIRCUMSTANCES A REASONABLE POLICE OFFICER WOULD DO WHAT DEPUTY STRICKLAND DID, THEN IT IS CONSTITUTIONAL INTO THE 4TH AMENDMENT. IS THERE ANY OTHER QUESTIONS? THANK YOU VERY MUCH.

THANK YOU. REBUTTAL?

VERY BRIEFLY, ONCE AGAIN TO TAKE ISSUE WITH ONE STATEMENT THAT WAS MADE. THIS WAS NOT THE APARTMENT WITH A SLIGHTLY UNCLOSED DOOR. IT WAS AN APARTMENT. WE DON'T KNOW HOW MANY OF THE OTHER APARTMENTS HAD, BECAUSE THERE WAS NO TESTIMONY TO THAT EFFECT. AS FAR AS, I'LL TRY TO TAKE THE REST OF MY TIME TO ANSWER THE QUESTION THAT I TRIED TO ANSWER A COUPLE OF TIMES.

SO THE POLICE IF THERE WERE OTHER DOORS THAT WERE SLIGHTLY AJAR LIKE THIS ONE, THE POLICE COULD NOT HAVE CHECKED ON ANY OF THOSE, EITHER?

WELL, IT WOULD CERTAINLY HAVE MADE IT MORE CLEAR THAT THERE WAS NO CLEAR CONNECTION BETWEEN THE CHILD AND THE APARTMENT THAT THEY DECIDED TO ENTER.

SO I GUESS IT COMES TO REALLY BACK TO WHAT WAS THE POLICE SUPPOSED TO DO? WHAT IS THE RULE THAT THE POLICE SHOULD HAVE FOLLOWED UNDER THESE KINDS OF CIRCUMSTANCES?

THEY WERE SUPPOSED TO NOT ENTER THE APARTMENT OF MY CLIENT.

IT WAS FINE FOR THEM TO KNOCK ON THE DOOR?

SURE.

AND SAY IS ANYONE HERE?

UH-HUH.

AND WITH AN OPEN APARTMENT YOU GET NO RESPONSE, YOU JUST WALK AWAY?

WELL, THAT'S WHAT I WOULD SUGGEST THEY HAD TO DO, AND THE REASON I SAY THAT IS BECAUSE IF YOU SAY OTHERWISE THEN ANY TIME THE POLICE ARE INVESTIGATING ANY SORT OF THING AND THEY KNOCK ON THE DOOR AND NO ONE ANSWERS, THEN THEY ARE GOING TO BE ALLOWED TO WALK --

SO INVESTIGATING ANY KIND OF THING AND SOMETHING THAT MIGHT BE AN EMERGENCY ARE TWO DIFFERENT THINGS?

WELL, ANYTHING THAT THEY CLAIM IS -- BEAR IN MIND THERE WAS NO EMERGENCY HERE.

SO THAT'S, AGAIN, THAT'S AFTER THE FACT THAT THERE WAS NO EMERGENCY?

RIGHT. THE CHILD WAS CERTAINLY NOT IN ANY DANGER BY THE TIME THEY ENTERED THE APARTMENT.

WHAT WOULD CAUSE A CHILD TO BE WANDERING ON THEIR OWN AT 1:00 IN THE MORNING NAKED? I MEAN, EITHER A VERY NEGLECTFUL CARETAKER.

WHICH IS APPARENTLY WHAT WE HAD HERE.

BUT IT IS REASONABLE OR MORE THAT IT WAS SOMEBODY THAT HAD SOMETHING HAPPEN TO THEM PHYSICALLY.

MY SUGGESTION FOR THE RULE OF LAW WOULD BE THAT ESPECIALLY AS IN HERE WHERE THERE IS NO CLEAR CONNECTION BETWEEN THE CHILD AND THE APARTMENT, WOULD BE THAT IN ORDER TO JUSTIFY AN ENTRANCE INTO THAT APARTMENT THERE MUST BE SOMETHING MORE EVIDENCE OF SOMETHING BEING AMISS THAN THE FAILURE TO RESPOND TO THE POLICE KNOCKING, WHICH IS BASICALLY WHAT WE HAVE GOT HERE. WE'VE GOT THE POLICE KNOCKING AT THE DOOR SAYING POLICE, POLICE, POLICE, AND IT IS MY POSITION THAT A CITIZEN HAS A RIGHT TO REFUSE TO COME TO THE DOOR FOR THE POLICE WHEN THEY DON'T HAVE A WARRANT OR ANYTHING LIKE THAT, AND IF THEY ASSUME THAT BECAUSE SOMEONE DOESN'T COME TO THE DOOR IN THE MIDDLE OF THE NIGHT THAT THAT MUST BE AN EMERGENCY THAT INDICATES THEY HAVE TO ENTER TO TAKE CARE OF THEM, I WOULD SUGGEST THAT'S A VERY DANGEROUS PRECEDENT. THANK YOU.

THANK YOU VERY MUCH. THANK BOTH OF YOU. WE CERTAINLY HAD A VARIETY OF CASES THIS MORNING, AND THIS WAS AN INTERESTING ONE TO END ON. THE COURT WILL BE IN RECESS UNTIL 9:00 TOMORROW MORNING. I'M SORRY, 8:30 TOMORROW MORNING