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Chavis Ziegler v. State of Florida

SC06-589

THE GREAT GREAT STATE OF
FLORIDA AND THIS HONORABLE
COURT.

>> GOOD MORNING.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING, FRIEND AND
WELCOME TO THE ORAL ARGUMENT
SCHEDULE FOR MONDAY JANUARY
8th.

WE'RE PLEASED TO SEE THAT
OUR INTERNS HAVE ARRIVE JOIN
US FOR THE SPRING SEMESTER.

WE HOPE YOU WILL FIND THE
ARGUMENT INFORMATIVE.

WEIR READY TO BEGIN OUR
FIRSTS.

THERE ARE SOME FACTUAL
ISSUES IN THIS CASE IT
APPEARS, THOUGH, THAT YOU
PROBABLY NEED TO ADDRESS
THOSE.

PLEASE USE YOUR TIME WISELY.

WE HAVE A LOT OF QUESTIONS
AND WANT TO BE SURE YOU HAVE
AN OPPORTUNITY TO GET YOUR
FULL PRESENTATIONS OUT WHILE
YOU ARE HERE.

WE'RE READY TO PROCEED.

MR. PATTERSON.

>>.

>> MAY IT PLEASE THE COURT
MY NAME THE PHIL PATTERSON.
WE REPRESENT THE PETITIONER'S
CHAVIS STKAOEGLER AND
TRISTAN ELLIS.

>> THIS IS WHAT I WOULD LIKE
YOU TO FOCUS ON AND ALSO THE
STATE.

ONE OF THE CRITICAL FACTS IS
WHETHER THE OFFICER ASKED
FOR IDENTIFICATION BEFORE
THE WINDOW WAS ROLLED DOWN.
AND DID THE TRIAL COURT MAKE
A FINDING AS TO THAT ISSUE

AS TO THE SEQUENCE OF WHAT OCCURRED AND IS THAT A CRITICAL FACT IN OUR DECISION AS TO EITHER ISSUE 1 OR ISSUE 2?

>> THIS CASE IS UNIQUE THE SENSE THAT EVERYTHING THAT TRANSPIRED IS CAPTURED ON VIDEOTAPE AND AUDIOTAPE.

>> RIGHT AND WE HAVE THAT VIDEOTAPE HERE.

>> AND IT'S CLEAR THAT THE OFFICER STOPPED THE CAR, AND NOTICED THE TAG WAS GOOD. WENT TO THE WINDOW, WRAPPED ON IT WITH HIS MAG LIGHT AND SAID, GOT SOME ID, MA'AM. AT THIS POINT THE WINDOW WAS LOWERED.

THE PASSENGER WAS RESPONDED THAT HE HAD NO IDEA -- ID AND THE OFFICER PUT HIS HEAD INSIDE THE WINDOW AND AT THAT POINT HE SMELLED MARIJUANA.

>> IS THAT ALSO CLEAR FROM THE TAPE THAT HE PUT HIS HEAD INSIDE?

>> YES.

YES IT IS.

AND IT'S ALSO CLEAR FROM THE RO'S DEPOSITION.

>>, DIAZ THE FIRST PART WOULD BE A VIOLATION.

THAT IS ASSUMING THAT HE DID ASK FOR IDENTIFICATION THAT DIAZ SAYS NO.

THE ONLY THING YOU ARE SUPPOSED TO DO IS EXPLAIN THE REASON FOR THE STOP.

>> CORRECT.

OKAY.

NOW UNDER THE SECOND AND SO THERE'S REALLY NO CONFLICT WITH DIAZ BECAUSE THE FIRST DISTRICT RECOGNIZES THAT -- DID THEY NOT?

>> TO THAT POINT THERE COULD BE NO CONFLICT.

THE CONFLICT ARISES WHEN THE DCA HELD IT WAS PERMISSIBLE FOR THE OFFICER TO ASK FOR IDENTIFICATION RATHER THAN TO EXPLAIN WHY HE HAD

STOPPED THE CAR AND THAT
THESE PEOPLE WERE FREE TO
GO.

BUT THE DIAZ OPINION STATES
THAT THE OFFICER CAN ONLY
EXPLAIN TO THEM WHY HE MADE
THIS STATEMENT.

OTHER THAN THE FIRST
DISTRICT SAID ONLY AFTER HE
SMELLED THE MARIJUANA AND
THEN DEVELOPED PROBABLE
CAUSE WAS IT PERMISSIBLE TO
THEN GO FURTHER.

I'M SORRY I DIDN'T GET.

>> I THOUGHT THE FIRST
DISTRICT ACKNOWLEDGED THERE
WOULD BE A DIAZ VIOLATION
BUT THAT UNDER -- THEY USE
INEVITABLE DISCOVERY, BUT
POSSIBLY THEY MEANT
INDEPENDENT SOURCE.

THAT ONCE HE SMELLED
THE -- ONCE HE SMELLED THE
MARIJUANA, THERE THEN WOULD
BE PROBABLE CAUSE TO PROCEED
WITH AN ARREST.

>> IF THE OFFICER HAD WALKED
UP TO THE VEHICLE AND
SMELLED BURNED MARIJUANA
SMOKE, THIS WOULD HAVE BEEN
IN THE ANDERS BRIEF I
BELIEVE.

HE CERTAINLY WOULD HAVE HAD
PROBABLE CAUSE TO MOVE THE
OCCUPANTS FROM CAN CAR.

>> BE MORE PRECISE ABOUT
THAT.

IF THE OFFICER HAD WALKED UP
TO THE AUTOMOBILE, AND ASKED
TAPPED ON THE WINDOW AND
THEN IT COME DOWN AND THEN
AFTER THE WINDOW CAME DOWN I
GUESS SORT OF A COMMON SENSE
WAY WE WOULD THINK THAT THE
ODOR FROM THE AUTOMOBILE
WOULD NOT EMANATE FROM THE
AUTOMOBILE UNTIL THE WINDOW
WAS RETRACTED AND CAME DOWN
SO THE OFFICER APPROACHED
THE AUTOMOBILE, TAPPED ON
THE WINDOW, THE WINDOW COMES
DOWN, AND THEN THAT IS -- AT
THAT POINT THE DETECTION
OF --

>> NO, SIR.

>> WELL THAT'S WHAT I'M ASKING YOU.

THAT IS THAT YOU MENTIONED A MINUTE AGO ANY SORT OF A SEMIDRAMATIC FASHION, AT LEAST, THAT THE VIDEOTAPE SHOWS THE OFFICER STEURBGING HIS HEAD INTO THE -- TO THE VEHICLE.

WOULD YOU -- REALIZING THAT WE HAVE THE VIDEO HERE, WOULD YOU GIVE US YOUR CHARACTERIZATION OF THAT AND HOW RELEVANT THAT IS TO THE DETECTION OF THE ODOR.

