

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.

**State of Florida v. Gregg Campbell
SC05-1844**

THE COURT WILL HEAR THE NEXT CASE OF STATE OF FLORIDA VERSUS GREG CAMPBELL.

CHIEF JUSTICE: JUST WAIT A MINUTE UNTIL THE HUSTLE AND BUZZLES DIES DOWN. YOU MAY START.

GOOD MORNING. MAY IT PLEASE THE COURT. MONIQUE L'ITALIEN FOR THE PETITIONER IN THIS MATTER.

CHIEF JUSTICE: SPEAK UP A LITTLE BIT.

I AM SORRY. THIS CASE BEGAN ONE EVENING IN JANUARY WHEN THREE DETECTIVES WERE ON GENERAL PATROL IN AN UNMARKED POLICE CAR IN AN AREA OF TAMARAC, FLORIDA. THE DETECTIVES ENTERED A PARKING LOT AFTER AN APARTMENT COMPLEX, AND AS THEY -- PARKING LOT OF AN APARTMENT COMPLEX, AND AS THEY DID SO, THEY PARKED THE CAR AND EACH DETECTIVE EXITED THE CAR AND WENT ON TO ADDRESS INDIVIDUAL CITIZENS, AND SPECIFICALLY IN THIS CASE DETECTIVE CATALANO WALKED UP TO THE CAR OF MR. CAMPBELL, TAPPED ON THE WINDOW AND PROCEEDED TO ASK HIM, MR. CAMPBELL ROLLED DOWN THE WINDOW.

CHIEF JUSTICE: WHAT IS THE TESTIMONY AS TO WHY HE WALKED UP TO THIS PARTICULAR VEHICLE.

NO PARTICULAR REASON AT ALL. DETECTIVE CATALANO SIMPLY SAID THEY SAW THE CAR WAS PARKED THERE.

WHAT TIME OF THE DAY WAS IT AGAIN?

AROUND 7:00 P.M.

JUSTICE: AND WHAT MONTH OF THE YEAR?

I BELIEVE 2004 IS THE YEAR.

JUSTICE: NOW, THE DAYLIGHT OR THE DARK?

EXACTLY IN JANUARY, 7:00 P.M. WOULD PROBABLY BE DARK.

JUSTICE: THE TRIAL COURT FOUND THAT THE ORIGINAL STOP WAS CONSISTENT.

YES, YOUR HONOR. THE TRIAL COURT DID DETERMINE.

JUSTICE: AND THAT THE TRIAL COURT, ALSO, FOUND THAT THE COURT DOES FIND THAT THE OFFICERS DID NOTHING IMPROPER.

CORRECT. YES. FROM HIS PERSPECTIVE , THE FACTS AS HE HEARD THEM THERE WAS NO DETENTION.

JUSTICE: RIGHT. NOW , WHAT DID OCCUR , HOWEVER, IN THIS INST ANCE , WAS THAT THE TRIAL COURT SUPPRESSED THE FILE.

HE DID THAT , Y OUR HONOR.

JUSTICE: AND HE DID THAT ON WHAT BASIS?

AT THE TIME THE TRIALCOURT HAD THIS CASE , THIS COURT HAD NOT BEEN HEARD BY US. SO AT THE TIME THE TRIAL COURT ONLY HAD BAEZ ONE AND PERKO ON APPEAL. SO AT THAT TIME RUNNING A WARRANTS CHECK WAS CONSIDERED TO BE DETENTION AT THAT TIME. THIS COURT PROCEEDED TO HAEFER TO HEAR BY AS - - TO HEAR BAEZ TWO , WHICH IS TAKING THE DRIVERS LICENSE AND RUNNING A WARRANTS CHECK DID NOT AMOUNT TO DETENTION.

JUSTICE: EXCUSE ME. I BELIEVE THAT THE BAEZ DECISION OUT OF THIS COURTTALKED IN TERMS OF THE TOTALITY OF THE CIRCUMSTANCES AND DID NOT DRAW A BRIGHT-LINE RULE , DID IT?

NO , YOUR HONOR. YOU ARE CORRECT AND AT SOME POINT I WOULD LIKE TO ADDRESS A LITTLE BIT ABOUT HOW WE WOULD LIKE THIS CASE TO SERVE AS POSSIBLE FOR THIS COURT TO CLARIFY SOME OF THE LANGUAGE OF BAEZ. THIS CASE REALLY PRESENTS A GREAT OPPORTUNITY TO DO THAT.

CHIEF JUSTICE: AS FAR AS WHAT THE PARAMETERS ARE IN BAEZ , THIS , THE SUPREME COURT'S OPINION IN BAEZ , THERE WAS SOME THING AKIN TO REASONABLE SUSPICION THAT WAS DISCUSSED ON THE CIRCUMSTANCES.

EXACTLY.

CHIEF JUSTICE: YOU ARE AGREEING THAT IN THIS CASE WE DON'T HAVE THE ISSUE OF REASONABLE SUSPICION.

ABSOLUTELY. PURELY CONSENTUAL ENCOUNTER.

JUSTICE: NOW, HAD THE , PRIOR TO THE TIME THAT THE OFFICERS ASKED FOR THEIR , FOR THE RIGHT TO DO THE SEARCH , HAD THE COMPUTER CHECK BEEN COMPLETED?

THE TESTIMONY FROM BOTH DETECTIVES AT THE MOTION TO SUPPRESS HEARING STAYS THE WARRANTS CHECK WAS ON GOING AT THE TIME THAT DETECTIVE CATALANO ASKED MR . CAMPBELL IF HE COULD SEARCH HIS CAR.

JUSTICE: AND THAT TOOK ABOUT 3-TO -7 MINUTES?

DETECTIVE CATALANO GAVE THREE ANSWERS AND APPARENTLY SETTLED ON 3-TO-5.

IT WAS WITHIN THE 3- TO-5 MINUTES THAT HE ASKED IF HE COULD SEARCH THE CAR?

YES.

CHIEF JUSTICE: SO ARE YOU SAYING THAT THE FOURTH DISTRICT OPINION, AND BECAUSE THE FOURTH DISTRICT OPINION SAID THAT THE CHECK CAME BACK CLEAN, BUT INSTEAD OF RETURNING HIS LICENSE AND CONCLUDING THE ENCOUNTER , ONE OF THE DETECTIVES ASKED WHETHER CAMPBELL HAD ANY GUNS OR DRUGS. REPLIED NO. THEN WITHOUT FIRST RETURNING THE LICENSE ASKED FOR CONSENT TO SEARCH. ARE YOU SAYING THAT IS AN INCORRECT STATEMENT OF THE FACTS AS FOUND BY THE TRIAL JUDGE?

YES, IT IS. YES, IT IS. BOTH DETECTIVE CATALANO AND DETECTIVE WHITE ON DIRECT AND CROSS-EXAMINATION AT THE MOTION TO SUPPRESS WERE VERY CLEAR. THE WARRANTS CHECK WAS ONGOING.

JUSTICE: AND THE DEFENDANT DID NOT TESTIFY, CORRECT?

NO, THE DEFENDANT DID NOT TESTIFY.

JUSTICE: SO THAT TESTIMONY WAS UNDISPUTED?

YES.

JUSTICE: AND WHAT DID THE TRIAL COURT FIND? DID THE TRIAL COURT FIND THAT THE WARRANT CHECK HAD NOT BEEN COMPLETED?

THAT IS A BIT AFTER PROBLEM BECAUSE THE TRIAL COURT, BECAUSE IT BASED ITS RULING ON BAEZ, DIDN'T TAKE THAT NEXT STEP. IT DIDN'T SEEM TO NEED TO ADDRESS WHETHER THE WARRANTS CHECK WAS ONGOING, BECAUSE AT THE TIME BAEZ ONE SAID THEY COULDN'T STOP. THEY COULDN'T DO THE WARRANTS CHECK.

