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**Tristan Hilton v. State of Florida**

**SC05-438**

MARSHAL: PLEASE RISE. HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT 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, THIS GREAT STATE OF FLORIDA AND THIS HONORABLE COURT. LADIES AND GENTLE MEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING LADIES AND GENTLEMEN. WELCOME TO THE FLORIDA SUPREME COURT. WE HAVE ONE CASE ON THE DOCKET THIS MORNING, AND THAT IS THE CASE OF HILTON VERSUS STATE OF FLORIDA. BEFORE STARTING ORAL ARGUMENT, I WANT TO WELCOME OUR TEACHERS AND FACULTY FROM THE JUSTICE TEACHING INSTITUTE, WHO HAVE BEEN HERE ALL WEEK, LEARNING ABOUT THE COURT SYSTEM, AND NOT TO PUT ANY ADDITIONAL PRESSURE ON THE PARTIES HERE, BUT HAVE BEEN STUDYING THIS CASE AND DOING THEIR OWN ORAL ARGUMENTS, AND I, ALSO, WANT TO WELCOME A GROUP, AND I DIDN'T GET THE NAME OF THE GROUP THAT IS ALSO IN THE COURTROOM A SCHOOL GROUP? AMERICORPS. WELCOME AND WE THANK YOU FOR YOU WHAT YOU DO, AS FAR AS THE VOLUNTEER WORK IN THE SCHOOLS. IT IS GREAT TO SEE ALL OF YOU HERE, SO WITH THAT AND WE, ALSO, APOLOGIZE FOR STARTING A LITTLE LATE. WE WERE IN COURT CONFERENCE, AND HAD SEVERAL IMPORTANT MATTERS TO DISCUSS. SO WITH THAT, I CALL THE CASE OF HILTON VERSUS STATE OF FLORIDA. MR. MUSTO.

MAY IT PLEASE THE COURT. GOOD MORNING, YOUR HONORS, ANTHONY MUSTO ON BEHALF OF TRISTAN HILTON. YOUR HONORS, IT IS PERFECTLY PROPER TO STOP A VEHICLE IF IT HAS GOT A CRACK LIKE THIS IN THE WINDSHIELD RIGHT IN FRONT OF THE DRIVER.

WHAT IF AN OFFICER SEES A VEHICLE DOWN THE ROAD AND SEES A CRACK BUT HE CAN'T TELL IF HE IS GOING 55 MILES AN HOUR ONE WAY AND 55 THE OTHER IN A MILLI SECOND, WHETHER THAT CRACK IS THAT BIG OR SOMEWHAT SMALLER, WHETHER IT IS DANGEROUS TO THE PASSENGERS OR NOT. IS HE JUSTIFIED IN STOPPING THE VEHICLE, JUST TO CHECK TO SEE HOW LARGE THE CRACK IS?

NOT MERELY UPON THE OBSERVATION OF A CRACK. THE QUESTION IS DOES HE HAVE A REASONABLE FOUNDED SUSPICION TO BELIEVE THAT A STATUTE IS BEING VIOLATED, AN ORDINANCE OR STATUTE IS BEING VIOLATED. IF YOU HAVE A CRACK LIKE THAT, IF AN OFFICER SEES A CRACK LIKE THAT ONE, HE HAS A REASONABLE FOUNDED SUSPICION TO BELIEVE THAT THE STATUTE THAT PROHIBITS A VEHICLE IN UNSAFE CONDITION AS TO ENDANGER A PERSON OR PROPERTY --

JUSTICE: TELL WAS THAT IS. IS THIS AN EXHIBIT --

A SPIDER WEB -- I AM SORRY.

JUSTICE: IS THIS AN EXHIBIT THAT WAS ENTERED INTO THE RECORD?

NO, YOUR HONOR, IT IS NOT.

JUSTICE: TELL US WHAT THAT IS.

THAT IS SIMPLY A PIECE OF GLASS WITH A STICKER ON IT TO RESEMBLE A CRACK, SHOWING A SPIDER WEB OR STAR BURST TYPE OF CRACK THAT MANY CASES TALK ABOUT I BROUGHT THAT IN TO DRAW THE DISTINCTION TO THE FACT IN THIS CASE WE DON'T HAVE A STAR BURST OR SPIDER WEB. WE HAVE ONE SINGLE CRACK.

JUSTICE: DOES THAT MATTER WHETHER THE STAR BURST IS THE ON THE PASSENGER SIDE OR THE DRIVER'S SIDE?

I THINK IT COULD. A STAR BURST LIKE THAT IS GOING TO COVER A GREATER AREA OF THE WINDSHIELD AND IN TERMS OF WHETHER IN FACT IT RENDERS THE VEHICLE UNSAFE, THE MORE OF THE DRIVER'S VISION THAT IS BLOCKED, MOST LIKELY IT WILL BE UNSAFE. CLEARLY IF IT IS RIGHT IN FRONT OF THE DRIVER, THAT IS GOING TO BE UNSAFE.

JUSTICE: ORDINARILY WE WOULD SAY TO YOU THAT WE ALREADY KNOW THE FACTS OF THE CASE. YOU ALL HAVE SKRAD DESCRIBED THEM AND WHAT IS IN YOUR BRIEFS, BUT HERE THE PHOTOGRAPH THAT IS IN THE RECORD IS NOT VERY HELPFUL.

NO, IT IS NOT.

JUSTICE: AND ESPECIALLY REPRODUCTIONS OF THE PHOTOGRAPH BUT THE PHOTOGRAPH, ITSELF, SO WOULD YOU GIVE US YOUR BEST WORD PICTURE OF THE WAY THAT THIS CRACK WAS DESCRIBED AND THE TESTIMONY BELOW, AND SO IN A SENSE, SINCE YOU ARE THE ONE APPEALING HERE, GIVE US THE WORD PICTURE THAT MAY TEND TO PRESENT A PICTURE OF IT MORE IN FAVOR OF THE STATE. SO WOULD YOU GIVE US THAT WORD PICTURE, THOUGH, THAT APPEARS IN THE RECORD.

I WILL GIVE YOU THAT WORD PICTURE.

JUSTICE: SIZE.

THE SIZE. THE OFFICER MERELY MADE A HAND GESTURE. THE TRIAL JUDGE DESCRIBED A HAND GESTURE AS BEING BETWEEN 7 AND 8 INCHES, SO WE HAVE ONE SINGLE CRACK, NOT A STAR BURST, NOT A SPIDER WEB BUT ONE SINGLE CRACK OF 7 OR 8 INCHES LONG LOCATED IN THE UPPER RIGHT HAND PORTION OF THE WINDSHIELD, THE PASSENGER'S SIDE OF THE WINDSHIELD, MOSTLY IN THE TINTED AREA.

JUSTICE: WAS IT LENGTH WISE HORIZONTAL OR VERTICAL?

IT APPEARED TO BE HORIZONTAL, COMING FROM THE TOP TOWARDS THE MIDDLE, AND I AM GETTING THAT MORE FROM WHAT I CAN TELL FROM --

JUSTICE: SEVEN OR EIGHT INCHES LONG AND A GREAT DISTANCE WAY FROM THE DRIVER'S WINDSHIELD.

THAT'S CORRECT, AND AS I SAID, PRIMARILY IN THE TINTED PORTION OF THE WINDSHIELD AND IN AN AREA WHERE, IF THE SUN VISOR WAS PUT DOWN, MOST OF THE CRACK WOULD NOT BE VISIBLE.

JUSTICE: MR. MUS TO, LET ME DIRECT YOUR ATTENTION TO, REALLY, THE BOTTOM LINE OF ALL OF THIS IS THAT YOUR SEEKING TO HAVE THE SUPPRESSION OF THE EVIDENCE REVERSED. RIGHT?

THAT'S CORRECT.

JUSTICE: AND THAT INVOLVES THE EXCLUSIONARY RULE , CORRECT?

THAT'S CORRECT.

JUSTICE: NOW , YOU WOULD AGREE THAT WE ARE BOUND BY THE UNITED STATES SUPREME COURT 'S DECISIONS ON THE EXCLUSIONARY RULE.

THAT'S CORRECT.

JUSTICE: AND THE UNITED STATES SUPREME COURT, IN ARIZONA VERSUS EVANS AND THE U.S. VERSUS LEON AND A WHOLE SERIES OF CASES , HAS SAID THAT THE EXCLUSIONARY RULE IS AN ISSUE WHICH IS SEPARATE FROM WHETHER THE FOURTH AMENDMENT , WHETHER IT WAS UNREASONABLE SEARCH AND SEIZURE , RIGHT?

WELL , I WOULD SAY THAT, IF THERE IS AN ILLEGAL STOP PURSUANT TO THE FOURTH AMENDMENT, THEN THE EXCLUSIONARY RULE IS GOING TO PRECLUDE THE ADMISSION OF EVIDENCE THAT IS SEIZED, BARRING ANY SPECIAL CIRCUMSTANCES.