>> I HAD A DIFFICULT TIME MAKING THE VIDEOTAPE PLAY.

I -- ULTIMATELY I DID GET IT TO PLAY AND I COULDN'T GET IT TO PLAY A SECOND TIME.

AS I RECALL -- ACTUALLY WHAT I'M RELYING ON IS THE OFFICER'S DEPOSITION

TESTIMONY ON THAT POINT WHERE HE SAID THE FIRST TIME HE SMELLED THE MARIJUANA SMOKE WAS AFTER HE PUT HIS HEAD INSIDE THE CAR.

I -- I MAY HAVE TO BACKTRACK ON SAYING THAT THE VIDEOTAPE SHOWS THAT.

BUT HE DIDN'T -- THE WINDOW IS CLEARLY LET DOWN, THE PASSENGER RESPONDS TO HIS DEMAND FOR ID AND HE AT THAT POINT HE STILL HASN'T SMELLED ANYTHING.

I DON'T KNOW --

>> WHETHER THERE'S AN APPRECIABLE PERIOD TIME WHICH OTHER THINGS ARE GOING ON IN THE DETENTION, IT WOULD BE YOUR POSITION BEFORE THERE WOULD BE ANY DEDUCTION OF THE ODOR OF MARIJUANA.

>> YES, I THINK IT WAS ALMOST TWO MINUTES AFTER THE CARS PULLED TO THE SIDE OF THE ROAD BEFORE HE SMELLED MARIJUANA.

>> SO IT WOULD BE YOUR POSITION THAT WAS BEYOND ANY

REASONABLE TIME JUST TO MAKE
A COMMENT ABOUT THE TAG AND
TO LEAVE THE SCENE.

>> I THINK HAD THE OFFICER
TOLD THEM I COULDN'T SEE
YOUR TAG, BUT NOW I REALIZE
THAT IT'S LAWFULLY PLACED
THERE, YOU ARE FREE TO GO --
>> REGARDLESS OF THE CONTENT
OF THE OFFICER'S METHOD,
THERE'S SOME AMOUNT OF TIME
THAT IT WOULD TAKE TO CONVEY
THAT AND IT SEEMS LIKE IT
WOULD BE A RELEVANT FACTOR
IF IMMEDIATELY UPON THE
WINDOW COMING DOWN THE ODOR
COMES FROM, YOU KNOW THE SWR,
IT WOULD -- FROM THE
INTERIOR, IT WOULD SEEM,
THEN TO CAST DOUBT ON THE
AMOUNT OF TIME, YOU KNOW
THAT HE WAS THERE IF THE
ODOR EMANATED IMMEDIATELY.
AS SOON AS THE WINDOW COMES
DOWN I CAN SMELL MARIJUANA,
THAT DOESN'T REALLY -- NOW
IT WOULD ALMOST APPEAR NOT
TO MAKE A HECK OF A LOT OF
DIFFERENCE AS TO WHAT HE WAS
GOING TO SAY OR WHAT HIS
PURPOSE WAS THERE.

I WOULD TAKE ISSUE WITH THAT
AND GO FURTHER AND SAY
THAT'S ACTUALLY NOT WHAT
HAPPENED.

HAD THE WINDOW BEEN LOWERED
IN THE IMMEDIATELY SMELLED
MARIJUANA SMOKE THAT WOULD
BE ONE THING, BECAUSE HE
WOULD HAVE DEVELOPED
PROBABLE CAUSE TO BELIEVE --

>> THAT'S WHO -- WHAT I'M
ASKING YOU, THOUGH.
THAT WHETHER OR NOT THIS
VIDEO, PLUS THE TESTIMONY OF
THE OFFICER WOULD SUPPORT A
FACTUAL POSITION, REALLY
FAVORABLE TO THE STATE THAT
WITH THE WINDOW DOWN THAT
THE ODOR WAS OBVIOUS.

>> NO, IT WAS NOT.

>> LET ME GO BACK TO
SOMETHING.

WE'RE HERE, FIRST OF ALL I

ASKED YOU WHETHER THERE WAS CONFLICT WITH DIAZ AND YOU SAID THAT THE FIRST DISTRICT HAD FOUND THAT IT WAS PERMISSIBLE FOR THE OFFICER TO ASK THE DEFENDANT FOR IDENTIFICATION.

THE -- THEY SPECIFICALLY SAY, ALTHOUGH OFFICER BROWN FEELS IMPERMISSION -- IMPERMISSIVELY ASKED FOR THE IDENTIFICATION.

SO THEY ACKNOWLEDGE THAT DIAZ WOULD NOT ALLOW FOR THE IDENTIFICATION TO BE ASKED FOR AT THE TIME OF THE STOP. WOULD YOU NOW AGREE THAT DID NOT -- IN THE STATEMENT CONFLICT DIAZ?

WHEN THEY SAY "ALTHOUGH OFFICER BROWN IMPERMISSIONABLY ASKED FOR THE IDENTIFICATION?"

>> YES.

>> NOW THE ONLY THING IS THE QUESTION AS TO THE TIMING OF WHETHER CERTAINLY IF IT IS PERMISSIBLE UNDER DIAZ TO GO OVER TO THE VEHICLE ONCE IT'S DETERMINED THAT THERE IS NO SRAOEUR HRAEUGS AND EXPLAIN THE REASON -- VIOLATION AND EXPLAIN THE REASON ISN'T IT CERTAINLY REASONABLE THAT IN EXPLAINING THE REASON THAT THEY WOULD TAP ON THE PASSENGER'S WINDOW AND THE PASSENGER WOULD ROLL THE WINDOW DOWN IN ANY EVENT.

>> I DON'T THINK THAT'S REASONABLE OR NECESSARY. BUT THE PEOPLE INSIDE THE CAR COULD CERTAINLY HEAR THE OFFICER.

WELL, IT SEEM -- WELL, BECAUSE THE QUESTION IS -- IF -- IF WE ASSUME IT IS REASONABLE THAT -- IF AN COMES UP AND IS ABOUT TO TALK TO OCCUPANTS, THAT THOSE OCCUPANTS WOULD ROLL THE WINDOW DOWN. THE TIMING ISSUE IS WHAT I'M

CONCERNED ABOUT AND WHETHER WE'RE GOING TO REWEIGH THE EVIDENCE.

BECAUSE THE FIRST DISTRICT SAID THAT THE TRIAL COURT DETERMINED THAT OFFICER BROWNFIELD SMELLED MARIJUANA WHEN HE WENT TO AN PLANTE'S STOPPED VEHICLE.

SO THAT -- AN PLANTE'S STOPPED VEHICLE.

SO THAT'S THE FACT OF AT LEAST THE FIRST DISTRICT ON THE FACE OF THE OPINION HAS MADE A DETERMINATION.