JUSTICE: SO THERE IS NO FINDING, ONE WAY OR THE OTHER.

NO.

CHIEF JUSTICE: I GUESS I THOUGHT YOU HAD SAID THAT IT WAS UNDISPUTED THAT IT WAS ONGOING.

WELL, ACCORDING TO THE DETECTIVE, AND I BELIEVE THAT MR. CAMPBELL DOESN'T DISPUTE THAT, EITHER, THAT THE WARRANTS CHECK WAS ONGOING. THE TRIAL COURT DIDN'T SPECIFICALLY --

CHIEF JUSTICE: WHERE DID THE FOURTH DISTRICT GET THAT STATEMENT?

I AM AFRAID I DON'T KNOW, YOUR HONOR. SO AT THE TIME THE WARRANTS CHECK WAS ONGOING --

CHIEF JUSTICE: LET ME ASK YOU IS IT CRITICAL IN THIS CASE TO KNOW IF, BECAUSE HE CONSENTED TO, IN THIS CASE, UNLIKE BAEZ AND UNLIKE SOME OF THE OTHER CASES LIKE GOLF I KNOW, HE -- LIKE GOLPHIN, HE TOLD HIM THEY WERE GOING TO RUN A WARRANTS CHECK AND HE CONSENTED TO THAT.

YES.

CHIEF JUSTICE: IT CRITICAL AS TO THE CONSENT, AS TO WHETHER THE WARRANTS CHECK WAS FINISHED AT THE TIME THAT THEY ASKED WHETHER THEY CAN SEARCH HIS VEHICLE OR DOES IT MATTER AT ALL?

WE BELIEVE IT REALLY DOES NOT MATTER.

CHIEF JUSTICE: DOES NOT MATTER.

NO.

CHIEF JUSTICE: SO UNDER NO CIRCUMSTANCES IS RETAINING SOMEONE'S LICENSE AFTER IT HAS BEEN VOLUNTARILY GIVEN FOR IDENTIFICATION PURPOSE, CONSTITUTION AN UNLAWFUL

SEIZURE.

WELL , YOUR HONOR , LET ME REPHRASE. IT SHOULD BE CONSIDERED MATERIAL AND IT SHOULD BE A FACTOR, BUT IT SHOULD NOT BE DISPOSITIVE , AND I THIN K IF WE LOOK BACK TO THE UN ITED STATES SUPREME COURT CASES SUCH AS BO SSTIC AND ROYER WHERE THEY DISCUSS DID THE OFFICERS RETAIN --

CHIEF JUSTICE: WHAT WAS HAPPENING AT THE POINT WHERE THEY HAD HIS LICENSE IN T HIS CASE? WHERE WERE THE OTHER OFFICERS?

AT THE POINT WHERE THE WARRANTS CHECK WAS ONGOING , THE OF FICERS WERE ON THE PASSENGER SIDE .

CHIEF JUSTICE: SURROUNDING THIS VEH ICLE ?

GUNS WERE H E LLS TORE TE R ED. -- GUNS WERE HOLSTER ED . IT I S DIS PUTED WHETHER THEY WERE SURROUNDING THE VEHICLE , BECAUSE DETECTIVE CAR TER WAS BEHIND THE CAR AND THEY SAY HE WAS ON A GRASSY AREA BEHIND A TREE, SO WITH A CAR BACKED INTO A SP AC E , BOTH SIDES COULD AR GU E HOW CL OSE DETECTIVE CARTER WAS TO THE CAR AND WHETHER THE DEFENDANT WAS ACTUALLY AWARE OF DETECTIVE CARTER.

CHIEF JUSTICE: THERE WERE T WO VEH ICLES , AT SEVEN O'CLOCK THERE WERE TWO SMALL CHILDREN IN THE CAR?

TWO CHILDR EN. WE ARE NOT TOLD THEIR A GES.

CHIEF JUSTICE: SO SMALL CHILDREN, AGAIN, F ROM THE FOURTH DISTRI CT'S OPIN ION IS JUST OUT OF NO WHERE ?

NO. I AM SAY ING THERE WERE TWO CHILDREN IN THE CAR. I DON'T KNOW THEIR AGES.

CHIEF JUSTICE: I THOUGHT THE COURT SAID SMALL CHILDREN. IT COULD AF FECT THE TOTALITY OF THE CIRCUMSTANCES , IF SOMEONE IS THERE WAITING FOR THE MOTHER. NOW THERE IS DETECTIVE S SURROUNDING THIS VEHICLE. THEY HAVE TA KEN HIS LICENSE , AND HOW IS, I GUESS , A REASONABLE PERSON TO THINK THAT NOW THEY ARE FREE TO LEAVE?

WELL , THE REASONABLE PERSON TEST IS OBJECTIVE NOT SUBJECTIVE. I DON'T KNOW WHETHER --

CHIEF JUSTICE: IT IS OBJECTIVE. THAT IS WHAT I A M ASKING. OBJECTIVELY HOW WOULD A REASONABLE PERSON THINK THAT THEY ARE FREE TO LE AVE, WHEN THERE ARE THREE OFFICERS --

FREE TO SAY NO. MR . CAM PBELL WAS FREE TO SAY NO. MR . CAMPBELL WAS FREE TO SAY, NO , I DON'T WANT TO TALK TO YOU.

CHIEF JUSTICE: IS THAT THEORETIC CAL LY?

I BELIEVE THE CURRENT STATE OF THE LAW IS MR WAS FREE TO S AY NO TO THE ENCOUNTER , FREE TO SAY NO TO HANDING OVER HIS DR IVERS LICENSE. MR. CAMPBELL WAS FREE TO SAY NO , I DON'T WANT YOU RUNNING A WARRANTS CHECK ON ME . MR . CAMPBELL WAS FREE TO SAY NO TO THE SEARCH . AND IN THIS CASE H E ULTIMATELY SAID HE COULDN'T REMEMBER HE HAD A GUN IN THE CAR.

JUSTICE: LET ME GET BACK TO THE ISSUE OF WHETHER THE WARRANTS CHECK WAS COMP LETED . IT SEEMS LIKE THER E IS A DISPUTE AMONG THE CASES AS TO WHETHER WHEN SOMEONE ASKS IF

THEY CAN SEE YOUR DRIVERS LICENSE AND YOU CONSENT TO THAT, WHETHER THE CONSENT TO LOOKING AT THE DRIVERS LICENSE ALSO INCLUDES A CONSENT TO RUN A WARRANTS CHECK, BUT IT SEEMS TO ME THAT IT IS UNDISPUTED AMONG THE CASES THAT ONCE THE WARRANTS CHECK IS COMPLETED, CERTAINLY AT THAT TIME THE DEFENDANT SHOULD GET HIS LICENSE BACK.THERE IS NO REASON TO K EEP THE LICENSE , ONCE A WARRANTS CHECK IS COMPLETED .

YOU ARE RIGHT. THERE IS NO REASON TO KEEP THE LICENSE, BU T THE POINTTHAT WE ARE TRYING TO MAKE IS LET'S SAY YOU HAVE A N OFFICER , I BELIEVE ECLIPSE IT TO HIS BELT. AN OFFICER FOR GET. THEY BECOME SIDETRACKED ANDFORGET. HE PUTS IT ON HIS D ASH BOARD.

IF THE CONSENT TO SEE THE LICENSE INCLUDES A CONSENT TO RUN A WARRANTS CHECK , I DON'T THINK THE CASES SAY IT INCLUDES A CONSENT TO RUN A WARRANTS CHECK AND TO KEEP IT FOR AS LONG AS YOU WANT UNTIL YOU DECIDE TO GIVE IT BACK TO ME.