JUSTICE: THE U.S. SUPREME COURT SAID THE QUESTION WHETHER AN EXCLUSIONARY RULE IS REMEDY IS LONG REGARDED AS AN ISSUE SEPARATE FROM THE QUESTION OF WHETHER THE FOURTH AMENDMENT RIGHTS OF THE PARTY SEEKING TO INVOKE THE RULE WERE VIOLATED BY POLICE CONDUCT. THE EXCLUSIONARY RULE OPERATES AS A JUDICIALLY REMEDY , DESIGNED TO SAFEGUARD AGAINST FUTURE VIOLATIONS , AND THE RULE'S APPLICATION HAS BEEN RESTRICTED TO THOSE INSTANCES IN WHICH ITS REMEDIAL OBJECTIVES ARE THOUGHT TO SERVE THE ENDS OF DETERRENCE. NOW , WHAT CAN BE THE END OF DETERRENCE IN KEEPING POLICE OFFICERS FROM STOPPING AND MAKING JUDGMENTS ABOUT PEOPLE THAT ARE OPERATING THEIR VEHICLES ON THE ROAD WITH CRACKED WINDSHIELDS? ARE WE TRYING TO DETER THAT CONDUCT BY POLICE OFFICERS?

WE ARE TRYING TO DETER THEM FROM DOING THAT WHEN DOING SO INVOKES THE PERSON'S FOURTH AMENDMENT RIGHTS, AND IF YOU STOP SOMEBODY WITHOUT A FOUNDED SUSPICION THAT A STATUTE BEING VIOLATED , THAT VIOLATES THE FOURTH AMENDMENT RIGHTS.

JUSTICE: THAT IS MY POINT. MY POINT IS THAT THAT IS NOT WHAT THE UNITED STATES SUPREME COURT SAID AS I READ THESE CASES. THE U.S. SUPREME COURT HAS SAID THAT THERE HAS GOT TO BE A REASON TO SANCTION THE CONDUCT OF THE POLICE OFFICER IN ORDER FOR THE EXCLUSIONARY RULE TO BE INVOKED, AND I WANT TO KNOW WHY ARE WE TRYING TO SANCTION POLICE OFFICERS FOR STOPPING PEOPLE THAT HAVE DEFECTIVE WINDSHIELDS?

BECAUSE IT IS AN ILLEGAL STOP. IT IS NOT AGAINST THE LAW IN THE STATE OF FLORIDA TO DRIVE WITH A CRACKED WINDSHIELD .

CHIEF JUSTICE: LET 'S GO BACK, MAYBE GET BACK TO THAT FIRST PRELIMINARY QUESTION. THE SECOND DISTRICT HELD THAT THERE WAS A VIOLATION , CORRECT? THEY INTERPRETED THE STATUTE AS THAT A VISIBLE CRACK IN A WINDSHIELD PROVIDES A LEGAL BASIS FOR , FOR A TRAFFIC STOP, BECAUSE THE WINDSHIELD IS NOT IN PROPER REPAIR , SO THE FIRST QUESTION THAT WE HAVE TO GET TO IS WHETHER A , ANY CRACK IN A WINDSHIELD MAKES , UNDER FLORIDA LAW , A WINDSHIELD NOT IN PROPER REPAIR. NOW, TELL US THE STATUTE THAT EITHER SAYS OR DOESN'T SAY THAT ANY CRACK IN THE WINDSHIELD IS A DEFECTIVE OR NONDEFECTIVE VEHICLE .

WELL , LET ME , FIRST OF ALL , TAKE ISSUE WITH ONE THING THAT YOU SAID IN YOUR QUESTION. YOU SAID THAT THE SECOND DISTRICT FOUND IT WAS A VIOLATION. I DON'T THINK THEY FOUND THAT. THEY FOUND THAT THE STATUTE AUTHORIZED A STOP , BUT THEY RECOGNIZED THAT A CRACKED WINDSHIELD, IN AND OF ITSELF , DID NOT CONSTITUTE A VIOLATION OF LAW. RATHER, THEY RELIED ON 316.610-1, WHICH TALKS ABOUT THE CIRCUMSTANCES UNDER WHICH AN OFFICER

MAY STOP AVEHICLE AND SUBMIT I T TO INSPECTION. THAT IS WHAT THEY RELIED ON.NOW , TO GET TO THE MEAT OF YOUR QUESTION --

IT IS REQUIRED BY THE CHAPTER AS A VIOLATION O F THE SECTION TO STOP A WINDSHIELD THAT IS NOT IN THE PROPER POSITION OF ADJUSTMENT.

I THINK BY T HIS SECTION , THEY WERE REFE RRING T O SUBSECTION 1, WHICH IS THE CRUX OF THEIR HOLDING AND THE CRUX OF THE STATE'S ARGUMENT THE PROBLEM WITH THAT , THERE IS REALLY TH REE ANSWERS TO THIS.FIRST OF ALL , WHAT EVER THE LEGISLATURE DID , THEY CAN'T IMPINGE ON THE FOURTH AMENDMENT. THE FOURTH AMENDMENT STILLREQUIRES THAT YOU HAVE TO HAVE A SH OWING OF A VIOLATION OR FOUNDED SUSPICION TO BELIEVE THAT THERE IS A V IOLATION OF LAW . THEY CAN'T C HANGE THAT.

CHIEF JUSTICE: YES , BUT THE LEGIS LATURE COULD DE CIDE THAT CRACKED WINDSHIELD S OF ANY SIZE , CREATES A SAFETY HAZARD. I ME AN, WE DON'T HAVE THE EVIDENCE HERE ABOUT WHETHE R, IF YOU HAVE GOT A 8 - INCH CRACK , THAT THAT MAY CAUSE , IN A MI NOR COLLISION , FOR THE WHOLE WINDSHIELD TO SHATTER?I DON'T KN OW.

CORRE CT.

CHIEF JUSTICE: THAT WOULD AND LEGISL ATIVE DETERMINATION.

ABSOLUTELY.

CHIEF JUSTICE: ALL RIGHT.SO NOW WE GO TO , DID THE LEGISLATURE INTEND FOR THERE TO BE STOPS , IF THERE WERE CRACKS IN WINDSHIELDS.

OKAY. THE ANSWER TO THAT IS NO. FIRST OF ALL THERE IS N O STATUTE THAT SAYS IT SHALL BE UNLAWFUL TO DRIVE WITH A CRACKED WINDSHIELD.NOW , LET'S ANALYZE SUBSECTION 1 UPON WHICH THE STATE RELIES AND UPON WHICH THE F IRST DISTRICT RELIED. FIRST OF ALL THAT POS ITION DOES NOT ESTABLISH OR DEFINE AN OFFENSE, IN AND OF ITSELF. THE OFFENS E IS ESTABLISHED AND DEFINED BY THE UNNUMBE RED PARAGRAPH THAT COMES BEFORE IT, AND THAT PARAGRAPH SAYS THAT IT SHALL BE UNLAWFUL TO OPERATE A VEHICLE WITH THE EQUIPMENTNOT IN PROPER CONDITION OR ADJUSTMENT, AS REQUIRED IN THIS CHAPTER. AND THOSE ARE THE KEY WORDS .

JUSTICE: WELL , COULD WE BOTH, I WOULD LIKE BOTH SIDES TO ADDRESS THIS. CERTAINLY THIS COURT HAS ADDRESSED THE ISSUE OF STOPS AND MO TOR VEHICLE CONDITIONS BEFORE, AND YOU ARE BOTH CERTAINLY A WARE OF THOSE , AND I GU ESS WE CAN ARGUE BACK AND FORTH OR DISCUSS WHETHER THAT IS STILL GOOD LAW, BUT I F THAT IS THE CORRECT APPROACH OR AT LEAST IT THE IS STILL V ALID , WHERE DOES THE WINDSHIELD SIT IN THIS DISCUSSION IF WE DO AN OVERLAY OF THE TAILLIGHT IF THAT IS THE FUNDAMENTAL QUESTION, AND CERTAINLY WE CAN GET INTO OTHER ISSUES OF BROWN AND THOSE WITH REGARD TO THE EXCL USIONARY RULE , BUT JUST THAT ONE , F IRST OF ALL THIS COURT HAS ALREADY SPOKEN TO THAT ISSUE, BUT THERE ARE DIFFERENCES , THERE ARE DIFFERENCES BETWEEN THESE TWO THAT APPEARS. COULD YOU AD DRESS THAT?

THERE ARE DIFFERENCES, IN THE SENSE THAT DO CTOR DEALS WITH THE TAILLIGHT AND THIS ONE DEALS WITH A WINDSHIELD. THE CRACK IN THE TAILLIGHT DID NOT EQ UAL A VIOLATION OF THE LAW .