WHAT DO WE DO IN A SITUATION WHERE YOU SAY, WELL, NO YOU WILL LOOK AT THIS VIDEO AND YOU ARE GOING TO COME UP WITH SOME DIFFERENT CONCLUSIONS ABOUT IT.

ISN'T THAT AS FAR AS FOR OUR REVIEW OF A CASE AT THE SUPREME COURT FOR US TO REWEIGH OR LOOK AT THE VIDEO AND SAY, YOU KNOW THE TRIAL COURT GOT T WRONG.

THE FIRST DISTRICT GOT IT WRONG.

WE WILL GO WITH MR. PATTERSON.

IS THAT REALLY THE FUNCTION OF THIS COURT TO SORT OF RESET OUT THE FACTS?

>> THE CONFLICT BETWEEN THE FIRST DISTRICT OPINION AND THIS COURT'S OPINION IN DIAZ IS YOUR OPINION SAYS AND I QUOTE THE SHERIFF'S DEPUTY COULD LAWFULLY MAKE PERSONAL CONTACT WITH MR. Z -- DIAZ ONLY TO EXPLAIN THE REASON FOR THE INITIAL STOP.

AND THE FIRST DCA IS ALLOWING HIM TO GO UP TO THE WIND WITHO AND DO EXACTLY WHAT THE OFFICER IN DIAZ DID AND THIS COURT FOUND UNACCEPTABLE AND THAT'S REQUEST THE ID.

>> I JUST DON'T SEE THEY SAY THAT.

WE CAN QUIBBLE WITH IT. THEY SAID ALTHOUGH THEY

IMPERMISSIONABLY ASKED FOR IDENTIFICATION.

I THINK THE ASSUMPTION OF THE FIRST DISTRICT AND THE TRIAL COURT WAS THAT IN WHAT YOU WOULD BE DOING IN Z -- DIAZ TO EXPLAIN THE REASON FOR THE STOP, THERE COULD BE INEVITABLY SOME CONTACT WITH THE PASSENGERS, WHICH WOULD THEN IN THIS CASE GIVE RISE TO HIM HAVING SMELLED THE MARIJUANA.

>> I DON'T THINK DIAZ PERMITS HIM TO GO UP AND CHAT UP THE OCCUPANTS OF CAR ONCE HE FOUND OUT HE HAS NO LEGAL BASIS FOR DETAINING THOSE PEOPLE.

>> WHAT WOULD HAPPEN. YOU WOULD GO UP AND WHAT WOULD THE OFFICER DO? I MEAN, IF WE NEED TO CLARIFY DIAZ.

>> IDENTIFIES I DIDN'T SEE YOUR TAG IN THE BACK WINDOW. YOU'RE FREE TO GO.

>> HOW WOULD HE SAY THAT TO THE OCCUPANTS OF CLOSED WINDOW.

>> THE SAME WAY YOU DO WHEN YOU SAY "GOT SOME ID ON YOU, MA'AM?"

>> YOU BELIEVE THE CRITICAL FACT IS WHETHER OR NOT THE OFFICER HAD THE RIGHT TO HAVE THE WINDOW COME DOWN. HE.

>> HE HAD NO RIGHT TO MAKE THEM LOWER THE POSITION.

>> SO THAT'S YOUR POSITION. SO THIS CASE IN YOUR VIEW WILL TURN ON WHETHER OR NOT WE AGREE WITH YOU THAT THE OFFICER HAD NO RIGHT TO HAVE THE WINDOW COME DOWN.

>> THAT'S MY CONTENTION. AND KEEP IN MIND THAT THE OFFICER TESTIFIED HE DIDN'T SMELL THE MARIJUANA SMOKE WHEN THE WINDOW CAME DOWN. HE SMELLED --

>> BUT HE ASKED THEM TO LOWER THE WINDOW.

WASN'T THAT MORE A VOLUNTARY
ACT.

HE ASKED THEM FOR THE I.D.
AND THEN IN THE PROCESS THEY
LOWERED THE WINDOW.

>> ONE HAD I.D.

THE PASSENGER DENT.

>> AND SO.

>> IT'S OBVIOUSLY YOU NEED
THE LOWER THE WINDOW TO SHOW
THE DRIVER'S LICENSE.

>> WHAT TOOK PLACE?

YOU MAINTAIN THAT THIS ALL
TOOK LIKE A TWO-MINUTE
PERIOD BEFORE HE ACTUALLY
SMELLED THE MARIJUANA.

SO WHAT -- ARE YOU
MAINTAINING THAT ASKING FOR
ID TOOK TWO MINUTES?

>> FROM THE TIME THAT THE
CAR STOPPED HE WALKED UP,
SAW THE TAG WAS GOOD.
CONTINUED ON UP, KNOCKED ON
THE WINDOW.

LOWERED THE WINDOW AND THEY
HAVE THE CONVERSATION.

I'M BASING THAT ON THE
TRANSCRIPT OF THE
SUPPRESSION HEARING.

I DID NOT TIME IT MYSELF.
BUT THE PASSENGER NEED
TO -- DID THE PASSENGER NEED
TO SHOW IDENTIFICATION?

>> IF THE OFFICER ASKED UP
AND ASKED HIM FOR SOME I
WOULD THINK HE WOULD BELIEVE
HE HAD TO.

>> YOU ARE INTO YOUR REBUT
PHYSICAL YOU WOULD LIKE TO
SAVE THAT TIME.

>> THANK YOU.

>> GOOD MORNING MAY IT
PLEASE THE COURT.

DANIEL DAVID ON BEHALF OF
THE ATTORNEY GENERAL'S
OFFICE.

IN TERMS OF THE QUESTIONING
OF TIME AND FACT FOUND BY
THE TRIAL COURT.

THE TRIAL COURT'S ORDER IS
VOLUME 1 OF 5152, PARAGRAPH
5 AND I WILL JUST QUOTE THIS
BRIEFLY.

WHEN THE OFFICER WENT TO THE

STOP SLASHED PULLED OVER
VEHICLE THAT'S WHEN HE
SMELLED THE BURNED CANNABIS
MARIJUANA SMELL.

WHETHER HE WAS THERE FOR A
FEW SECONDS OR LONGER IS NOT
SIGNIFICANT.

THE ODOR HAD BEEN DETECTED
AND PROBABLE CAUSE WAS
EXISTING.

>> NOW, WAS THERE TESTIMONY
AT THAT HEARING TO SUPPORT
THAT CONCLUSION?

>> THAT IS THE WAY THAT
YOU'VE READ THAT IT APPEARS
THE TRIAL COURT IS SAYING
JUST AS SOON AS THE OFFICER
GOT NEAR THE WINDOW OF THE
AUTOMOBILE NEAR THE DRIVER'S
SIDE THERE THAT HE PICKED UP
THE ODOR OF THE MARIJUANA.
IS THAT A CORRECT
CHARACTERIZATION OF WHAT YOU
JUST READ?