NO. BUT WHAT IT DOES INCL UDE IS THE PERSON CAN END THE ENCOUNTER. I BELIEVE THAT I S THE POINT . THE PERSON AT A NY POINT CAN S AY, YOU KNOW WHAT? NO. I AM AF RAID SOMETHING MIGHT COME BACK ON MY WARRANTS CHECK SO I DON'T WANT T O CONTINUE THIS DISCUSSION.I AM GOING TO BE ON MY WAY AND END IT. I AM GOING TO ROLL UP MY WINDOW. LEAVE ME A L ONE.

JUSTICE: ONCE THEWARRANTS CHECK IS COMPLETED, WHAT IS THE REASONABLE BASISFOR THE POLICE OFFICER TO RETAIN THE LICENSE?

THERE WAS NO PARTICULAR BASIS FOR RETA INING IT.

JUSTICE: I UNDERSTANDTHAT YOU ARE SAYING THAT IN THIS CASE THE WARRANTS CHECK HAD NOT BEEN COMPLETED. BUT YOU ALSO SAID THAT IT WOULD NOT NECESSARILY MAKE A DIFFERENCE IN THE CASE , ANDI THINK THAT IT MAY VERY WELL MAKE THE DIFFERENCE BETWEEN A LEGAL AND ILLEGAL DETENTION.

WHAT WE ARE SUGGESTING IS IT IS JUST TO BE CONSIDERED A FACTOR. WE DON'T WANT THIS COURT TO COME BACK AND SAY SI MPLY BECAUSE AN OFFICER RETAINED THAT DRIVERS LICENSE, THAT SUDDENLY THAT BECO ME S DETENTION IN AND OF ITSELF , BECAUSE THE CIRCUMSTANCES --

JUSTICE: IF YOU YOU LOOK AT BOTH THE STATE AND FEDERAL CASES, THAT ONCE THE PURPOSE OF TA LKING WITH THE INDIVIDUAL OR HAVING SOMETHING , INTERACTION WITH THE INDIVIDUAL IS COMPLETED, AS JUSTICE CANTERO SAID, SUCH AS DETERMINING THAT THE TEMPORARY LICENSE TAG IS V ALID, FLORIDA CASE DI RECTLY ON POINT , FEDERAL CASES , ONCE WE TALK WITH AN INDIVIDUAL, WE KEEP THEIR AIRLINE TICKET AND IDENTIFICATION THAT CHANGESTHE DYNAMICS . IF WE GIVE THE TIC KET ANDTHE IDENTIFICATION BACK , THAT IS A DIF FERENT SCENARIO, SO WH Y IS IT NOT CRITICAL? IT IS ALMOST A BRIGHT LI NETHAT, ONCE YOU FIN ISH THAT CONSENTUAL EN COUNTER , IF YOU MAINTAIN AND KEEP FOR NO REASON, NO REASON ABLE BASIS TO CONTINUE, THAT IT ALMOST SEEMS LIKE IT IS A BRIGHT LINE. WHY ARE TH OSE CASES NOT A BRIGHT LINE , AT LEAST AT THAT POINT?

BECAUSE IF YOU LOOK AT THOSE CASES WHEN THEY DISCUSS, WHETHER IT WAS THE AIRLINE TICK ET AND THE LICENSE RETAINED , WE DISCUSSIT IN TERMS OF THOSE FACTORS.DID THEY RETAIN IT? WAS IT INTIMIDATION ? DID THEY TO UCH THEDEFENDANT?AND IN ROYER THEY TOOK HIS LUGGAGE . THEY HAD HIS AIRLINE TICKET AND HIS LICENSE , BUT THEY A LSO TOOK HIS LUGGAGE , ANDMR. ROYER TEST IFIED, AND ITHINK THAT IS THE WH OLE POINT IS WE DON'T WANT A BRIGHT-LINE RULE TO SAY SIMPLY BECAUSE A DRIVERS LICENSE IS RETAINED, THAT THAT TURNS IT INTO A DETENTION.

JUSTICE: WHY DO WE NOT? FOR EXAM PLE THE OTHER F LORIDA CASE STOPPING FO LKS R ANDOM

LY BECAUSE YOU CANNOT CLEARLY SEE THE TEMPORARY TAG BUT ONCE YOU APPROACH THE VEHICLE AND YOU MAKE CERTAIN THAT THAT TAG IS VALID AND THERE IS NOT A PROBLEM TO CONTINUE FURTHER AND TO MAINTAIN AND KEEP THE PERSON AT THE SCENE, IT IS TANTAMOUNT TO A SEIZURE. WE KNOW A STOP IS A JEEZ YOUR.

BUT THAT WAS -- IS A SEIZURE.

BUT YOUR HONOR, THAT WAS A STOP. IT IS TANTAMOUNT, AND WHEN THERE IS A STOP, YOU CAN ONLY CONTINUE THE STOP IN THE REALM OF WHAT IT WAS FOR, AND WHEN THE OFFICER REALIZED THERE WAS NOTHING WRONG WITH THAT TAG, LET ME BEGIN BEGIN AGAIN. AT THAT POINT THE PERSON IS DETAINED BECAUSE THERE IS A STOP. IN THIS CASE IT IS CONSENTUAL. THERE IS NO STOP, AND FROM THE BEGINNING WE ARE SAYING --

JUSTICE: DON'T THE CASES LOOK AT FOR EXAMPLE THE FEDERAL CASES, IF YOU ARE IN THE VEHICLE AND YOU HAVE THE OPPORTUNITY TO LEAVE, MAINTAINING OF THE DRIVERS LICENSE, IS THAT YOU CANNOT LEAVE BECAUSE IT IS A VIOLATION OF LAW, WHEREAS IF I AM OUT OF THE VEHICLE AND WALKING TO MY HOME, I AM NO LONGER IN THE VEHICLE, AND THAT IS NOT, SO IT SEEMS TO ME THAT THE POSSESSION OF THE LICENSE IS A CRITICAL FACTOR, DEPENDING UPON WHERE THE INDIVIDUAL IS LOCATED AND WHAT THAT INDIVIDUAL MIGHT BE ABLE TO DO?

JUSTICE: LEWIS YOU ARE ABSOLUTELY RIGHT. THAT IS THE POINT IS THE CRITICAL FACTOR, AND IT IS MATERIAL BUT NOT DISPOSITIVE, AND THAT IS ALL WE ARE TRYING TO SAY. WE ARE NOT SUGGESTING TO THROW IT OUT THE WINDOW. IT IS JUST A MATERIAL FACTOR.

CHIEF JUSTICE: BUT WOULD YOU THEN GO TO, THAT, IF ONE, IT IS MATERIAL, AND IT IS CRITICAL, AND THE OTHER ISSUES, WAS WHAT ELSE DID YOU LOOK AT THEN, IN TERMS OF WHETHER IT IS A VOLUNTARY CONSENT OR NOT.

I BELIEVE WE DON'T HAVE A DELINEATED LIST BUT WE CONSIDER SOME OF THE MORE GENERAL ARE THE OFFICERS IN UNIFORM OR PLAIN CLOTHES? HAVE THE OFFICERS UNHOLSTERED THEIR GUNS OR ARE THE GUNS HOLSTERED? HAVE THEY GRABBED ANYTHING LIKE IN ROYER WHERE THEY TOOK HIS LUGGAGE. SOME COURTS, I BELIEVE THE FEDERAL DOES CONSIDER THE SEX, THE AGE.

JUSTICE: HOW ABOUT THE FACT THAT THEY PRETTY MUCH SURROUNDED THE CAR. YOU HAVE AN OFFICER ON ONE SIDE AND AN OFFICER ON THE OTHER AND AN OFFICER BEHIND THE CAR OR IN FRONT OF THE CAR. DO YOU LOOK AT THAT?