JUSTICE: BUT IN DOCTOR , THEY FOUND THAT THERE WAS AN OPERATING TAIL LIGHT THAT SHINES FOR THE 4,000 F EET AS REQUIRED BY THE STATUTE.

THAT'S CORRECT.

JUSTICE: AND THAT , THE EQUIPMENT WAS THE TAILLIGHT NOT THE LENS .

CORRECT.

JUSTICE: BUT ISN'T THAT A DISTINCTION WITH DOCTOR?

IT IS A DISTINCTION BUT I SUGGEST TO YOU IT IS A DISTINCTION WITHOUT A DIFFERENCE, BECAUSE THE SECOND DISTRICT'S OPINION HOLDS THAT, IF ANY EQUIPMENT IS NOT IN PROPER WORKING ORDER , THERE CAN BE A STOP. THIS COURT REJECTED THAT IN DOCTOR. THIS COURT POINTED OUT THAT, BECAUSE THE CRACKED TAILLIGHT DIDN'T VIOLATE A LAW , THEY WERE NOT GOING TO ACCEPT THAT PRINCIPLE , AND YOU STATED SPECIFICALLY THAT YOU DID NOT AGREE WITH THE STATE'S CONTENTION THAT A STOP WOULD BE PROPER, EVEN IF THE MALFUNCTION POSES NO SAFETY HAZARD OR OTHERWISE VIOLATES THE LAW, AND THAT IS WHAT THE STATE IS ARGUING HERE.

JUSTICE: ARE YOU MAINTAINING THAT IN THIS ACTION THE POLICE OFFICER OPERATED IN BAD FAITH? THAT THIS WAS A --

THAT WAS NOT AN ISSUE THAT WAS RAISED HERE. I AM ARGUING THAT --

JUSTICE: THERE HAS BEEN NO DETERMINATION --

THERE HAS BEEN NO DETERMINATION AND IT IS NOT A PART OF MY ARGUMENT .

JUSTICE: GOING BACK TO WHERE YOU STARTED IN THE SITUATION CONTAINING DOCTOR, YOU WOULD AGREE THAT, IF THERE WAS A CRACK LIKE IN THE PANE THAT YOU SHOWED US , THAT THE OFFICER WOULD EXERCISE JUDGMENT , GOOD JUDGMENT IN STOPPING THE PERSON. DO YOU AGREE?

CORRECT.

JUSTICE: BUT REALLY WHAT IT BOILS DOWN TO IS THAT YOU SAY THIS OFFICER EXERCISED BAD JUDGMENT, BECAUSE YOU STRING THESE STATUTES TOGETHER AND A 7-INCH CRACK IS NOT AS DANGEROUS AS THAT CRACK. THAT IS WHAT YOU ARE ARGUING , ISN'T IT?

THE QUESTION , THOUGH , OF WHETHER THE OFFICER'S JUDGMENT WAS GOOD OR NOT IS NOT THE ISSUE. THE QUESTION IS WAS THERE OBJECTIVELY A FOUNDED SUSPICION THAT A STATUTE WAS BEING VIOLATED, AND THERE IS NOT BECAUSE THE CRACK ALONE DOES NOT VIOLATE STATUTE , ONLY IF IT RISES TO THE LEVEL THAT IT IS SO UNSAFE THAT IT ENDANGERS A PERSON OR PROPERTY.

JUSTICE: YOU YOUR ANSWER ERRING THE QUESTION ON THE BACK END, AFTER THE STOP OF THE VEHICLE AND AFTER THE OFFICER DETERMINED THE EXTENT OF THE CRACK. IT SEEMS LIKE WE HAVE TO DETERMINE IT FROM AN OBJECTIVE POINT OF VIEW , AN OFFICER WHO IS LOOKING AT A CAR PASSING BY, WITHOUT INSPECTING IT YET , AND DETERMINING THAT THERE IS A CRACKED WINDSHIELD , BUT DOESN'T KNOW THE EXTENT OF THE CRACK . A REASONABLE OFFICER , WHEN HE SEES A CRACKED WINDSHIELD , WHY DOESN'T THE OFFICER AT LEAST HAVE A SUSPICION FOR A JUSTIFIABLE STOP THAT THE CRACKED WINDSHIELD POSES A SAFETY HAZARD AND THEN , LIKE THE ELEVENTH CIRCUIT SAID , UPON INSPECTION HE MAY DETERMINE THAT HE WAS WRONG AND YOU ARE OKAY , BUT AT LEAST IT HAS MEANINGFUL SUSPICION ENOUGH TO JUSTIFY THE STOP?

A COUPLE OF ANSWERS TO THAT. FIRST OF ALL IF THE CRACK , IF THE OBSERVATION BY THE OFFICER IS OF A CRACK OF THAT SUFFICIENT NATURE THAT IT COULD RISE TO THE LEVEL TO MAKE IT UNSAFE, THEN HE COULD MAKE THE STOP AND LATER ON DETERMINE IT. BUT THESE

OFFICERS DIDN'T SAY THAT AS PART OF THEIR THINKING. THEY SAID THERE IS A CRACK. WE HAVE A RIGHT TO STOP THEM. WE ARE STOPPING THEM AND THE PURPOSE IS NOT FOR A WARNING.

CHIEF JUSTICE: WHAT WAS THE OTHER FACT THAT TO ME RAISES SOME CONCERNS IS THAT THEY KNEW THIS WAS A DEFENDANT WHO WAS ON PROBATION.

WELL, I DIDN'T SAY THAT IT WASN'T PROTECTURAL. I SAID THAT THAT IS NOT PART OF MY ARGUMENT. I THINK, READING BETWEEN THE LINES HERE, THERE IS BASIS TO BELIEVE THAT MAYBE IT WAS.

CHIEF JUSTICE: DID THEY SAY THEY KNEW HIM? WHAT WAS THE TESTIMONY ON IT?

THERE WAS EVIDENCE THAT THEY KNEW HIM. THERE WAS EVIDENCE THAT HE HAD BEEN STOPPED BEFORE FOR THIS. THERE IS EVIDENCE --

CHIEF JUSTICE: FOR WHAT?

FOR THE CRACKED WINDSHIELD.

CHIEF JUSTICE: THE SAME CRACK?

YES. THE SAME CRACK, WHICH GETS TO PART OF MY ARGUMENT. IF YOU ALLOW STOPS LIKE THIS, THEY CAN KEEP STOPPING SOMEONE LIKE THIS AND KEEP ISSUING WARNINGS, AND HE DOESN'T HAVE TO DO ANYTHING ABOUT IT.

JUSTICE: CAN HE GET IT FIXED?

I AM NOT SURE IF THERE WAS A SPECIFIC FINDING BUT I AM NOT ARGUING --

JUSTICE: HE DID NOT FIND IT?

HE DID NOT FIND IT. THAT'S CORRECT.

JUSTICE: DID THE OFFICERS ENUNCIATE THAT, IN THEIR PERCEPTION, THAT THIS WAS AN UNSAFE CONDITION OR DANGER, AND IS THAT IMPORTANT OR IS IT NOT IMPORTANT? DO THEY NEED TO BE ABLE TO AT LEAST SAY THAT AS A CONDITION PRECEDENT TO MAKING THE STOP?

THE OFFICERS DID NOT SAY THAT. THE OFFICER SAID THAT THEY SAW A CRACKED WINDSHIELD, AND THEY DECIDED TO STOP HIM. I THINK IT IS IMPORTANT. I WANT TO TAKE THAT ONE STEP FURTHER. THE CERTIFIED QUESTION TALKS ABOUT WHETHER AN OFFICER SEES A CRACK BUT HAS NOT YET ASCERTAINED THE LENGTH OF IT. THERE IS NOTHING IN THIS RECORD TO SUPPORT THE CONTENTION THAT THEY HAD NOT ASCERTAINED THE LENGTH OF IT. THEY BOTH SAID WE SAW THE CRACK. WE MADE THE STOP. THEY WEREN'T STOPPING IT TO INVESTIGATE. THEY WERE STOPPING IT BECAUSE THERE WAS A CRACK THERE. THE OFFICER WAS ASKED SPECIFICALLY THIS DOESN'T OBSTRUCT THE DRIVER'S VIEW, DOES IT?

AND HE SAID -- DOES IT? AND HE SAID, NO, AS FAR AS I KNOW. AND THERE WAS NEVER ANY THINKING THAT THIS SHOULD BE ON A FOUNDED SUSPICION BASIS.

JUSTICE: BUT BASED UPON THE CURRENT STATUS OF THE LAW THAT REALLY IT IS AN OBJECTIVE BASIS THAT YOU ARE USING.

IT IS AN OBJECTIVE BASIS, AND THE OBJECTIVE BASIS, THE DISCUSSION OF THAT SHOULD BE THAT, IF THERE IS A CRACK THAT IS OF SUFFICIENT LENGTH OR LOCATION OR WHATEVER OTHER FACTORS IT MAY BE, TO GIVE RISE TO A FOUNDED SUSPICION THAT THE VEHICLE IS SO UNSAFE AS TO ENDANGER A PERSON OR PROPERTY, A STOP CAN BE MADE, BUT NOT EVERY CRACK IS

GOING TO DO THAT.