>> THAT'S A DIRECT QUOTE ON
PARAGRAPH 5.

WELL, LET ME --

>> WAS THERE TESTIMONY THAT
SUPPORTS THAT?

THAT IS IN ESSENCE WHAT
YOU'VE JUST READ AT LEAST
THE WAY THAT I UNDERSTOOD IT
WAS THAT THE OFFICER
APPROACHED THE DRIVER'S SIDE
AND IMMEDIATELY DETECTED THE
ODOR OF MARIJUANA.

WAS THERE TESTIMONY TO THAT
EFFECT?

>> THE TRIAL COURT BASED ITS
RULING AS IT SAID IN ITS
ORDER.

IT HAD THE VIDEOTAPE.

THE DEPOSITIONS OF DEPUTY
BROWNFIELD WHO WAS THE MAIN
OFFICER IN THIS.

DEPUTY JACKSON AND ALSO
THERE WAS --

>> I'M LOOKING FOR SOMETHING
MORE SPECIFIC.

YOU ARE OBVIOUSLY MUCH MORE
FAMILIAR WITH THE RECORD.

WHAT ARE -- THAN I AM AT
THIS STAGE.

BUT WOULD YOU POINT TO

EITHER THE OFFICER SAYING
LITERALLY WELL JUST AS SOON
AS I GOT NEAR THE AUTOMOBILE
I COULD SMELL MARIJUANA AND
YOU KNOW REGARDLESS OF ANY
WINDOW COMING UP OR DOWN OR
YOU KNOW THAT, THAT
WAS -- OR THAT THE VIDEO
SHOWS HE JUMPED BACK OR
SOMETHING, IN OTHER WORDS
WHAT -- WHAT PARTICULAR
PIECE OF EVIDENCE IS THERE
IN THE RECORD THAT WOULD
SUPPORT A CONCLUSION THAT
THE TRIAL COURT MADE THERE?

>> WHAT I WOULD POINT TO
YOUR HONOR IS THAT THE
VIDEOTAPE WHICH I REVIEWED
AND BY MY CALCULATIONS AS
REFLECTED IN THE UPPER
RIGHT-HAND CORNER OF THE
VIDEOTAPE THERE'S A
COUNTDOWN CLOCK IN MILITARY
TIME.

BY MY NOTATION ON THIS THE
OFFICER WAS AT THE CAR AT
22:54:09.

HE TAPPED ON THE WINDOW WITH
HIS RIGHT HAND AT 22:54:011.
HIS HEAD IN DOWN OR NEAR THE
WINDOW AT 22:54:15.

BEFORE HE TAPPED ON -- ON
THE WINDOW, WHEN HE TAPPED
ON THE WINDOW BEFORE THE
WINDOW WAS ROLLED DOWN DID
HE ASK FOR TIE DOMI?

>> NO, YOUR HONOR.

MY REVIEW OF THE RECORD AND
AGAIN I WOULD DEFER TO THE
COURT, MY RECOLLECTION IS
THAT, THAT HE DID NOT ASK
FOR ID UNTIL THE WINDOWS
ROLLED DOWN AND HE PLACED
DOWN NEAR IT AND IF YOU
WATCH THE VIDEOTAPE AT THAT
ALMOST PRECISE MOMENT THERE
IS A LARGE KNOT OF TRAFFIC
MOVING BY IN THE OTHER TWO
LANES AND YOU CAN EVEN HEAR
THE NOISE ON HIS -- I GUESS
THE TERM IS HIS LAPELL
MICROPHONE.

THERE IS AUDIO AND VISUAL AS
WELL.

THE STATE'S POSITION IN THAT
IN BENDING DOWN -- EVEN IF
HE STUCK HIS HEAD IN THE
VEHICLE WAS AN ENTIRELY
REASONABLE AND PERMISSIBLE
THING TO DO GIVEN THE --
>> DOES THE VIDEO -- DID HE
BEND DOWN OR DID HE PUT THE
HEAD IN THE WINDOW.
WHAT DOES THE VIDEOTAPE
SHOW?

>> YOUR HONOR, I CAN'T
HONESTLY REPRESENT DO YOU
THAT YOU CAN MAKE A CLEAR
CONCLUSION ON THIS.
IT'S A BLACK AND WHITE
VIDEO.

IT'S KIND OF GRAINY IN THE
CAR IS 50 FEET AWAY.
DO FLATLY CONCEDE THAT HE'S
STUCK HIS HEAD DOWN NEAR
THERE.

I DO SON -- CONCEDE IN HIS
DEPOSITION TESTIMONY WHICH
WAS RELIED ON BY THE TRIAL
COURT PAGE 8, HIS EXACT
PHRASING IS "THEN APPROACHED
THE VEHICLE" AS I STUCK MY
HEAD THROUGH THE WINDOW
THAT'S WHEN I DETECTED THE
ODOR OF MARIJUANA.

>> DOES IT MAKE A DIFFERENCE
IF HE ACTUALLY INVADED THE
VEHICLE BY PUTTING HIS HEAD
IN THE WINDOW?

>> NO, YOUR HONOR I DON'T
BELIEVE SO FROM THE
CIRCUMSTANCES OF THE CASE.
AND, AGAINST, AS
MR. PATTERSON HAS INDICATED
THE VIDEO MAY BE OUR BEST
WITNESS.

THIS IS 7 -- I-75 NORTHBOUND
IT'S ABOUT 11:00 P.M.
AND AS HE IS TAPPING ON THE
WINDOW YOU CAN SEE A LARGE
KNOT OF CARS AND SEMITRAILER
AND OTHER TRAFFIC SPEEDING
BY AT 0 TO 0 MILES PER HOUR
AND YOU CAN HEAR THE RUSH
AND THE ROAR THE VEHICLES ON
HIS LAPELL MOUNTED
MICROPHONE.
SO AT THAT POINT, I DO NOT

SEE HOW ANY REASONABLE PERSON COULD BE EXPECTED TO HAVE A CONVERSATION WITH SOMEONE UNDER THOSE FIELD CONDITIONS UNLESS YOU GOT RIGHT DOWN NEAR THEIR MOUTH AND WERE ABLE TO HEAR WHAT THEY HAD TO SAY.

>> THE INFERENCE BEING THAT THE PURPOSE OF EITHER LEANING DOWN OR STICKING THE HEAD IN OR NEAR THE INDEPENDENT -- WINDOW WAS TO FACILITATE THE COMMUNICATION?

>> SIMPLY TO HEAR.