YES. ABSOLUTELY, JUSTICE QUINCE.

JUSTICE: WAS THAT A FACTOR IN THIS PARTICULAR CASE? I MEAN WE HAD THREE OFFICERS THAT PRETTY MUCH SURROUNDED THE VEHICLE. AN INNOCENT PERSON, WHICH IS THE STANDARD WE HAVE TO APPLY.

YES.

JUSTICE: EVEN AN INNOCENT PERSON UNDER THOSE CIRCUMSTANCES, YOU BELIEVE, HONESTLY BELIEVE THAT THEY FELT FREE TO LEAVE AND ASK THE OFFICER GIVE ME BACK MY LICENSE. I DON'T WANT TO COOPERATE ANYMORE?

WELL, I BELIEVE FIRST STATE HAS SAID WE DON'T ENTIRELY AGREE THAT THIS CAR WAS SURROUNDED, BUT EVEN ASSUMING THAT YOU HAVE THREE OFFICERS, SO SO FAR IT LOOKS, WE HAVE TWO FACTORS THEN. THE OFFICERS AROUND THE CAR AND RETENTION OF THE DRIVERS LICENSE, SO THE ONLY TWO FACTORS THAT WE HAVE IN AN OTHERWISE CONSENTUAL ENCOUNTER HERE.

JUSTICE: BUT IN THAT KIND OF SITUATION WHEN YOU HAVE THAT KIND OF SHOW OF FORCE , AND YOU NEED THE OFFICER TO ACT AND BE INTIMIDATING , PULL THEIR GUNS --

YOU NEED THE OFFICERS TO PULL THEIR GUNS?

JUSTICE: ONE OF THE FACTORS YOU SAY IS WHETHER THEY PULLED THE WEAPON AND THOSE KINDS OF THINGS. DO YOU REALLY NEED THAT IN ORDER TO BE INTIMIDATING IT TO A CITIZEN , WHEN YOU HAVE A NUMBER OF OFFICERS WHO HAVE PRETTY MUCH SURROUNDED YOU AND HAVE YOUR DRIVERS LICENSE.

IT JUST GOES INTO THE TOTALITY, YOUR HONOR. IT DEPENDS ON THE CIRCUMSTANCES.

CHIEF JUSTICE: I CANNOT , AND AGAIN WE ARE IN THE UNITED STATES OF AMERICA , AND WHATEVER THIS COURT DECIDES , THAT AN AVERAGE CITIZEN SITTING IN A VEHICLE WITH TWO YOUNG CHILDREN. THERE ARE THREE OFFICERS WITH GUNS. THEY HAVE HIS LICENSE. HOW THAT IS NOT A SHOW OF AUTHORITY, AND SOMEBODY WOULD SAY I AM FREE TO LEAVE, WHEN THERE ARE THREE OFFICERS SURROUNDING THE VEHICLE.

YOUR HONOR, I JUST HAVE TO GO BACK TO WHAT OUR UNITED STATES SUPREME COURT HAS SAID. I MEAN WE HAVE TO LOOK AT MENDENHALL , A 22-YEAR-OLD , I BELIEVE NOT EVEN HIGH SCHOOL EDUCATED YOUNG WOMAN TRAVELING ALONE IN AN AIRPORT , IS ASKED TO ACCOMPANY THE DETECTIVE , NARCOTICS OFFICERS , TO A ROOM SEPARATE FROM THE AIRPORT , AND OUR SUPREME COURT FOUND THAT THAT WAS NOT A DETENTION.

JUSTICE: BUT THEY HAD GIVEN HER BACK HER TICKET AND HER IDENTIFICATION.

AND THAT WAS A FACTOR .

JUSTICE: AT THE POINT THAT THEY ASKED HER WOULD YOU ACCOMPANY US, SHE HAD HER DOCUMENTS.

THEY HAD RETURNED THE DOCUMENTS WHEN SHE WAS ASKED TO ACCOMPANY THEM.

CHIEF JUSTICE: DO YOU WANT TO SAVE SOME TIME FOR REBUTTAL?

JUSTICE: COULD YOU ADDRESS THE CHANGE OF FACTS. WE HAVE BEEN OPERATING ON THE OPINION , CERTAINLY FROM THE FOURTH DISTRICT WITH REGARD TO A VERY MATERIAL FACT. IS THE RECORD CLEAR WITH REGARD TO HOW THE WARRANT CHECK HAD BEEN CONDUCTED? THEY TAKE THE LICENSE BACK TO THE INDIVIDUAL? THEY DO IT RIGHT STANDING BY THE CAR. IS THAT CLEAR FROM THIS RECORD?

THE ONLY THING I CAN SAY , YOUR HONOR, IS DETECTIVE CATALANO SAID I WENT TO THE TELETYPE, AND SAYING I WENT TO THE TELETYPE , WOULD INDICATE THAT HE SEEMED TO GO TO HIS CAR, AND THEN HE SAID , HEY , WHILE YOUR WARRANTS CHECK IS ONGOING , DO YOU MIND IF I SEARCH YOUR CAR , WHILE I AM RUNNING YOUR WARRANTS CHECK, SO HE WENT TO THE TELETYPE . THANK YOU.

CHIEF JUSTICE: MR . HALPERN.

GOOD MORNING AND MAY IT PLEASE THE COURT. MY NAME IS SAM HALPERN . I REPRESENT THE RESPONDENT GREG CAMPBELL. I WOULD LIKE TO INITIALLY JUST CLEAR UP THE ISSUES THAT I THINK THE COURT MAY BE HAVING SOME PROBLEMS WITH FACTUALLY. AS PAGE 21 OF THE RECORD IT DOES INDICATE THAT THERE WERE TWO SMALL CHILDREN IN THE CAR. ON PAGE 33 OF THE RECORD , IT INDICATES CLEARLY THAT WHILE THE TELETYPE WAS IN PROGRESS , DETECTIVE CATALANO DID IN FACT ASK THEN FOR THE CONSENT.

JUSTICE: SO YOU WOULD AGREE WITH THE STATE THAT THE WARRANTS CHECK WAS NOT OVER, AT THE TIME THAT THE OFFICER ASKED TO SEARCH THE CAR.

ABSOLUTELY. THERE IS NO QUESTION THAT THE RECORD SHOWS THAT .

JUSTICE: SHOULDN'T THAT MAKE A REAL DIFFERENCE IN THIS CASE, IF THE OFFICER HAD COMPLETED THE WARRANTS CHECK AND RETAINED THE DRIVER'S LICENSE AND ASKED FOR THE SEARCH , WOULD THAT BE A DIFFERENT SCENARIO FROM WHAT WE HAVE HERE , WITH THE WARRANTS CHECK ONGOING AND YOU ASKED FOR PERMISSION TO SEARCH THE VEHICLE.

I REALLY DO NOT BELIEVE THAT IT IS OF ANY MOMENT WHATSOEVER, WHETHER THE WARRANTS CHECK HAD BEEN COMPLETED OR NOT.

CHIEF JUSTICE: BUT HE GAVE CONSENT FOR THE WARRANTS CHECK.