CHIEF JUSTICE: I WANT TO REMIND YOU YOU ARE IN REBUTTAL. YOU ONLY SA VED --

JUSTICE: YOUR LAST STATEMENT , YOU SAID THAT THERE IS A CRACK THAT IS SUSPICIOUS LY LENGTHY SO THAT THE PO LICE OFFICER DETERMINES MAYBE IT IS UNSAFE, ONE CAR GOING 55 ONE WAY AND THE OTHER GOING 5 5 THE OTHER WAY , H OW IS THAT OFFICER GOING TO DETERMINE IN THAT M ILLIE SE COND WHETHER IT I S SUFFICIENTLY LENGTHY TO B E UNSAFE , UNTIL HE STOPS THE CAR AND INSPECTS IT?

IT DEPENDS ON WHAT HE OBSERVES.

JUSTICE: BY VIRTUE OF A CRACKING WINDSHIELD AND STOP DUE TO A REASONABLE SUSPICION THAT IT IS UNSAFE TO JUSTIFY INS PECTION OF THE VEHICLE TO DETERMINE WHETHERIT IS UNSAFE.

I WOULD SUGGEST TO YOU YOU THAT IT IS NOT AND I WOULD POINT TO YOUR HONOR THAT, BETWEEN THE TWO OF US WE HAVE C ITED 19 OUT OF JURISDICTION CA SES AND NOT ONE OF THOSE CASES HO LDS THAT A MERE CRACK ALONE PROVIDES A FOUNDED SUSPICION.IT HAS TO BE A NATURE THAT A F OUND SUSPICION IS G IVEN UNDER THE STATUTE.

JUSTICE: IF WE I N FACT SAY THAT IT IS SUFFICIENT IF YOU OBSE RVE ANY CRACK ON A WINDSHIELD, TO MAKE A STOP, WHA T WOULD YOU SU GGEST WOULD BE THE S COPE OF THAT STOP O R HAVE YOU GHACHB ANYCONSIDERATION?

WELL , A CTUALLY -- HAVE YOU GI VEN THAT ANYCONSIDERATION?

WELL, AC TUALY THE PURPOSE THAT THE STATE IS RELYING ON TO DO THE STOP IS NOT TO G RANT THE STOP . IT IS NOT T O DEFINE THE OFFENSE.IT IS FOR THE P URPOSE OF REQUIRING INSPECTION AND T ESTING, AND I WOULD SUGGEST THAT THE EXTENT OF IT BE LIMIT TO DO THAT. I WOULD ALSO SUGGEST THAT, BECAUSE IN THIS CASE IT WAS NOT STOPPE D FOR THAT PURPOSE , TO WHATEVER EXTENT THERE IS S OME STATUTORY AUTHORIZATION THAT IS HE LD TO OVERRIDE THE CONSTITUTION, IT SHOULD B E LIMITED TO THAT P URPOSE , AND SINCE THE STOP WASN'T MADE FOR THAT PU RPOSE , THAT SHOULD CONSTITUTE A BASIS FOR SUPPRESSION. I WOULD LIKE TO RESERVE THE TIME THAT I HAVE LE FT.

CHIEF JUSTICE: THA NK YOU.

MAY IT PLEASE THE COURT. MY NAME IS MARILYN BEC CUE AND I REPRESENT THE STATE OF FLORIDA.THE PETITIONER WANTS THIS COURT TO HOLD THAT A LAW ENFORCEMENT OFFICER MUST WAIT UNTIL A CAR IS IN AN OBVIOUSLY UP SAVOR IMMEDIATELY DANGE ROUS CONDITION, BE FORE HE OR SHE STOPS THE CAR FOR THE CRACKED WINDSHIELD.

CHIEF JUSTICE: WOULD YOU GIVE THE FACTS , EXACTLY WHAT THE POLICE OFFICER SAID AND WHAT THE TESTIMONY, AND ALSO I WANT TO KNOW THE SEC OND DISTRICT'S OPINION ABOUT THEFACT THAT THEY HAD STOPPED THIS VEHICL E FOR THE SAME PROBLEM BEFORE.

SURE. OFFICER HARRISON AND CE NTO WERE DRIVING TOGETHER. OFFICER HAR RISON WAS A FI EL D TRAINING OFFICER, SO THEY WERE DRIVING TOGETHER. OFFICER SE NNA , I B E LIEVE THE DISTINCTION BETWEEN THE TWO OFFICERS' TESTIMONY WAS ONE SAID HE SAW THE CRACK AS THE C AR WAS DRIVING BY AND ONE SAID HE S AW THE CRACK WHILE THEY WERE BE HIND THE VEHICLE AND THAT WAS REALLY THEBASIS OF THE ARGUMENT BELOW. THE BASIS OF THE ARGUMENT BELOW WAS THE CONTRADICTION IN THE OFFICER 'S TESTIMONY.

CHIEF JUSTICE: HOW WAS WERE THE VEHICLES DRIVESOMETHING.

I DON'T THINK THERE WAS ANY TESTIMONY AS TO HOW WAS THE VEHICLE WAS DRIVING, BUT IT SO UNDS LIKE IN A RESIDENTIAL NEIGHBORHOOD , S O THEY WERE N'T ON A HIGHWAY. THEY BOTH SAW THE CRACKED AND THAT WAS THE REASON THAT THEY PULLED THE CAR OVER. THEY WOULD NOT HAVE PULLED THE CAR O V ER FOR ANY OTHER REASON, EXC EPT FOR THEY SAW THE CRACK.

JUSTICE: AND THERE IS A F AIR READING OF THE RECORD THAT THE CONCEPT OF DANGER OR SAFETY WAS NOT PART OF THAT DESCRIPTION ? THEY SAW A CRACK. THEY DIDN'T REALLY GET INTO WE THOU GHT IT WAS UNSAFE OR ANYTHING LIKE THAT.

NO. THAT NEVER CAME UP IN RELATIONSHIP TO THE CRACK. THE BASIS OF THE MOTION TO SUPPRESS IS REALLY THAT THE OFFICERS COULDN'T HAVE SEEN WHAT THEY CLAIM THEY SAW F ROM WHERE THEY WERE.

CHIEF JUSTICE: AND THEN THE OFFICERS, HOW DID THE TESTIMONY COME OUT THAT THEY HAD STOPPED HIM FOR THIS SAME PROBLEM BEFORE?

I BELIEVE IT WAS ON CROSS-EXAMINATION THAT THEY WERE ASKED WHETHER OR NOT , I THINK IT WAS THE SAME OFFICERS STOPPED , I KNOW WHAT IT WAS. THE PETI TIONER STATED THAT HE WAS A WARE THAT THE WINDSHIELD WAS CRACKED, BECAUSE HE HAD BEEN STOPPED BEFORE.

CHIEF JUSTICE: WAS HE GAIN WARNING ? -- WAS HE GIVEN A WARNING?

THE RE COR D DOESN'T SHOW.

CHIEF JUSTICE: WHAT WAS THE FI RST THING THEY DID AFTER THEY STOPPED HIM?

AFTER THEY STOPPED HIM , THEY APPROACHED THE CAR. THEY OBTAINED HIS INFORMATION, AS FAR AS HIS DRIVERS LICENS E AND WHAT NOT. IT IS IM PORTANT TO REMEMBER THAT OFFICER SEN NA WAS IN TRAINING, BECAUSE THAT IS WHY BOTH OFFICERS WENT BACK AND THEN HE STAYED WITH THE CAR WHILE THE OTHER OFFICER WENT BACK TO CH ECK .

CHIEF JUSTICE: DID HE KNOW THE DEFENDANT AND THAT HE HAD A PR IOR FELONY?

I THINK THEY KNEW THE DEFENDANT AND THAT HE HAD A PRIOR FE LONY .

CHIEF JUSTICE: WERE THEY CHECKING HIS LICENSE TO MAKE SURE IT WAS VALID?

THEY WERE CHECKING HIS LICENSE TO SEE IF IT WAS VALID. AND THE OFFICER EXPLAINED TO THE PETITIONER THAT HE WAS GOING TO ISSUE HIM A WARNING REGARDING THE CRACK AND THE FACT THEY WEREN'T WE ARING THEIR SEAT BELTS, BUT BEFORE HE GET S THAT IN FORMATION OUT , OFFICER POINTS OUT THAT THERE WAS A R I FLE IN THE BACKSEAT, AND AT THAT POINT OFFICER SAFETY WAS THE MAIN CONCERN.

JUSTICE: WAS THAT THE POINT WHEN THEY TOOK HIM OUT OF THE VEHICLE, OR WAS HE IMMEDIATELY TA KEN OUTFIT VEHICLE WHEN THEY MADE THE STOP?