>> IT'S THE STATE'S POSITION IF -- IF WE SAY THAT DIAZ LIMITED NARROWLY THE AMOUNT OF TIME, THE PURPOSE THAT THIS DID NOT EXCEED ANY REASONABLE TIME AND THAT THE ODOR WAS DETECTED WITHIN A VERY BRIEF TIME.

IT WOULD HAVE BEEN THE SAME AMOUNT OF TIME IF THE MESSAGE WAS BEING CONVEYED.

>> THAT IS THE STATE'S POSITION BY MY COUNT THE -- IT WAS A PERIOD OF 22 SECONDS FROM THE TIME THE WINDOW WAS ROLLED DOWN UNTIL HIS HEAD WAS ARGUEABLY IN THE WINDOW UNTIL HE BACKED UP -- BACKED UP AND WALKED AWAY.

>> WHY SHOULDN'T WE ACCEPT THE DEFENDANT'S POSITION THAT IT WAS CLEAR HERE THAT THE OFFICER REALLY WAS AFFECTING A DETENTION AND WAS SEEKING IDENTIFICATION, WAS GOING BEYOND DIAZ AND THAT WE SHOULD SIMPLY SAY BECAUSE THE OFFICER REALLY WAS VIOLATING THE DIAZ RULE THAT THE STOP WAS IMPLEMENTED.

>> OUR POSITION YOUR HONOR IS THAT WE HAVE NO INDICATION OF BAD FAITH ORELINGABLE TEMPORARY TAG IS PERMISSIBLE UNDER DIAZ. IF YOU BRING THIS ONE STEP

FURTHER BEYOND THE RECORD AND HYPOTHESIS THAT THE POLICEMAN WAS ON A FISHING EXPEDITION.

WHAT HE DID WAS PERFECT I WILL PERMISSIBLE UNDER DIAZ BUT FOR AND WE CONCEDE HE COULDN'T IS ASK FOR THE IDENTIFICATION.

UNDER DIAZ HE COULD HAVE LAWFULLY STOPPED THE CAR. UNDER DIAZ HE COULD HAVE GONE TO THE PASSENGER SIDE AWAY FROM THE PREDOMINANT FLOW OF TRAFFIC IN THE INTERSTATE LANE, IT WOULD BE PERFECT I WILL PERMISSIBLE TO TAP ON THE WINDOW TO FACILITATE COMMUNICATION. AND UNDER DIAZ HE WOULD HAVE BEEN AUTHORIZED TO HAVE A DIALOGUE IN EFFECT, I'M SORRY I STOPPED YOU.

I THOUGHT YOUR TAG WAS BAG. >> WHATEVER OTHER COMMENTS THE STATE WOULD CHARACTER RYCE THOSE AS HARMLESS.

>> EVEN -- HARMLESS OR -- EVEN IF IT HAS BEEN PERMISSIBLE.

EVEN IF HE HAD BEEN ODORING A DIALOGUE THAT WAS PERFECT I WILL PERMISSIBLE UNDER D I I AZ.

I'M SORRY I STOPPED YOU. I THOUGHT YOUR TAG WAS BAD. NOW I SEE IT'S GOOD.

AS HE WAS DUCKING DOWN STICKING THE HEAD IN WINDOW. PROBABLE CAUSE WOULD HAVE PRESENTED ITSELF.

AT THAT POINT THE --

>> IS THAT WHAT THE RULING OF THE FIRST DISTRICT WAS.

>> THAT'S MY READ OEUF PBG THE FIRST DISTRICT.

I AGREE WITH JUSTICE PARIENTE'S INTERPRETATION. I READ THAT FOUNDDY AS BECAUSE OF OLEFACTORY PROPABLE CAUSE DURING THE EXPLANETARY PHASE WHEN HE SHOULD HAVE BEEN SAYING SORRY I STOPPED YOU.

DO YOU THINK YOU NEED TO CLARIFY?

THEY USED INEVITABLE DISCOVERY. DOCTRINE.

AND THE INEVITABLE DISCOVERY DOCTRINE REQUIRES AN INVESTIGATION ALREADY BE UNDER WAY AT THE TIME OF THE STOP.

THERE'S ALSO A CLOSELY RELATED DOCTRINE WHICH REFERS TO IT AS INDEPENDENT COURSE.

WHICH IS IF IT COULD BE DISCOVERED BY MEANS INDEPENDENT OF ANY CONSTITUTIONAL EVALUATION.

IS IT THE FIRST DISTRICT USED THE WORD AND OR THE TERM INEVITABLE DISCOVERY. DO YOU CONTEND THAT IT IS INEVITABLE DISCOVERY THAT, THAT DOCTRINE CONTROLS BASED ON YOUR VERSION OF THE FACTS HERE OR IS IT INDEPENDENT SOURCE?

>> YOUR HONOR, WE HAVE ARGUED THAT AS A SECONDARY POSITION.

OUR PRIMARY POSITION IS THAT THE FIRST DISTRICT'S DECISION WAS PERFECT I WILL STAND UNDER DIAZ BECAUSE IT WAS ADEQUATELY DISTINGUISHED ON THE FACTS IN THE RECORD AND THEIR POSITION CONCISELY IS ONCE THE MARIJUANA ODOR WAS DISCOVERED DURING THIS PERMISSIBLE PERSONAL ENCOUNTER THAT CHANGED THE ANALYSIS.

>> LET ME ASK A QUESTION. LET'S ALTER THE FACTS A LITTLE BIT AND UNDER DIAZ LET'S ASSUME THAT EVERYTHING IS IDENTICAL HERE. THEY COME UP AND THEY NOTICE THE LICENSE IS A VALID LICENSE.

RATHER THAN TAPPING ON THE WINDOW AND TRYING TO MAKE THE STAND OR CIRCLING THE

CAR WITH HIGH INTENSITY LIGHT LOOKING INSIDE THE CAR, SEEING WHAT THE CONTENT MAY BE.

AND THROUGH THE PROCESS OF THIS BE IT A FEW MINUTES FIVE MINUTES TEN MINUTES, THEY SEE SOME KIND OF SUSPICIOUS PLANT. BENEATH SOME THINGS IN THE BACK.

WHAT IS THE -- WHAT'S THE PARADIGM TO WHICH WE LOOK AT THAT KIND OF SCENARIO AS COMPARED WHERE WE ARE HERE?

>> YOUR HONOR, I WOULD AGREE IF YOU STRETCH OUT THE TIME FRAME TO SOME LARGE AMOUNT OF TIME AND I KNOW THAT TIME LIMIT IS NOT FIRMLY FIXED. BUT ASSUMING WE DON'T HAVE AN INORDINATE AMOUNT OF TIME.

SAY FIVE MINUTES AND HE'S WALKING AROUND WITH HIS FLASHLIGHT.