WELL, THAT IS AN ISSUE I THINK FOR THE COURT TO DETERMINE, BUT BEFORE WE GET INTO THAT ISSUE, I WOULD LIKE TO JUST ADDRESS JUSTICE QUINCE ON THE MATTER CONCERNING WHETHER IT IS OF RELEVANCE, BECAUSE I THINK A NUMBER OF JUSTICES -- RELEVANCY, BECAUSE I THINK A NUMBER OF JUSTICES HERE HAVE INQUIRED ABOUT THAT ONE , DETECTIVE CATALANO HAD IN HIS POSSESSION THE DRIVER'S LICENSE AND HAD COMMUNICATED THE BIOGRAPHICAL INFORMATION THAT IS CONTAINED ON THAT LICENSE TO THE TELETYPE , FOR ALL INTENTS AND PURPOSES , HE HAS NO FURTHER USE FOR THE LICENSE, AND IT MATTERS ABSOLUTELY NOT WHETHER OR NOT THEY COME BACK OR NOT .

JUSTICE: AREN'T WE GETTING PRETTY TECHNICAL ?

I AM SO RRY ?

JUSTICE: AREN'T WE GETTING PRETTY TECHNICAL , IF YOU SAY THAT AS SOON AS HE PUTS THE INFORMATION INTO THE SYSTEM THAT AT THAT POINT HE HAS TO GIVE THE LICENSE BACK?

NO. I DON'T THINK WE ARE GETTING TECHNICAL AT ALL. I THINK THAT IS WHAT THE ISSUE IS.

CHIEF JUSTICE: REALLY , CERTAINLY I IN MANY CASES IS SUPPORTED MAKING SURE THE FOURTH AMENDMENT HAS MEANING, BUT IF SOMEBODY CONSENTS TO A WARRANTS CHECK , THEY ARE CONSENTING TO SOMEBODY CHECKING TO SEE IF THERE ARE OUTSTANDING WARRANTS ON THEM, SO DURING THAT TIME THEY EXPLICITLY CONSENTED TO STAYING THERE WHILE THE WARRANTS CHECK SO GOING AND COMPLETED .

WELL , I DON'T BELIEVE THAT THE RECORD IN THIS CASE SHOWS THAT MR . CAMPBELL CONSENTED TO A WARRANTS CHECK. I THINK WHAT THE RECORD SHOWS IS THAT THE OFFICER WALKED UP TO A CAR WHERE HE WAS DOING ABSOLUTELY NOTHING WRONG, TAPPED ON THE WINDOW AND ASKED HIM A QUESTION AS TO WHAT ARE YOU DOING HERE, TO WHICH HE RESPONDED. THE POLICE SAID THEY HAD NO REASON TO SUSPECT THAT THEY DIDN'T BELIEVE HIM. HE WAS WAITING FOR THE YOUNG CHILDREN'S MOTHER TO COME DOWN, AND AT THAT POINT THEY ASKED HIM FOR HIS LICENSE. WHEN HE PRODUCED IT, THEN THEY ADVISED HIM WE ARE GOING TO RUN A WARRANTS CHECK ON YOU.

CHIEF JUSTICE: SO SINCE YOU SEEM TO HAVE THE RECORD RIGHT IN FRONT OF YOU, WHAT , THEY ASKED HIM FOR IDENTIFICATION, AND IT LOOKED TO BE IDENTIFICATION , AND THEN THE NEXT THING THEY ASKED HIM WHAT HE WAS DOING.

WELL , I AM LOOKING AT PAGE 32 , AND IT SAYS ONCE I TOOK IT FROM HIM, I JUST SAID I AM GOING TO CHECK YOU FOR ANY WARRANTS OR CHECK YOUR LICENSE. THAT IS WHAT HE SAID.

CHIEF JUSTICE: AND WHAT DID CAMPBELL --

HE SAID I HAVE NO PROBLEM. BUT HE SAID I HAVE NO PROBLEM , ONLY AFTER HE HAD BEEN EFFECTIVELY SEIZED.

JUSTICE: WELL , LET ME ASK YOU THIS. THE TRIAL COURT HERE MADE A SPECIFIC STATEMENT IN THE ORDER, AS I UNDERSTAND IT , THAT THE COURT DOES FIND THAT THE OFFICERS DID NOTHING IMPROPER .

THAT IS WHAT THEY DID TO THE WARRANTS CHECK.

JUSTICE: NOW , THE BOTTOM LINE OF THIS WHOLE ARGUMENT HERE AND WHAT THE TRIAL COURT DID, WAS THE TRIAL COURT SUPPRESSED THE FILE , CORRECT?

THAT IS CORRECT.

JUSTICE: UNDER THE EXCLUSIONARY RULE.

SURE.

JUSTICE: NOW , THE U.S. SUPREME COURT HAS REPEATEDLY SAID SINCE 1976 THAT THE EXCLUSIONARY RULE IS NOT AS PRESCRIBED , A FOURTH AMENDMENT VIOLATION PER SE, BUT THAT IT APPLIES ONLY IN THE CONTEXT WHERE REMEDIAL OBJECTIVES ARE THOUGHT TO BE SERVED . NOW , WHAT IS THE REMEDIAL OBJECTIVE THAT WOULD BE SERVED IN THIS INSTANCE , IF THE POLICE OFFICERS DID NOTHING WRONG ? NOTHING IMPROPER .

WELL , YOU KNOW , I THINK THAT THIS COURT HAS THE OPPORTUNITY TO REVIEW THINGS DE NO VO WITH REGARD TO APPLYING THE FACTS TO THE LAW , AND I THINK THAT IN THIS PARTICULAR CASE , THE REAL ISSUE IS WHEN THE POLICE DETAINED AND RETAINED MR . CAMPBELL'S DRIVERS LICENSE , WHETHER OR NOT HE WAS EFFECTIVELY SEIZED FOR FOURTH AMENDMENT PURPOSES.

JUSTICE: BUT THE STATE CONSTITUTION OF THE STATE OF FLORIDA SAYS THAT WE HAVE TO FOLLOW IN THESE FOURTH AMENDMENT CASES , THE DECISIONS OF THE UNITED STATES CONSTITUTION , OF THE UNITED STATES SUPREME COURT, RIGHT?

THAT'S CORRECT.

JUSTICE: AND THAT APPLIES TO THEIR CASES ON THE APPLICATION OF THE EXCLUSIONARY RULE, DOES IT NOT?

ABSOLUTELY, AND IN BOSTICK, WE HAVE A DIFFERENT SCENARIO ENTIRELY THAN WE HAD IN JORDAN AND THOMPSON AND A NUMBER OF OTHER FEDERAL CASES . FOR EXAMPLE , THERE IS A DISTINCTION TO BE DRAWN BETWEEN WHETHER WE ARE GOING TO APPLY A FREEDOM TO LEAVE ANALYSIS VERSUS A FREEDOM TO DECLINE ANALYSIS , AND IN BOSTICK THERE WAS A FREEDOM TO DECLINE ANALYSIS , BECAUSE AFTER ALL IT WAS NOT THE POLICE WHO HAD DONE ANYTHING TO RESTRICT BOSTICK'S MOVEMENT. BOSTICK'S MOVEMENT WAS RESTRICTED SIMPLY BECAUSE BOSTICK WAS ON A BUS AND WASN'T GOING ANYWHERE , WHEREAS IN THOMPSON AND OTHER CASES THAT YOU ARE FAMILIAR WITH , JORDAN AMONG THEM , IT WAS THE POLICE ACTION NOT THE ACTION OF THE CITIZEN , THAT CAUSED HIM TO BE DETAINED .

JUSTICE: IN THAT VEIN, CAN YOU GIVE US A VERBAL SKETCH OF THE CIRCUMSTANCES HERE. HOW MANY POLICE OFFICERS WERE INVOLVED, WHERE AROUND THE VEHICLE THEY STOOD AND WHETHER THE VEHICLE WAS PARKED NOSE FIRST OR TAIL FIRST.