HE WAS TAKEN OUT OF THE VEHICLE WHEN THEY SAW THE GUN , WHEN THEY APPEARED - -

JUSTICE: YOU STARTED OUT YOUR ARGUMENT SAYING THIS WAS AN OBVIU SLY UNSAFE WINDSHIELD. TELL ME WHAT WAS SO OBVIOUS ABOUT THE UNSAFETY OF THE WINDSHIELD.

WELL , THE STATE'S POSITION IS N'T THAT THIS WAS AN OBVIU SLY UNSAFE WINDSHIELD. WHAT THE STATE'S PO SITION IS, IS THAT THE PETI TIONER WANTS THE COURT TO HOLD THAT HE HAS TO WAIT UNTIL IT IS OBVIOUSLY UNSAFE. THE STATE'S POSITION IS A CRACK IN A WINDSHIELD IS

UNSAFE. THE QUESTION THEN BECOMES TO WHAT EXTENT IS IT UNSAFE , AND THAT IS WHY LAW ENFORCEMENT --

JUSTICE: YOU YOU SAY ANY CRACK IN A WINDSHIELD. OFTEN WE RIDE DOWN THE ROAD AND A ROCK WILL HIT A WINDSHIELD AND MAKE A SMALL CRACK IN THE WINDSHIELD. SO ANY CRACK, EVEN A CRACK LIKE THAT , IS AN OBVIOUSLY UNSAFE WINDSHIELD AND AN OFFICER HAS THE RIGHT TO STOP YOU.

ANY CRACK IS A POTENTIALALLY VERY UNSAFE WINDSHIELD. THAT IS WHY THE OFFICER --

JUSTICE: IS THAT THE CASE WITH ALL KINDS OF EQUIPMENT, BUT POTENTIALLY , WHAT IS THE STATE'S VIEW AS WE PROBE THE PARAMETERS OF THIS BUMPER WITH A DENT? I MEAN POTENTIALLY THAT BUMPER COULD FALL OFF AT SOME POINT , BUT HOW MANY BUMPERS ARE AROUND THE STATE OF FLORIDA WITH SOMETHING WRONG WITH THEM, AND ARE WE GOING TO TURN LAW ENFORCEMENT , IS IT THE STATE'S POSITION THAT LAW ENFORCEMENT SHOULD HAVE THAT ENCOUNTER ? SHOULD STOP OR HAVE THE RIGHT TO STOP FOR WHATEVER ELSE OCCURS.

WELL , OBVIOUSLY EVERY CASE TURNS ON ITS OWN FACTS , BUT TO ADDRESS THE QUESTION THAT I THINK YOU ARE QUESTIONING AT IS THERE IS A DIFFERENCE BETWEEN A COSMETIC DEFECT AND A STRUCTURAL DEFECT. A SMALL DENT IN YOUR BUMPER MIGHT BE A COSMETIC DEFECT THAT YOU MIGHT LIKE TO GET FIXED BUT THAT BUMPER IS GOING TO PERFORM THE FUNCTION FOR WHICH IT IS THERE.

CHIEF JUSTICE: THE PROBLEM I HAVE IS THIS ISSUE OF JUDGMENT. WE NEED TO BE GUIDED BY WHAT THE LEGISLATURE THINKS IS UNSAFE , AND WE HAVE SEEN OUT-OF-STATE STATUTES THAT TALK ABOUT YOU CAN HAVE THIS MUCH OF A CRACK OR NOT . SHOULDN'T THE LEGISLATURE BE THE ONES TO DECIDE WHAT IS UNSAFE AND NOT , AND WHAT HAVE THEY SAID ABOUT SAFETY AND WINDSHIELDS IN THIS FLORIDA STATUTE?

WHAT THEY HAVE SAID, FIRST OF ALL IN 316, IS THAT YOU ARE REQUIRED TO HAVE A WINDSHIELD ON YOUR CAR. THEN THEY HAVE 316.610.

CHIEF JUSTICE: HE HAS WINDSHIELD.

AND YOU ARE REQUIRED TO HAVE A BUMPER.

YES. HE IS REQUIRED TO HAVE A BUMPER AS WELL.

JUSTICE: COMPARE THE TWO AS YOU GO THROUGH THE STATUTE.

WITH THE WIND HE WOULD WITH THE WINDSHIELD IT IS A STRUCTURAL PROBLEM.

CHIEF JUSTICE: I AM ASKING WHAT DOES THE LEGISLATURE SAY SO I KNOW TOMORROW WHEN I GO OUT AND I HAVE A CRACK IN MY WINDSHIELD , IF I AM DRIVING, WHETHER MY DRIVING IS LEGAL IF I HAVE A CRACK IN A WINDSHIELD.

LEGISLATURE SAYS THAT YOU HAVE TO HAVE A PROPER WINDSHIELD AND EQUIPMENT NEEDS TO BE IN PROPER ADJUSTMENT AND REPAIR OR YOU WILL GET STOPPED .

CHIEF JUSTICE: THERE FOR GOING BACK TO WHAT JUSTICE, IF YOU HAVE A DENT IN THE BUMPER, THAT IS NOT IN PROPER REPAIR SO I CAN'T DRIVE WITH A DENT IN MY BUMPER?

PROPER REPAIR IS IN GOOD CONDITION FOR PERFORMING THE FUNCTION FOR WHICH IT IS THERE.

JUSTICE: WHERE DOES THE STATUTE SAY THAT I S I T I N A STATUTE ? TELL HER STATUT ORY , THECHIEF, WHER E WE CAN LOOK SO WE KNOW.

THERE IS NO SPECIFIC DEFINITION FOR THE CONDITIONOF A WINDSHIELD, BUT I THINK IT IS IMPORT ANT THAT THE LEGISLATURE HAS ALSO STATED THAT THE DEDUCTIBLE OF YOUR INSURANCE IS NOT GOIN G TO BE APPLIED TO GET YOUR WINDSHIELD REPLACED AND IN THAT STATUTE THEY DO N'T SAY IT HAS TO BE A TEN-INCH CRACK OR 3-INCH CRACK. IT SAYS IF YOU NEED YOUR WINDSHIELD REPL ACED, IF YOU HAVE A CRACK IN YOUR WINDSHIELD, YOU CAN GET IT REPLACED AND IT IS NOT GOING TO COST YOU ANYTHING. YOUR INSURANCE IS GOING TOPAY FOR IT.

JUSTICE: ANY CRACK, I T DOESN'T MATTER, THEINSURANCE COMPANY WILL REPLACE YOUR WINDSHIELD .

THAT IS MY UNDERSTANDING.

JUSTICE: THAT IS WHAT YOU ARE TA LKING ABOUT 627.728-8.

CORRECT.

JUSTICE: SO THE POSITION OF THE STATE IS IT ISN'T AN ISSUE OF JUDGMENT THAT THEY SAW THE 7 OR 8-INCH CRACK AND THEY HAD TO SEE WHETHEROBVIOUSLY IT IS UNSAFE. THIS I S EASY THAT EVERYBODY DRIVING A VEHICLE NEEDS TO KNOW OR SHOULD KNOW FROM THE FLORIDA STATUTES THAT ANY CRACK, NO MAT TER WHERE IT IS , NO MATTER WHAT IT LOOKS LIKE , IS A T RAFFIC VIOLATION.

CORRECT. AND

CHIEF JUSTICE: BE CHARGED WITH WHAT SPECIFIC STATUTE?

316.610 SUBSECTION 1 OR 2 , BECAUSE SUBSECTION 2 SAYS IF , A FTER INS PECTION THE CAR IS FOUND TO BE UNSAFE, THE OFFICER CAN DO A NUMBER OF THINGS. IMPOUND THE VEHICLE IF IT IS IMMEDIATELY DANG EROUS , IF IT IS , A HAZARD FOR PEOPLE ONTHE ROAD , OR IF THE E QUIPMENT IS NOT IN PROPER ADJUSTMENT OR REPAIR , THEY CAN ISSUE A NOTICE TO REPAIR .

JUSTICE: SO IF THE OFFICER STOPS THE CAR AND DETERMINES THAT THIS CRACK CAUSED BY THE ROCK HI TTING THE WINDOW IS NOT, DOES NOT PRESENT A SAFETY HAZARD , THEN I CAN CONTINUE TO DRIVE WITH MY CAR I N THAT CONDITION.

IF IT DOESN'T PRESENT AN IMMEDIATELY DANGEROUS CONDITION. AND THEY WILL TELL YOU, THOUGH, YOU NEED TO GET IT FIXED AND THAT IS THE POINTOF THE STATUTE , I S IF THEY HAVE DEFINED EVERY CRACK WITH IMMINENT DANGER , THEY WOULD HAVE TO IMP OUND ARRIVE CAR , BUT THERE ARE CERTAINCRACKS THAT YOU CAN CONT INUE TO DRIVE BUT I AM ADVISING YOU THAT YOU NEED TO GET THIS FIXED BEFORE YOU DO PRESENT AN IMM EDIATE DANG TORY INDIVIDUALS ON THE RO AD.