THERE'S BEEN NUMEROUS DECISIONS OF THE UNITED STATES SUPREME COURT THAT HAVE HELD THAT AIDING A HUMAN CENSUS THROUGH SUCH COMMON THINGS AS EYEGLASSES, FLASHLIGHT AND BACK TPOPLERS DON'T CONSTITUTE A SEARCH OR DON'T ENHANCE THE INVASION OF PRIVACY.

>> SO UNDER DIAZ THAT WOULD BE PERMISSIBLE UNDER YOUR READING AND INCLUDING THIS CASE.

UP TO THE TIME -- IT'S A TIME FACTOR AS OPPOSED TO THE KWAU DAYTIVE ASPECT, THE QUANTITATIVE TIME.

>> THE QUANTITATIVE TIME WOULD BE MY CONCERN.

BUT EVEN UNDER DIAZ I DON'T SEE ANYTHING UNDER DIAZ OR THE JURISPRUDENCE OF THIS COURT THAT WOULD PRECLUDE THE OFFICER FROM WALKING UP TO THE STOPPED VEHICLE WITH A FLASHLIGHT AND POINTING HIS FLAG -- FLASHLIGHT

INSIDE TO SEE WHETHER
THERE'S A WEAPON OR
SOMETHING IN THERE FOR HIS
CONCERN.

AND I HONEST STPHESLY DON'T
KNOW HOW TO ADDRESS THE REST
OF YOUR POINT ON THE TIME
FRAME.

WE DON'T HAVE THIS HERE IN
THIS RECORD.

AND --

>> I'M TRYING TO UNDERSTAND
REALLY WHAT IS OUR WHAT'S
THE FRAMEWORK THAT WE DO?
THE ATPHALSITION?

IS IT JUST FLIP A COIN AND
WHERE IT LANDS THAT KIND OF
THING OR DO WE -- ARE THERE
PARAMETERS?

DIAZ SAID YOU ARE NOT TO GET
INVOLVED IN DOING THIS.
YET YOU GET INVOLVED IN
DOING THIS AND IT PRODUCES.
SO WHAT'S THE PARADIGM THAT
YOU LOOK AT TO EVALUATE WHAT
HAPPENS AFTER THAT?

>> I WOULD SAY THAT THE
PARADIGM SHOULD BE THAT
UNDER DIAZ ANALYSIS YOU CAN
STOP A CAR FOR AN ILL
LEGIBLE TEMPORARY TAG.
I DON'T SEE ANYTHING IN
Z -- DIAZ OR JURISPRUDENCE
OF THIS COURT THAT WOULD
CONCERN OF AN OFFICER
WALKING UP WITH FLASHLIGHT
ALL ILLUMINATED FLASHING
FLASHLIGHT INTO THE
PASSENGER COMPARTMENT OF THE
CAR TO SEE WHAT THE SAFETY
SITUATION IS, AND HAVING A
BRIEF PERSONAL CONTACT WITH
THE OCCUPANTS OF THAT
VEHICLE.

AND AS I SAY WHERE I HAVE
TROUBLE DRAWING THE LINE IS
BRIEF.

IF YOU WANT TO ARBITRARILY
PICK A TIME OUT OF THE SKY
AND SAY TWO MINUTES.
LET'S JUST SAY THAT OR FIVE
MINUTES.

I THINK THAT WOULD BE
PERFECTLY PERMISSIBLE UNDER

THE DIAZ PARADIGM.

>> WHAT IS YOUR POSITION ON WHETHER THERE'S A CONFLICT AND AN ANSWER TO JUSTICE PARIENTE'S DISCUSSION.

ON YOUR POSITION THERE'S NO CONFLICT ON ISSUE 1 OR 2?

>> CANDIDLY I DON'T SEE A CONFLICT BETWEEN THIS COURT'S DECISION IN DIAZ AND THE DECISION OF THE FIRST DISTRICT BELOW.

THE WAY I READ THE FIRST DISTRICT BELOW THEY RECOGNIZED THE CONTROLLING PRECEDENT OF THIS COURT IN DIAZ.

THEY APPLIED DIAZ BUT RE -- REASON PWHR FOUND BASED ON THE FACTS THEY HAD IN THEIR RECORD THAT THE PRESENTATION OF OLFACTORY PROBABLE CAUSE DURING THE EXPLANTORY PHASE MADE DIAZ DISTINGUISHABLE.

>> IS THERE A CONFLICT WHETHER THE INEVITABLE DISCOVERY RULE REQUIRE THERE BE AN ONGOING INVESTIGATION.

>> AGAIN, I DON'T SEE THAT. I'VE READ THE DECISION OF THIS COURT IN SUCH CASES AS MOODY AND TPEUDZ PASS ELECTRIC.

THE STATE'S POSITION IS THAT THIS EXPLANTORY PHASE AS I'VE TERMED IT UNDER DIAZ OF EXPLAINING WHY YOU ARE STOPPED AND WHY YOU ARE ABLE TO -- WHY I STOPPED YOU AND NOW YOU ARE ABLE TO GO IN THE EXPLANTORY PHASE WHEN THE INDEPENDENT PROBABLE CAUSE PRESENTS IT ELF AT THAT POINT A CRIMINAL INVESTIGATION SPRINGS INTO EFFECT OR IT'S BEEN HELD NUMEROUS TIMES BY THIS COURT IN THE UNITED STATES SUPREME COURT THAT PROBABLE CAUSE IS UNDER A TOTALITY OF THE CIRCUMSTANCES AND I THINK IT VERY FAIRLY AND VERY WELL FIT WITHIN THE TOTALITY OF

THE CIRCUMSTANCES ANALYSIS THAT WHEN YOU ARE EXPLAINING SORRY I STOPPED YOU AND YOU ARE FREE TO GO AND THROUGH YOUR OLFACTORY SENSES YOU ARE PRESENTED WITH PROBABLE CAUSE.

I THINK THAT FITS IN AS WELL.

>> YOU DON'T MAKE A DISTINCTION BETWEEN THE INDEPENDENT SOURCE -- SOURCE DOCTRINE AND THE INEVITABLE DISCOVERY DOCTRINE?

>> AS I UNDERSTAND THOSE TWO DOCTRINES WHICH ARE THE UNITED STATES SUPREME COURT TELLS US IN NICKS THEY ARE CLOSELY INTERTWINED.

INEVITABLE DISCOVERY EVEN IF YOU HOLD IT IT HAS TO BE AN ONGOING INVESTIGATION AT THE TIME, INDEPENDENT SOURCE WOULD PERMIT IT BECAUSE INDEPENDENT SOURCE AS I BELIEVE THIS COURT STATED IN FITZPATRICK ELECTRIC IS THE FACT IN POSSESSION OF THE POLICE AT THE TIME WOULD HAVE NECESSARILY LED TO THE DISDOVE -- DISCOVERY OF THE EVIDENCE COMPLAINED OF.