IF I REMEMBER CORRECTLY ON THAT POINT, THE VEHICLE WAS BACKED INTO A SPOT. I BELIEVE THAT IS WHAT THE RECORD INDICATES. BUT THERE IS NO QUESTION IT WAS LEGALLY PARKED AND THAT THE SOLE PURPOSE FOR THE POLICE TO APPROACH MR. CAMPBELL WAS TO CHECK HIM OUT AND SEE WHAT HE WAS DOING.

JUSTICE: HOW MANY POLICE WERE THERE AND WHERE DID THEY STAND IN RELATION TO THE VEHICLE?

THERE WERE THREE POLICE OFFICERS, ALL DETECTIVES WITH THE BROWARD SHERIFFS OFFICE. DETECTIVE CATALANO.

JUSTICE: WERE THEY IN UNIFORM OR PLAIN CLOTHES?

THEY WERE WEARING A JACKET THAT INDICATED THEY WERE BROWARD SHERIFFS OFFICERS. AND THEY WALKED UP, THEY WERE NOT IN UNIFORM PER SE, BUT, YES, THEY IDENTIFIED THEMSELVES BY THEIR CLOTHING, I BELIEVE. DETECTIVE CATALANO STOOD BY THE DRIVERS WINDOW. DETECTIVE WHITE STOOD ADJACENT TO MR. CAMPBELL ON THE PASSENGER SIDE, AND DETECTIVE CARTER WAS OFF TO THE REAR OF THE CAR. IT IS NOT EXACTLY CLEAR HOW FAR BEHIND THE CAR IT WAS, BUT I DO AGREE WITH THE CHARACTERIZATION THAT THE POLICE AGREE TO, THAT YOU KNOW, THEY WERE EFFECTIVELY SURROUNDING THE CAR. I MEAN, THERE WERE ONLY THREE OF THEM. YOU COULDN'T SURROUND THE CAR ANYMORE FULLY THAN THEY DID.

JUSTICE: DOES THE RECORD SHOW WHETHER THE DEFENDANT KNEW THAT THERE WAS A POLICE OFFICER AT THE REAR OF THE VEHICLE?

THE RECORD DOESN'T INDICATE THAT YOU BECAUSE THE DEFENDANT DID NOT TESTIFY.

JUSTICE: BUT IN ANY EVENT THE POLICE OFFICER AT THE REAR OF THE VEHICLE WAS NOT PREVENTING EGRESS OF THE VEHICLE BECAUSE THE VEHICLE WAS PARKED TAIL FIRST.

THE ONLY THING THAT WAS PREVENTING THE EGRESS OF THE VEHICLE WAS DETECTIVE CATALANO HOLDING ON TO HIS MEANS TO DRIVE A WAY AND I DO WANT TO POINT OUT SOMETHING THAT WE HAVEN'T REALLY TALKED ABOUT HERE AND THAT IS UNDER 322.15. WHEN AN OFFICER APPROACHES SOMEONE WHO IS SEATED IN A CAR AND REQUESTS THE LICENSE, I DO NOT BELIEVE THAT A REASONABLE OBJECTIVE PERSON WOULD FEEL AS THOUGH THEY HAVE ANY RIGHT WHATSOEVER TO TELL THAT OFFICER NO. NOR DO I THINK THAT LEGALLY THAT PERSON WOULD HAVE THAT RIGHT, EITHER IN A PARKED VEHICLE, AND THE ONLY MATH THAT STATEMENT, IS IF YOU MUCH TO -- IF YOU WERE TO LOOK AT 322 UNDER THE DEFINITIONAL SECTION, IT STATES PRETTY CLEARLY THAT DRIVING MEANS BEING IN PHYSICAL CONTROL OF THE VEHICLE, ACTUAL PHYSICAL CONTROL, SO THAT THERE IS NO QUESTION THAT THE SAME ANALYSIS THAT WE WOULD APPLY TO A DUI CASE WOULD APPLY TO A DRIVING CASE AT ALL, SO, REALLY, IN FACT, HE HAD NO CHOICE WHEN CONFRONTED BY THE OFFICERS, BY VIRTUE OF THE FACT THAT HE WAS SEATED IN A CAR THAT HE HAD TO GIVE HIS LICENSE TO THE OFFICER.

CHIEF JUSTICE: WAS THAT ARGUMENT MADE TO THE TRIAL COURT?

THIS ARGUMENT WAS NOT MADE TO THE TRIAL COURT, PRIMARILY BECAUSE IT WAS SETTLED LAW AT THE TIME THAT THIS MOTION WAS HEARD BELOW, THAT RETENTION OF THE LICENSE WAS PER SE A DETENTION.

CHIEF JUSTICE: WELL, DO WE NEED TO, DEPENDING ON WHAT THE COURT DECIDES AS A WHOLE, I AM CONCERNED THAT THE CASE THAT THE FOURTH DISTRICT SENT TO US SO UNDS LIKE A DIFFERENT CASE THAN WE ARE NOW DISCUSSING, AND SPECIFICALLY WITH THIS VERY CLEAR STATEMENT AT THE BEGINNING THAT THE WARRANTS CHECK CAME BACK CLEAN, AND IT WAS

ONLY AFTER THAT , THAT THEY THEN ASKED FOR THE CONSENT TO SEARCH. YOU HAVE CONCEDED HERE TODAY , THAT IS NOT THE CASE. I AM TRYING TO UNDERSTAND HOW THAT FACT GOT INTO THIS OPINION OF JUDGE STONE'S.

I DON'T REALLY KNOW. I CAN ONLY SUGGEST ON THIS CASE, THERE WAS NO ORAL ARGUMENTS BELOW IN THE FOURTH DISTRICT. I DON'T KNOW WHERE THAT FACT CAME FROM , BUT I DO MAINTAIN --

CHIEF JUSTICE: DID SOMEONE ON MOTION FOR REHEARING ON EITHER SIDE ASK THAT --

NO. NO. CHIEF THE DEFENDANT DIDN'T EITHER?

NO , YOUR HONOR. THE POINT THAT I THINK IS CRITICAL HERE IS REALLY ABOUT MR . CAMPBELL SEATED IN HIS CAR. HE IS ASKED FOR HIS LICENSE. HE DOESN'T HAVE ANY CHOICE IN THE MATTER . NOW , THEY TAKE THE LICENSE.

JUSTICE: LET ME GO BACK TO YOUR ARGUMENT HERE. YOU APPEAR TO BE SUGGESTING , IF YOU DIDN'T SAY IT, IF THAT IS WHAT YOUR POSITION IS , IS THAT BY OPERATION OF THE FLORIDA STATUTE A PERSON IS REQUIRED TO DEMONSTRATE THEIR LICENSE TO A POLICE OFFICER, THAT BECOMING AN UNREASONABLE SEIZURE OF THAT INDIVIDUAL.

WELL, BUT FOR WHAT PURPOSE? THAT IS WHAT THE QUESTION IS. IF FLORIDA LAW WOULD -- IF FLORIDA LAW WOULD , AND YOU RAISED TWO ISSUES , AND I WANT TO TAKE THE FIRST ONE AT A TIME. THE FIRST ONE IS , IF FLORIDA LAW DOES REQUIRE THAT , WHICH I SUGGEST THAT IT , THERE IS AN INTERPRETATION THAT IT CAN REQUIRE THAT , THEN THE OFFICER CAN ONLY RETAIN THAT LICENSE FOR A REASONABLE REASON. THAT IS TO SAY IF THERE WAS INDEED A TRAFFIC STOP , I THINK A CONSTITUTIONAL READING OF THE STATUTE --

JUSTICE: WHY DO YOU GIVE THE LICENSE? YOU GIVE THE LICENSE SO YOU CAN LOOK AT IT AND I GUESS LOOK AT THE LICENSE AND LOOK AT THE PERSON. IT IS THE PERSON. BUT WHY WOULD YOU NOT THEN BE PERMITTED REASONABLY, TO RUN IT THROUGH THE SYSTEM TO SEE IF THIS IS A VALID PLASTIC PIECE OF THING THAT THIS PERSON HAS HANDED ME?