JUSTICE: WE WANT A POLICE OFFICER DO ING THAT K IND OF ACTIVITY WITH ALL OF THECRIME THAT IS GOING ON , WE WANT POLICE OFFICE RS TO STOP PEOPLE WH O HAVE ANY KIND OF CRACK IN THEIR WINDOW ANDTELL THEM , THIS IS UNSAFE OR THIS IS NOT UNSAFE , BUT MAYBE YOU SHOULD GO GET A NEW WINDOW.

YES. THAT IS PART OF THEIR FUNCTION. YOU KNOW, THAT , INTERESTING THAT YOU POINT THAT OUT BECAUSE THIS WAS NOT A STATUTE THAT WAS ENACTED T O ASSIST LAW ENFORCEMENT OFFICERS INVESTIGATING CRIMES OR OB TAIN ING EVIDENCE OF CRIMES . IT IS A SAFETY --

JUSTICE: BUT THEY CAN USE IT THAT WAY.

THEY DON'T HAVE TO TURN A BLIND EYE TO EVIDENCE OF CRIME, IF AFTER THEY STOP SOMEONE THEY DETERMINE THERE IS A CRIME BEING COMMITTED.

JUSTICE: WHERE ARE LAW ENFORCEMENT OFFICERS GUIDED IN THIS. LET'S SAY YOU HAVE A SMALL PEBBLE HIT YOUR WINDSHIELD UPPER RIGHT CORNER AND AS THE OPPONENT SAYS IT IS COVERED BY THE ADVISOR THAT IS PUT DOWN. ISN'T IT -- BY THE VICE OR THAT IS -- BY THE VIOLATOR THAT IS PUT DOWN. ISN'T IT TRUE THAT YOU NEED A WINDSHIELD TO ALLOW YOU FREE AND EFFECTIVE VULNERABILITY TRAFFIC AND THERE IS NO EVIDENCE THAT THIS WINDSHIELD IS INEFFECTIVE FOR THAT PURPOSE?

THE NEXT TIME IT GETS HIT, IT IS GOING TO IMMEDIATELY POSE A DANGER TO THE INDIVIDUALS

CHIEF JUSTICE: ISN'T THAT SOMETHING THAT THE LEGISLATURE WOULD HAVE INTENDED? WOULDN'T THE LEGISLATURE SAY THAT ANY VEHICLE WITH A CRACK OF ANY LENGTH IS NOT IN GOOD REPAIR? THAT IS A PRETTY SIMPLE STATEMENT TO MAKE, BECAUSE I DON'T KNOW. I AM NOT THE EXPERT TO KNOW THAT, WELL, ONE LITTLE CRACK LEADS TO A SHATTERING IF YOU GET BUMPED FROM BEHIND, AND BECOMES A SIGNIFICANT SAFETY HAZARD OR WHETHER THERE IS SHATTERPROOF GLASS ON THESE WINDSHIELDS, SO REALLY A CRACK DOESN'T REALLY CAUSE A PROBLEM, BECAUSE IT IS NOT EVER GOING TO SHATTER IN THE WAY, AND THAT TO ME GOES BACK TO BEING A LEGISLATIVE DETERMINATION, AND MY CONCERN IS THAT WE DON'T WANT TO TURN POLICE OFFICERS INTO SAFETY INSPECTORS, HAVING TO MAKE JUDGMENTS THAT THINGS IN WHICH THERE ARE NO CRITERIA LISTED.

WELL, THE LEGISLATURE HAS MADE A DETERMINATION. THEY HAVE ALLOWED LAW ENFORCEMENT OFFICERS TO USE THEIR DISCRETION IF AN EQUIPMENT IS NOT IN PROPER REPAIR AND ADJUSTMENT, AND I UNDERSTAND YOUR CONCERN, CERTAINLY, BUT I DON'T THINK IT IS THIS KIND OF UNBRIDLED DISCRETION OR UNFETTERED DISCRETION THAT WE DON'T WANT LAW ENFORCEMENT OFFICERS TO V. THEY DO NEED TO HAVE GUIDANCE AND REASONABLE CARE THAT IT IS NOT IN PROPER ORDER AND REPAIR, AND WE HAVE TO REMEMBER THAT LAW ENFORCEMENT OFFICERS ARE OUT ON THE ROAD EVERYDAY. THEY ARE IN CONTACT WITH CARS. THEY --

JUSTICE: WHAT IS A POLICE OFFICER GOING TO USE, NOW THAT SOMEBODY HAS BEEN STOPPED AND THEY SEE A WHOLE VARIETY. THERE IS A COUPLE OF INCHES OF A HAIRLINE CRACK. THERE IS THE BB GUN TYPE OF THING HERE. NOW, WHERE DO THE POLICE OFFICERS GET THE EXPERTISE TO KNOW IF THAT WINDSHIELD CONTINUES DOWN THE ROAD, THAT AT SOME POINT IT IS GOING TO IMPLODE OR EXPLODE, WHICH WAS THE POINT THAT YOU YOU ARE MAKING, THAT IS THAT, HOW IS THE POLICE OFFICER TO MAKE THAT EVALUATION?

WELL, I THINK THEY NEED TO USE REASONABLE DISCRETION WHEN THEY MAKE THAT EVALUATION.

JUSTICE: DO THEY KNOW ANYTHING ABOUT NONSHATTER OR SHATTER-PROOF GLASS AND THE FACT THAT YOU CAN GO FOR 100 YEARS WITH A HAIRLINE CRACK AND NOTHING WILL CAUSE THAT WINDSHIELD TO, WHERE DO THEY GET THE KNOWLEDGE, THEN, AND IN A CASE LIKE THIS, FOR INSTANCE, HOW DO THEY KNOW WITH THIS 7-INCH HAIRLINE CRACK IN THE UPPER RIGHT CORNER, WHETHER TO ISSUE A WARNING OR TO FIND THAT IS A VIOLATION OF THE STATUTE?

THAT IS A SITUATION THAT OCCURS AFTER THE STOP HAS ALREADY OCCURRED.

JUSTICE: WHERE DO THEY GET THE KNOWLEDGE OF THAT?

FROM THEIR EXPERIENCE, AND I THINK THAT IS THE REASON WHY THE SECTOR --

JUSTICE: WHAT EXPERIENCE DO THEY HAVE?

WE ALL HAVE EXPERIENCE WITH CRACKS IN GLASS AND WINDSHIELDS. WE KNOW THEY DON'T GET SMALLER, THAT THEY GET BIGGER AND THEY DON'T GO AWAY ON THEIR OWN.

JUSTICE: HOW DO WE KNOW THEY ALL GET BIGGER?

WE ALL HAVE WINDSHIELDS AND WE ALL KNOW THAT, ONCE YOU HAVE A CRACK IN THE GLASS THE INTEGRITY OF THE GLASS IS COMPROMISED, AND I THINK IT IS IMPORTANT TO NOTE THAT THE WAY THE STATUTE IS WRITTEN, ANY CRACK IS GOING TO BE A VIOLATION THAT THEY CAN STOP YOU FOR AND THEN MAKE A DETERMINATION LATER, SO WE DON'T HAVE TO HAVE THE GUESSING ABOUT WHETHER IT IS SAFE, UNSAFE OR WHAT EVER, BEFORE AN OPPORTUNITY TO ACTUALLY LOOK AT THE CAR. IF IT IS OBVIOUSLY UNSAFE, SUCH AS THAT PICTURE RIGHT IN FRONT OF THE DRIVER'S VIEW, THEN THEY CERTAINLY WOULD IMPOUND THE CAR.

CHIEF JUSTICE: DO YOU AGREE WITH MR. MUSTO THAT ALL OF THE OUT-OF-STATE CASES, THAT IN ALL OF THE OUT-OF-STATE CASES, THERE IS NOT ONE THAT SAYS THAT SIMPLY A CRACK IN A WINDSHIELD IS A BASIS FOR A TRAFFIC VIOLATION?

WELL, I DON'T NECESSARILY AGREE WITH THAT.

CHIEF JUSTICE: WHAT CASE SAYS WHAT YOU ARE ASKING US TO HOLD?

THE OUT-OF-STATE CASES, THE ONES THAT WERE CITED, PARTICULARLY THE KENTUCKY ONE THAT WAS MOST RECENTLY CITED, THEY TALK ABOUT THEIR STATUTES, BUT THEY DON'T -- RECENTLY CITED, THEY TALK ABOUT THEIR STATUTE BUT DON'T HAVE A SAFETY INSPECTION, SO THEY HAVE TO RELY ENTIRELY ON THE OTHER PROVISIONS OF THE CHAPTER.