THE EVIDENCE HERE WAS OBVIOUS WITH THE DRUGS AND -- IN THE PEOPLE'S CAR. IN AN INDEPENDENT SOURCE THE POLICEMEN HAD A CAR STOPPED FOR A VALID REASON.

HE WAS IN A LAWFUL PUBLIC PLACE AT THE SIDE OF THE ROAD.

HE DID A LAWFUL THINGS ASKING HIM TO ROLL DOWN THE WINDOW.

AT THAT POINT HE WAS PRESENTED WITH THE OLFACTORY PROBABLE CAUSE.

SO A WORSE CASE SCENARIO INDEPENDENT SOURCE WOULD HAVE ALLOWED IT AND UNDER SAY FAIR READING OF THE TOTALITY OF THE CIRCUMSTANCES INEVITABLE DISCOVERY.

>> MY CONCERN ABOUT DIAZ IS THAT WE UNDERSTOOD THAT THERE OLD -- WOULD BE CIRCUMSTANCES ESPECIALLY AT NIGHT WHERE OFFICERS WOULD NOT BE ABLE TO CLEARLY SEE THE TAG.

THE TEMPORARY TAG UNTIL THE VEHICLE WAS STOPPED.

IT WAS SORT OF KIND OF A CATCH-22, BECAUSE THE TAGS A LOT OF THEM EVEN THE ONES THAT THE STATE ISSUES JUST AT NIGHT YOU WILL HAVE DIFFICULTY SEEING THEM ON -- IF THE VEHICLE IS MOVING.

SO WE'VE GOT THAT FIRST ISSUE OF ALL RIGHT IT'S OKAY TO PULL OVER THAT VEHICLE. AND BUT YOU SEE BEFORE YOU EVEN APPROACH THE CAR THAT THERE IS NO VIOLATION. UH-HUH.

>> THEN THE NEXT STEP IS, WELL IT'S -- YOU KNOW IT WOULD BE KIND OF STRANGE IF AN OFFICER PULLS THE CAR OVER TO NOT HAVE ANY CONTACT WITH THE OCCUPANTS.

BUT WHAT I'M DISTURBED ABOUT IS EVEN IN THE RESPONSE JUST LEWIS' HYPOTHETICAL IS THAT SOMEHOW THAT THIS CONTACT IS BECOMING A FULL-FLEDGED STOP, IS JUST A STOP ITSELF WAS AUTHORIZED WHEN IT WASN'T.

SO WHAT IF WE KEPT THIS CASE, WHAT IS IT THAT WE COULD SAY THAT WOULD ENSURE THAT OFFICERS WOULD UNDERSTAND THAT A STOP UNDER DIAZ IS REALLY NOT A STOP IDENTICAL TO A STOP IF THE VEHICLE WAS A SPEEDING VEHICLE OR ANY OTHER TRAFFIC VIOLATION THAT WOULD REALLY MINIMIZE THE INTRUSION TO WHAT DIAZ INTENDED WHICH WAS SORT OF A COMMON SENSE THING OF SAYING LET'S -- WE GOT TO TELL THE DRIVER OR THAT HE OR SHE IS FREE TO GO, WE THOUGHT YOU HAD A TEMPORARY TAG

VIOLATION, BUT YOU DON'T.
DO YOU HAVE ANY SUGGESTIONS
CAN.

>> YOUR HONOR, MY SUGGESTION
WOULD BE AND I WOULD AGREE
COME PLEALY WITH YOUR HONOR
THAT IF THIS POLICEMAN
WALKED UP, ROLLED DOWN THE
WINDOW AND SAID LET ME SEE
SOME IDEA -- I.D.
TAKEN THE I.D.
THAT PERSON HAS SUSPENDED
LICENSE.

I WOULD HAVE WRITTEN A
CONCESSION OF ERROR UNDER
DIAZ.

WHAT DISTINGUISHES DIAZ IS
DURING THAT PERMISSIBLE
PERSONAL CONTACT PHASE WHERE
HE SHOULD HAVE SAID I'M
SORRY I STOPPED YOU.

I CAN SEE YOUR TAGS IS GOOD.
IF DURING THAT BRIEF
PERSONAL CONTACT PERIOD THE
OFFICER IS ABLE TO SEE
INDEPENDENT OR SENSE THROUGH
HIS NOSE INDEPENDENT
VERIFIABLE PROBABLE CAUSE OF
AN EXISTENCE OF A CRIME THAT
SHOULD BE THE TRIGGER THAT
SETS US APART FROM DIAZ.

>> IF IT'S SIGNIFICANT IN
THIS CASE THAT THE VIDEO
REVEALS THAT HE
DOESN'T -- EXPLAIN THE BASIS
OF THE STOP UNTIL AFTER HE
ASKED FOR THE IDEFICATION.

>> NO, I DON'T, YOUR HONOR.
AS I READ THIS VIDEOTAPE, HE
DID NOT ASK FOR ID UNTIL
AFTER HE HAD, HAD HIS HEAD
DOWN AND SMELLED THE
MARIJUANA.

THAT'S ALSO SUPPORTED BY HIS
DEPOSITION TESTIMONY PAGE OF
HIS DEPOSITION, WHICH WAS
PLACED IN THE RECORD.

AND RELIED ON BY THE TRIAL
COURT, THEN APPROACHED THE
VEHICLE, AS I STUCK MY HEAD
THROUGH THE WINDOW THAT'S
WHEN I DETECTED THE ODOR OF
MARIJUANA.

WENT AHEAD AND ASKED FOR ID

AND ALL OF THAT.

>> AND THEN WHAT DUD -- DOES HE SAY AS AN AFTERTHOUGHT BY THE WAY I DIDN'T REALLY STOP FOR THAT REASON.

WHAT IS HIS TESTIMONY CAN.

>> IT IS -- IN THE VIDEOTAPE IT'S COUPLE OF MINUTES LATER FOUR OR FIVE MINUTES LATER. I DON'T HAVE THAT TIME FRAME DOWN EXACT HE MAKES SOME STATEMENT THAT I STOPPED YOU BECAUSE THE TAG WAS BAD. THE TAG SHOULD HAVE BEEN ON THE REAR BUMPER AND THE STATE CONCEDES THIS CASE IT DOESN'T REQUIRE ON THE REAL BUMPER.

HE MAKES SOME SORT OF EXPLANATION I STOPPED YOU BECAUSE I COULDN'T SEE YOUR TAG.

AND I'M WRITING YOU A WARNING CITATION FOR THAT ILLEGAL -- ILL LEGIBLE TEMPORARY TAG.

THAT'S CONSIDERABLY LATER IN THE PROCESS AFTER THE MARIJUANA ODOR HAS BEEN DETECTED AND THE ID REPLACED.