WELL , THE REASON FOR THAT IS BECAUSE UNDER THESE CIRCUMSTANCES AS OPPOSED TO A TRAFFIC STOP, THERE IS NO REASON THAT THE OFFICER WOULD LEGALLY HAVE TO DO ANYTHING WITH THAT LICENSE , OTHER THAN TO REVIEW IT. THERE IS NO BASIS IN LAW .

JUSTICE: HE IS SITTING THERE. YOU DON'T WANT TO DETERMINE WHETHER IT IS A VALID LICENSE? AND HE IS IN CONTROL OF THE VEHICLE. WHY WOULD IT NOT BE REASONABLE TO CHECK AND SEE IF THAT IS A VALID PIECE OF PLASTIC?

BECAUSE HE HAS GOT NO BUSINESS DOING IT CONSTITUTIONALLY. WHAT I SUGGEST IS THAT THE STATUTE MAY MANDATE IT, AND THAT GOES TO WHETHER OR NOT A REASONABLE PERSON WOULD FEEL AS THOUGH HE HAD ANY REASON TO DECLINE THE OFFICER'S REQUEST. I AM NOT SUGGESTING THAT THAT IS A CONSTITUTIONAL READING OF THE STATUTE, BECAUSE WHAT YOU GET INTO THERE IS WHAT THE COURTS HAVE HELD IN A NUMBER OF THE FEDERAL BORDER CASES AND OTHERS , THAT YOU MAY NOT HAVE ROVING PATROLS , AND ASK FOR IDENTIFICATION , AND THEN DO WITH THAT WHAT YOU PLEASE. THIS IS REALLY NOTHING MORE THAN WHAT COURTS HAVE HELD TO BE AN IMPERMISSIBLE SEIZURE , BECAUSE IT IS A ROVING PATROL.

JUSTICE: YOU SEEM TO BE SUGGESTING, HOWEVER , THAT BECAUSE OF THIS STATUTE , IF MR . CAMPBELL HAS SAID , NO , I AM NOT GOING TO GIVE YOU MY LICENSE , THEN THE OFFICERS WOULD HAVE HAD SOME REASON TO FORCE HIM TO GIVE THE LICENSE.

WELL , THAT IS NOT THE WHAT THE STATUTE -- THAT IS NOT WHAT THE STATUTE SAYS. THERE

ARE STATUTES THAT REQUIRE , FOR EXAMPLE --

JUSTICE: IF THAT IS NOT WHAT THE STATUTE SAYS THEN I AM MISSING THE POINT OF YOUR ARGUMENT ABOUT THE STATUTE.

I AM SAY ING THAT A REASONABLE PERSON WOULD FEEL AS THOUGH HE HAS TO GIV E IT. I AM NOT SUGGESTING THAT THE POLICE COULD AR REST HI M OR OTHERWISE FORC E HIM TO PROVIDE IDENTIFICATION.I AM J UST SAYING THAT HE IS OPERATING THE VEHICLE AT THAT POINT , AND A REASONABLE P ERSON WOULD FEEL AS T HOUGH HE HAS TO SU BMIT TO THE APPARENT AUTHORITY OF THE LAW ENFORCEMENT OFFICERS , AS OPPOSED TO THE CASES THAT WAS CITED IN THE BA EZ CASE THAT SPEAKS T O THE ISSUE AS TO WHETHER OR NOT A STATUTE MANDATING IDENTIFICATION IS CONSTITUTIONAL, AND THERE THEY SAID ONLY IF THERE IS FOUNDED SUSP ICION TO BELIEVETHAT THERE IS A CRIMINAL ACTIVITY A FOOT AND THAT WOULD NOT BE A CONSTITUTIONAL READING OF THIS STATUTE TO SAY THAT HE HAS TO, UPON PENALTY OF ARREST, GIVE UP HIS LICENSE.

JUSTICE: WHAT IS YOUR BOTTOM LINE HERE? WHAT IS IT THAT Y OU WOULD HAVE THIS COURT HO LD THAT THE , GIVING OF THE DRIVERS LICENSE, THE TAKING OF THE DRIVERS LICENSE , THE ASK ING FOR THE DRIVERS LICENSE BEC OMING THE SEIZURE , AT WHAT POINT DO YOU WANT US TO SAY THAT THERE WAS A SEIZURE?

THIS IS THE RULE I WOULD LIKE TO SEE COM E OUT OF THIS CAMPBELL. I WOULD LIKE THE COURT TO UNDERSTAND THE REALITY OF THE SITU ATION AS A WH OLE, THAT WHEN A POLICE OFFICER COMES UP TO A CITIZEN SUCH AS MR . CAMPBELL , SEAT ED IN A CAR , AND ASKS FOR A DRIVERS LICENSE, AND THEN IT IS PRODUCED TO HIM , THAT THEY MAY NOT RETAIN THAT LICENSE , AND --

JUSTICE: BEYOND WHAT?

BEYOND , A T THE POINT IN TIME WHEN THEY WANT TO DO SOMETHING ELSE , LIKE ASK FOR CONSENT.SO I AM SUG GESTING THAT CONSENT , WHILE HE IS BEING EFFECTIVELY IMMOBILIZED BY THE OFFICER'S RETENTION OF THE DRIVERS LICENSE , S H OULD BE IN MY VIEW, AND I THINK IN THE VI EW OF JORDAN AND THOMPSON AND A NUMBER OF OTHER FE DERAL CASES , A CRITICAL FACTOR TO HOLD THAT THE CONSENT IS INVOLUNTARY.

JUSTICE: SO YOU CAN N EVER GET , YOUR POINT, THEN , IS YOU CAN NEVER HAVE VOLUNTARY CONSENT, AS LONG AS THE OFFICER HAS, IN HIS O R HER POSSESSION, A PERSON'S DRIVERS LICENSE. THAT IS THE BO TTOM LINE.

WELL , QUALIFIED B Y THAT THE CONSENT THAT THEY GET CANNOT BE LEGAL , UN LESS THEPOLICE OFFICER FIRST HAD FOUNDED SUSPICION TO DETAI N HIM IN THE FIRST IN STANCE. THAT IS THE CRITICAL DISTINCTION.REMEMBER THERE WAS JUST AMONTH AGO , THAT THE FIRST DISTRICT DISTINGUIS HED THE CHANG CASE AND APPROVED CAMPBELL BELOW , B Y STATINGTHAT A PEDESTRIAN WHO SURE E ND ARE HIS HIS -- WHO SURRENDER S HIS LICENSE W ITHOUT FOUNDED SUSP ICION TO A POLICE OFFICER WHO , THEN , CLIPPED IT TO HIS POLICE BELT AND THEN CONTINUED ON IN AN INTERROGATION OF HIM, REQUESTING CONSENT WIT HOUT ANY FOUNDED SUSPICION. THAT ONE FACTOR CA USED THE CONSENT THAT THE BRIGHT DEFENDANT GAVE T O BE MADE , TO BE INVOLUNTARY BY LAW.

CHIEF JUSTICE: MY CONCERNIS THAT THE CONSENT TO THE WARRANTS CHECK WAS NOT E VER FOUND BY THE TRIAL COURT , BECAUSE AT THAT T IME BAEZ HAD THE FOURTH DIS TRICT OPINION IN BAEZ , SAID THAT IF THERE WAS A RETE NTION OF THE LICENSE BEYOND JUST S HOWING THAT THERE WAS A DETENTION , SO WE REALLY HAVE A FOURTH DIST RICT OPINIONTHAT TALKS ABOUT THE WARRANTS CHECK BEING CONCLUDED , SO IT WOULD SEEM TO ME THAT, WHAT EVER HA PPENS , THAT WE NEED , THE TRIAL COURT HASN'T MADE THEFINDINGS THAT WOULD SHOW , AGAIN, YOU SAY THERE COULD N EVER BE A VOLUNTARY AGREEMENT TO

RUN A WARRANTS CHECK. LET'S ASUME WE DISAGREE WITH YOU, THEN AT THE VERY LEAST THAT FACTUAL FINDING WOULD NEED TO BE MADE BY THE TRIAL COURT, CORRECT?