CHIEF JUSTICE: NOW WE GO BACK TO THE ISSUE OF STATUTORY CONSTRUCTION, SO IF WE DON'T AGREE WITH YOUR INTERPRETATION OF THE STATUTE THAT, REALLY, THEY CAN, THEY HAVE BECOME, TAKEN OVER FOR THE INSPECTION PEOPLE AND CAN STOP, EVEN IF, CAN THEY STOP IF THERE ARE BUMPERS THAT ARE IN DISREPAIR? CAN THEY STOP FOR THAT, TOO?

IF THE BUMPER IS FALLING OFF.

CHIEF JUSTICE: BUT THEY CAN'T TELL BECAUSE IT IS GOING 40 MILES AN HOUR. THEY SEE A DENT AND GO OOPS IT IS A DENT, AND TO STOP THEM AND SEE IF IT IS IN GOOD REPAIR. CAN THEY DO THAT?

YOU HAVE TO CONSIDER THE REASONABLENESS OF THE CONDUCT AND ONCE IT TURNS OUT IT WAS UNREASONABLE FOR THE LAW ENFORCEMENT OFFICER TO BELIEVE THAT THAT BUMPER WAS IN DISREPAIR, THAT IS A DIFFERENT ISSUE.

CHIEF JUSTICE: HERE 7 OR 8 INCHES, NOT A LOT OF INCHES, DO YOU AGREE ON THE PASSENGER SIDE UP NEAR WHERE THE VIOLATOR WOULD BE?

IT KIND OF CAME DOWN DIAGONALLY. CHIEF -- DIAGONALLY.

CHIEF JUSTICE: AND THEY HADN'T GO T TEN IT REPLACED ONCE THE LAST STOP --

NO TESTIMONY.

CHIEF JUSTICE: NO TESTIMONY THAT THE STATE E LICITED THAT THEY WERE CONCERNED ABOUT THE SAFETY OF THIS VEHICLE.

THAT IS BECAUSE THE MOTION TO SUPPRESS, WHEN IT WAS FILED AND WHEN IT WAS ARGUED IN THE TRIAL COURT, THAT WASN'T THE ISSUE THAT THEY WERE ARGUING. THE DEFENSE WASN'T SAYING YOU COULDN'T HAVE STOPPED ME BECAUSE IT WASN'T UNSAFE. WHAT THE DEFENSE'S ARGUMENT BASICALLY WAS, WAS THAT THE OFFICERS COULDN'T HAVE SEEN THE CRACK IN THE WINDSHIELD BEFORE THEY STOPPED THE CAR.

CHIEF JUSTICE: WELL, ISN'T THE STATE'S BURDEN SINCE THIS IS A WARRANTLESS SEARCH, TO PROVE THAT THIS STOP WAS LAWFUL? DO YOU AGREE WITH THAT?

YES.

CHIEF JUSTICE: SO THEREFORE IF THE STATE'S CONTENTION IS THAT THERE IS AUTHORITY UNDER THE STATUTE, IF THEY ARE CONCERNED ABOUT THE SAFETY OF THE VEHICLE, SHOULDN'T THE STATE HAVE ELICITED THAT TESTIMONY?

WELL, IT IS THE STATE'S BURDEN TO SHOW THAT THE CONDUCT WAS REASONABLE BECAUSE THAT IS WHAT THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION REQUIRES, REASONABLE CONDUCT ON THE PART OF OUR LAW ENFORCEMENT OFFICERS. THE INTERPRETATION OF THE STATUTE THAT ALLOWS FOR AN OFFICER TO STOP A CAR IF THE EQUIPMENT IS NOT IN PROPER REPAIR, IS THE BASIS FOR THE STOP. IT IS NOT IN PROPER REPAIR. IT IS BROKEN. IT IS NOT IN THE CONDITION THAT IT IS SUPPOSED TO BE. THERE WOULD BE NO REASON TO HAVE A WINDSHIELD, IF WE WERE GOING TO ALLOW INDIVIDUALS TO HAVE WINDSHIELDS THAT ARE CRACKED.

CHIEF JUSTICE: IS DOCTOR STILL GOOD LAW?

WELL, WITH RESPECT TO THE EQUIPMENT DISCUSSION IN DOCTOR, OBVIOUSLY THE PRETEXTUAL ANALYSIS IS OBVIOUSLY NOT IN LAW, BUT TO REFLECT OR LIGHT ASSEMBLY, BECAUSE THE REFLECTOR WAS BROKEN, IT WAS NOT VIOLATING THE STATUTE. NOBODY IS ARGUING THAT THE WINDSHIELD IS NOT REQUIRED EQUIPMENT, SO THAT IS ONE DISTINCTION IN DOCTOR. EVEN IF IT WAS AND THERE ARE CASES ABOUT THE LENS COVER OF THE LIGHT BEING CRACKED, AGAIN, WHEN YOU HAVE A CRACK IN A LENS COVER, THE TAILLIGHT, BRAKE LIGHT, WHATEVER IS STILL PERFORMING THE FUNCTION FOR WHICH IT IS THERE, STILL ABLE TO ADVISE PEOPLE THAT THE CAR IS STOPPING OR THAT YOU CAN SEE THE CAR IN THE DARK. THAT IS THE PURPOSE OF THE LIGHTS, SO EVEN IF THAT IS CRACKED, IT IS STILL FULLY PERFORMING THE FUNCTION FOR WHICH IT IS THERE.

JUSTICE: WAS THE WINDSHIELD PERFORMING ITS FUNCTION?

NO, IT IS NOT, IT IS INCAPABLE OF FULLY PERFORMING ITS FUNCTION ONCE IT IS CRACKED. THAT IS THE PROBLEM.

JUSTICE: CAN YOU ADDRESS BEFORE YOU SIT DOWN, THE STOP BEING ILLEGAL, WAS THERE SUFFICIENT SITUATION TO STATE VERSUS PARTY SO N?

NO. BECAUSE THEY DIDN'T PROLONG THE STOP IN ANY WAY, TO OBTAIN EVIDENCE AFTER CRIME. IT WAS UNFOLDING MOMENTARILY BEFORE THEM, BEFORE HE WAS EVEN ABLE TO STOP HIS WARNING, THEY DISCOVERED THE GUN, SO I DON'T THINK THAT THERE IS ANY ISSUE WITH REGARD TO THE STOP BEING UNLAWFULLY PROLONGED.

CHIEF JUSTICE: THEY DISCOVERED AN OUTSTANDING WARRANT?

NO.

JUSTICE: WHY WAS THERE A BACKUP? IS IT NORMAL POLICE PROCEDURE THAT YOU MAKE A TRAFFIC STOP, WAS THIS DAY OR NIGHT?

FIVE O'CLOCK.

FIVE O'CLOCK IN THE AFTERNOON, LIGHT OUTS IDE.

UM-HUM.

JUSTICE: SO IN A NORMAL TRAFFIC STOP D URING DAYLIGHT HOURS WHEN YOU SEE AN EQUIPMENT , ALLEGED E QUIPMENT MALFUNCTION, YOU YOU BRING BACK UPS TO THE SCENE?

PART OF THE REASON THERE WAS BACK UP IS OFFICERS HARRISON AND SE NN A WERE INFIELD TR AINING THAT IS WHY HE NEEDED THE BAC KUP , BECAUSE HE WAS TRAINING HI M TO DO V ARIOUS CHECKS.

JUSTICE: SO ANY TIME YOU ARE DOING TRAINING, NO MATTER HOW MINOR THE STOP I S, YOU YOU BRING BACK UP. IS THAT WHAT YOU ARE SAYSOMETHING.

I WO ULDN'T PRESUME T O TELL LAW ENF ORCEMENT OFFICERS HOW MUCH BACK UP IS AVAILABLE TO THEM DURING ANY TRAFFIC STOP, BEC AUSE I THINK ANY TRAFFIC STOP IS A POTENTIALLY DANGEROUSCONDITION, BUT ONLY OFFICER MATTHEWS ARRIVE D WITH REGARD TO THE TRAFFIC STOP T WASN'T UNTIL AFTER THEY SA W THE GUN WHICH DID R AISE THEIR CON CERNS REGARDING SAFETY , THAT THE OTHER OFFICERS ARRIVED.

JUSTICE: WOUL D YOU H E LP M E A LITTLE BIT. IT APPE ARS WE NEED TO ADDRESS WHAT IS THE FUNDAMENTAL VA LUE THAT W E ARE LOOKING AT THAT IS IN QUESTION HERE , AND I THINK YOU WOULD AGREE THAT THE U.S. SUPREME COURT HA S TOLD US THAT THE RA NDOM STOPS CERTAINLY ARE NOT PERMISSIBLE. YOU AGREE WITH THAT.

I AGREE WITH THAT.

JUSTICE: AND PROBABLY THERE IS SOME FUNDAMENTAL V ALUE HERE THAT IT NOT B E STANDARDLESS WITH OUT CRITERIA . SHARE WITH U S YOUR VIEW FROMTHE STATE'S POSITION AS TO WHY, IF THERE IS NOT A STATUTORY DESCRIPTION SUFFICIENT TO CREATE A STANDARD THAT WE CAN ALL LOOK AT , THAT IT WOULD NOT FALL INTO BEC OMING A RA NDOM KIND OF JUST STOP PING WHOM EVER WITHOUT ANY, A STANDARDLESS, BASELESS , JUST I SAW THIS ON A CAR.

RIGHT. THE STATUTE DOES REQUIRE REASONABLE CAUSE, SO THERE IS A STANDARD THERE , AND WE DO HAVE A LE SSER EXPECTATIONOF PRIVACY IN OUR VEHICLES , AND ONE OF THE REASONS WE HAVE THAT LESSER EXPECTATION OF PRIVACY IS BECAUSE THEY ARE H I GHLY REGULATED BY BOTH STATE AND FEDERAL GOVERNMENT,SO IT ISN'T ANY INVASION OF ONE'S SENSE OF PRIVACY WHE N THEY ARE DRIVING DOWN THE ROAD, TO BE STOPPED FOR A M INOR , QUOTE UN QUOTE , CONSIDERED MI NOR EQUIPMENT DEFECT. WHEN YOU ACCEPT THE PRIVILEGE TO DRIVE IN THE STATE OF FLORIDA, WE ALSO HAVE TO AGREE TO A B IDE BY THE RULES, AND THE RULES REQUIRE THAT YOU HAVE A WINDSHIELD, AND THE RULES A LSO REQUIR E THAT , IF AN OFFICER HAS REASONABLE CA USE TO BE LIEVE THAT YOUR EQUIPMENT IS NOT IN PROPER REPAIR, HE OR SHE CAN TEMPORARILY PULL YOU OVER. IT IS GOING TO BE A MINOR STOPPAGE OF YOUR DAY FOR THEM TO GO AHEAD AND DO A SAFETY INSPECTION OF THE CAR.

JUSTICE: AND THAT IS WITHOUT REGA RD TO DANGER O R THE WORD IN THE STATUTE IS SOMETHING ABOUT UNSAFE , WITHOUT REGARD TO WHE THER THAT CONDITION SUN SA VO R DANGEROUS?

WITHOUT REGARD TO WHETHER IT IS IMMINENTLY DANGEROUS OR IMMEDIATELY DANGEROUS , BECAUSE IF IT I S IMMEDIATELY DANGEROUS, THEY ARE GOING TO IMPOUND THE CAR. IF NOT, THEY ARE GOING TO GIVE YOU A NOTICE TO REPAIR.

CHIEF JUSTICE: BEFORE YOU SIT DOWN, I WANT TO MAKE SURE, WAS THE FAILURE TO WEAR SEAT BELTS A SECONDARY REASON FOR THE STOP, OR DID THAT JUST, WAS THAT JUST NOTED AFTER THEY PULLED THE VEHICLE --

IT IS MY UNDERSTANDING OF THE RECORD, IT IS NOT REAL CLEAR, BUT I THINK THAT WAS NOTED AFTER THEY HAD ALREADY STOPPED THEM.

JUSTICE: AT THIS TIME I THINK YOU CAN STOP THEM NOW IF THEY SEE YOU NOT WEARING A SEAT BELT, BUT AT THE TIME THIS STOP OCCURRED, THE LAW DID NOT ALLOW YOU TO STOP.

I THINK YOU ARE CORRECT. THIS WAS IN 2002, SO I DON'T THINK THE INDEPENDENT CAUSE FOR STOPPING WAS THERE.

CHIEF JUSTICE: THANK YOU VERY MUCH FOR ANSWERING OUR QUESTIONS. REBUTTAL, MR. MUSTO.

THE STATE ARGUES THAT A PERSON IN MR. HILTON'S SITUATION COULD BE CHARGED UNDER EITHER SUBSECTION 1 OR 2 OF 316.610. NEITHER OF THOSE DEFINE AN OFFENSE. THE OFFENSE IS DEFINED BY THE FIRST UNNUMBERED PARAGRAPH, WHICH REQUIRES THAT THE LACK OF ADJUSTMENT OR REPAIR BE AS REQUIRED BY THIS CHAPTER. THIS COURT RECOGNIZED THAT FACT, SPECIFICALLY IN DOCTOR, SAYING THAT --

JUSTICE: LET'S MAKE IT CLEAR HERE. WHAT IS REQUIRED BY THIS CHAPTER, WHEN IT COMES TO WINDSHIELDS?

WHEN IT COMES TO WINDSHIELDS. THERE ARE CERTAIN TIGHTENING REQUIREMENTS. HOW DARK IT CAN BE. HOW FAR DOWN IT CAN EXTEND. THERE ARE CERTAIN REQUIREMENTS, AS FAR AS YOU CAN HAVE SUN PASS AND ANY STICKERS REQUIRED BY LAW AND THAT SORT OF THING. THERE IS NOT ANYTHING THAT REQUIRES THAT THE WINDSHIELD NOT BE CRACKED. THE IMPORTANT POINT HERE IS THAT THE OFFENSE IS THAT THERE HAS TO BE A VIOLATION OF A PROVISION OF THE CHAPTER.

JUSTICE: AN OFFICER SAW THE CRACK, WOULD HE HAVE REASONABLE CAUSE TO STOP THE CAR?

THAT'S CORRECT.

JUSTICE: THERE IS NOTHING IN THE STATUTE.

NO. THERE IS SOMETHING IN THE STATUTE. THE STATUTE SAYS THAT YOU CANNOT OPERATE A VEHICLE THAT IS IN SUCH UNSAFE CONDITION AS TO ENDANGER ANY PERSON OR PROPERTY. A CRACK OF THAT NATURE, YOU SEE THAT, YOU HAVE FOUNDED SUSPICION TO BELIEVE THAT THAT MAY BE VIOLATED.

JUSTICE: THE OFFICER SAID THAT BIG CRACK IS ENOUGH TO STOP. THE SMALL CRACK IS NOT ENOUGH TO STOP. SO THE POLICE OFFICER MADE A JUDGMENT CALL, TO DETERMINE WHETHER IT IS, THE CRACK IS SAFE OR UNSAFE.

THAT IS FOUNDED SUSPICION IS ALL ABOUT. POLICE OFFICERS ARE ALWAYS MAKING THAT JUDGMENT CALL AND TO GET BACK TO THE OBSERVED, IF HE DOESN'T HAVE THAT MUCH OF AN ABILITY, YOU HAVE GOT TO BASE IT ON THE FACTS NOPE TO HIM AT THAT TIME, SO HERE WE HAVE GOT TO ASSUME THAT THEY SAW THE CRACK AND KNOW WHAT THE CRACK IS AND THEY BASED IT ACCORDINGLY AND I SUBMIT TO UTAH THAT IS NOT ENOUGH FOR A FOUNDED SUSPICION AND THE STATE HAS NEVER ARGUED THAT IT IS NOT ENOUGH FOR A FOUNDED SUSPICION.

JUSTICE: BUT HERE THE STATUTE IS VAGUE YOU YOU ARE SAY SO METHING .

I AM NOT SAYING IT IS VAGUE.I AM SA YING IF THIS IS INTERPRETED ON A STOP OF ALESS THAN FOUNDED SUSP ICION , IT WOULD AND VIOLATION OF THE F OURTH AMENDMENT AND THAT IS WHY IT SHOULDN'T BE INTERPRETED THAT WAY.

CHIEF JUSTICE: B EFORE YOUSIT DOWN , MR. MUSTO , SINCEWE HAVE BEEN REFERRING TO THAT OVER THERE , WE OR CAMERA HERE AND THE VIDEO IS RUNNING , W OULD YOU BRING IT BACK AND MAKE SURE WE GET IT.

OF COURSE. THE C A SES SOMETIMES CALL IT A SP IDER WEB CRACK. SOMETIMES THEY CALL IT A STAR BURST CRACK AS OPPOSED TO THE PRESENT CASE, WH ICH IS S I MPLY ONE SINGLE CRACK.

CHIEF JUSTICE: THANK YOU . YOUR TIME HAS EXP IRED.

MY TIME IS UP. THANK YOU , YOUR HO NOR.

CHIEF JUSTICE: T HANK YOU VERY MUCH. THANK YOU TO BOTH SIDES. I KNOW YOU HAD THE EXTRA PRESSURE HERE O F HAVING AN AUDIENCE BEHIND YOU , BUT W E ARE, WE HAVE TWO EXCELLENT ORAL ADVOCATES , AND WE THAN K YOU FOR BEING RESPONSIVE TO OUR QUESTIONS AND FOR BEING VERY WELL PREPARED IN THIS CASE. THE COURT WILL BE IN RECESS.

MARSHA L: P LEASE R ISE.