WELL, IN THIS CASE THERE IS NO EVIDENCE IN THE RECORD THAT THERE WAS AN OUTSTANDING WARRANT, OR WE WOULD HAVE INDEPENDENT FACT TO CONSIDER HERE. THAT IS THE ONE THAT WAS JUST RECENTLY DECIDED IN BREYER SON BY THIS COURT, BUT --

JUSTICE: THE ONLY EVIDENCE IN THE RECORD WAS THAT WHEN HE WAS ASKED FOR HIS DRIVERS LICENSE, HE CONSENTED AND GAVE IT, AND THE OFFICER SAID, WELL, WE ARE DOING A RECORDS CHECK.

THAT IS THE EVIDENCE.

JUSTICE: THAT IS THE EVIDENCE. IT IS NOT DISPUTED.

IT DOESN'T GO FURTHER THAN THAT. THE QUESTION WAS NOT ASKED AT THE TRIAL LEVEL, WITH REGARD TO WHETHER OR NOT --

CHIEF JUSTICE: YOU ARE SAYING THAT BECAUSE BAEZ REALLY DIDN'T REQUIRE YOU TO GO ANY FARTHER, IS THAT WHY THE RECORD ISN'T DEVELOPED?

I AM SUGGESTING WE DON'T REALLY NEED TO -- I AM SUGGESTING WE DON'T REALLY NEED TO DEVELOP THE RECORD WITH REGARD TO THAT FACTOR.

CHIEF JUSTICE: I THINK YOU CAN HEAR FROM MEMBERS OF THIS COURT AND OTHER COURTS THAT FROM THE BAEZ CASE, IT IS NOT AS CUT AND DRIED AS THAT.

CHIEF JUSTICE PARIENTE, I WANT TO POINT OUT, I SEE MY TIME IS ABOUT OUT, BUT ONCE THEY HAVE ALREADY INPUTTED THIS INFORMATION, THE BUYING GRAPHICAL INFORMATION IN THE COM -- THE BIOGRAPHICAL INFORMATION IN THE COMPUTER, THERE IS NO OTHER PURPOSE TO BE SERVED BY HOLDING THE LICENSE, OTHER THAN TO USE IT AS LEVERAGE TO GET CONSENT.

JUSTICE: SO NOT KNOWING WHERE THE POLICE CAR IS OR WHETHER THERE IS SOME MOBILE THING THAT YOU CAN PUNCH IT ALL INTO, YOU WOULD HAVE, THEN, THE OFFICER, IF HE HAS IT IN HIS CAR, GO TO HIS CAR, PUNCH IN THE INFORMATION, COME BACK, IMMEDIATELY GIVE THE GUY HIS LICENSE BACK AND ONLY THAT WOULD SATISFY THE FOURTH AMENDMENT.

YES. BECAUSE OTHERWISE UNDER ALL OF THE CASES, HE IS DETAINED. AND HE CANNOT GET LEGITIMATE CONSENT, WHEN THERE IS A DETENTION.

CHIEF JUSTICE: THANK YOU.

THANK YOU VERY MUCH.

CHIEF JUSTICE: REBUTTAL.

VERY BRIEFLY.

JUSTICE: CAN I ASK YOU A QUESTION. YOUR OPPONENT POINTS TO SECTION 322.15 OF THE FLORIDA STATUTE, WHICH YOU SAID REQUIRES A MOTORIST TO PRODUCE A DRIVERS LICENSE UPON REQUEST OF A LAW ENFORCEMENT OFFICER. IS THAT HOW YOU READ SECTION 322.15?

IF I, I AM SORRY. I HONESTLY DO NOT RECALL WHAT IT SAYS PRECISELY.

JUSTICE: I AM READING IT HERE AND IT SAYS E V ERY LICENSEE SHALL HAVE HIS OR HER DRIVERS LICENSE AND THEN S AYS AT HIS MEAD POSSESSION AT ALL TI MES WHEN OPERATE AGO MOTOR VEHICLE AND SHOULD DISPLAY THE SAME UPON DEMAND OF A LAW ENFORCEMENT OFFICER OR AUTHORIZED REPRESENTATIVE OF THE DEPARTMENT , AND SUBSECTION 4 SAYS AVIOLATION OF SUBSECTION ONE IS A NONCRIMINAL TRAFFIC INFRACTION. SO IT SEEMS TO ME THAT THE STATUTE SAYS THERE IS NO CONSENT ABOUT IT. YOU ARE REQUIRED UNDER THE LAW TO PRODUCE A DRIVERS LICENSE UPON REQU EST OF A LAW ENFORCEMENT OFFICER. OTHERWISE YOU VI OLATED THE STATUTE AND IT IS A NONCRIMINAL TRAFFIC VIOLATION. NONTRAFFIC VIOLATION.

RI GHT. SEEMINGLY SO, BUT I AM NOTCERTAIN HOW THAT PLAYS INTO THIS.

JUSTICE: WELL , ISN'T THE PREMISE OF THE STAT E'S INDICATES FACT THAT HE CONSENTED TO DO GIVING THE DRIVERS LICENSE IN THE FIRSTPLACE.

YE S.

JUSTICE: SO IF THE STATUTE REQUIR ES YOU TO GIVE YOUR DRIVERS LICENSE , THEN THE CONSENT IS IRRELEVANT . HE WAS REQUIRED TO G IVE HIS DRIVERS LICENSE.

WELL , BUT THAT IS IN THIS PARTICULAR CASE. WHAT ABOUT A FLORIDA IDENTIFICATION CARD.SO I DON'T KNOW IF WE CAN REALLY USE THAT PARTICULAR STATUTE TO , FOR , DETERMINE THE FACTOR S, SINCE WE HAVE GOT OTHER SITUATIONS WHERE IT MAY NOT BE A DRIVERS LICENSE.IT MAY JUST BE AN I .D. CARD.

JUSTICE: IN THIS CASE IT WAS A DRIVERS LICENSE.

YES. IN THIS CASE IT WAS ADRIVERS LICENSE.

JUSTICE: AND HE WAS IN A CAR, SO HE WAS A MOTORIST ATTHE TIME, AND THIS APP LIES TO MOTIVES WRISTS. -- TO MOTO RISTS .

YES. I DON'T DISAGREE WIT H THAT BUT I DON'T WANT T O USE THAT STATUTE AS A REASON FOR FIND THAT THIS ENCOUNTER WAS CONSENTUAL. I WANT THIS COURT TO RECOGNIZE THAT WE HAVE A CONSENTUAL ENCOUNTER AND GOING AS FAR BACK A S TERRY VERSUS O HIO , THE POLICE OFFICER CAN APPROACH THE VEHICLE, ASK FOR IDENTIFICATION AND CAN EVEN ASK TO SEARCH. THIS IS NOT A NOVEL IDEA.

CHIEF JUSTICE: WITH OUR HELP YOU HAVE USED UP YOUR TIME. THANK YOU VERY MUCH.THANK YOU TO BOTH SIDES , AND WE WILL TAKE OUR MORNING REC ESS OF 15 MIN UTES.

MARSHA L: PLEASE RI SE.

THE MARSHAL: PLEASE RIS E