SO SIMPLY PUT SUCCINCTLY THE STILL WOULD ASK THE COURT TO AFFIRM THE FIRST DISTRICT OF THE COURT BELOW THEY ADEQUATE DISTINGUISHED DIAZ ON THE RECORD AND WE WOULD ASK THIS COURT TO AFFIRM. THANK YOU.

>> REBUTTAL.

>> IT DOES APPEAR WE HAVE SOME FACTUAL DISPUTE STILL BREWING IN THIS CASE. BUT APPARENTLY HAS NOT BEEN AT LEAST RESOLVED TO THE PARTY'S SATISFACTION. BECAUSE WE HAVE DIFFERENT VERSIONS OF FACT, WHICH IS VERY DIFFICULT AT THIS STAGE.

>> THE STATE'S POSITION THAT HE WALKED UP TO THE CAR AND SMELLED MARIJUANA THAT'S NOT WHAT THE OFFICER'S OWN

TESTIMONY WAS.

THERE'S CONFLICT IN THIS CASE BETWEEN DIAZ AND THE FIRST DCA'S OPINION BECAUSE THE FIRST DCA'S OPINION ALLOWS THE CONTINUED ILLEGAL DETENTION TO CHECK FOR IDENTIFICATION ONCE THE OFFICER HAS NO GROUNDS WHATSOEVER TO BELIEVE THE OCCUPANTS OF THIS CAR HAVE DONE ANYTHING WRONG. DIAZ SAID YOU CANNOT DO THAT.

ONCE YOU DETERMINE YOU HAVE NO REASON TO STOP THE CAR, YOU CAN ONLY TELL THE OCCUPANTS ABOUT THE MISTAKE AND ALLOW THEM TO BE FREE TO GO.

THE OCCUPANTS ARE NOT REQUIRED TO ENGAGE ANY CONVERSATION IN THE OFFICER IS NOT ALLOWED TO MAKE AN EXPLORATORY ENTRY INTO THE CAR THAT HE SE -- THAT IS NOW ILLEGALLY STOPPED BECAUSE THE OFFICER REALIZES HE HAS NO LAWFUL BASIS FOR HAVING STOPPED IT.

>> BUT DIDN'T THE DISTRICT COURT RECOGNIZE THAT, THAT'S WHAT DIAZ HELD AND THAT HE HAD NO AUTHORITY TO ASK FOR IDENTIFICATION?

DIDN'T THEY RECOGNIZE THAT?

>> I REALLY HAVE NEVER BEEN CLEAR ON THE DECISION.

>> IF THEY HADN'T RECOGNIZED THAT -- IF THEY HADN'T RECOGNIZED THAT THEY WOULDN'T HAVE TO GO TO ISSUE 2, THE INEVITABLE DISCOVERY. THE ONLY REASON THEY WENT TO INEVITABLE DISCOVERY WAS BECAUSE THEY FOUND A VIOLATION.

>> THE WAY I READ DIAZ IS IT SEEMED TO ALSO RISE -- THE WAY I READ THE DCA'S OPINION IT SEEM AUTHORIZE WHAT THIS COURT PROHIBITED.

AND THAT'S WHY I MOVE THIS COURT TO REVIEW THE CASE.

IT ALSO WRITES INSTEAD OF GOING UP TO THE CAR AND SAYING, GENTLEMAN I MADE A MISTAKE YOU'RE FREE TO GO HE WALKED UP TO THE CAR AND SAID GIVE MY DYE THAI AND THEN GO INSIDE THE CAR AFTER HE HAD IT DETAINED WITH NO LEGAL BASIS.

NOW HE'S IN THE CAR.

>> THAT'S WHY HE -- WE'RE DISCOST -- DISKING THE INEVITABLE DISCOVERY.

DIDN'T THE COURT RECOGNIZE THAT THE -- THE COURT AT OFFICER VIOLATED DIAZ HAD GONE BEYOND DIAZ AND WENT BEYOND THAT AND SAID, HOWEVER, HE WOULD HAVE DISCOVERED IT ANY WAY.

>> THAT'S NOT THE WAY I READ THE DCA'S OPINION.

I FOUND THE DCA TO SAY THAT THE CONDUCT WAS PERMISSIBLE UNDER DIAZ AND EVEN HYPOTHETICALLY ALMOST -- IF IT WASN'T IT WOULD HAVE BEEN DISCOVERED PURSUANT TO THE INDEPENDENT SOURCE DOCTRINE.

>> READ US THE PART OF THE FIRST DISTRICT OPINION THAT YOU CONTEND SAYS WHAT YOU JUST CHARACTERIZED THAT. BECAUSE I THINK ALL OF US ARE HAVING DIFFICULTY FINDING THAT THE FIRST DISTRICT OPINION.

THAT IS FINDING THE REAL CONFLICT WITH DIAZ THAT YOU ARE ASSERTING.

>> THE DCA.

>> IN OTHER WORDS THE FIRST DISTRICT FACTUALLY -- WHO KNOWS WHETHER THEY GOT IT RIGHT OR WRONG OR THE EVIDENCE IS SUPPORT IS THERE.

I'M HAVING DIFFICULTY FINDING SOME STATEMENT INCONSISTENT WITH DIAZ ON THE FACE OF THE FIRST DISTRICT'S OPINION. HELP ME WITH THAT DIFFICULTY.

WHERE IS IT THAT YOU SAY
THEY WENT BEYOND?

>> IT SAYS OFFICER
BROWNFIELD HAS THE LEGAL
AUTHORITY TO MAKE PERSONAL
CONTACT AND BE IN A POSITION
TO SMELL THE MARIJUANA.
THAT'S WHERE I THINK -- THAT
COURT -- THAT OPINION
DEVIATES FROM DIAZ.
WE IN DIAZ WE CERTAINLY AT
THE VERY LEAST IMPLIED THAT
THE OFFICER HAD A LEGAL
AUTHORITY TO MAKE THAT
PERSONAL CONTACT IN ORDER TO
EXPLAIN THE PURPOSE OF THE
STOP INITIALLY.

>> RIGHT.
BUT NOT TO KNOCK ON THE
WINDOW, HAVE THE
INDEPENDENTER LOWERED PUT
YOUR HEAD IN --

>> AT -- WHERE DO THEY
SAY --

>> SO YOU ARE -- YOUR
DISAGREEMENT WITH THE FIRST
DISTRICT IS THIS THING ABOUT
THE WINDOW BEING LOWERED?

>> RIGHT.
THE REQUEST FOR
IDY -- IDEFICATION WHICH
REQUIRED THE WINDOW TO
BILLOWERED WHICH MADE IT
POSSIBLE FOR THE OFFICER
TO -- MAKE AN ENTRY INTO THE
VEHICLE WITHOUT A WARRENT OR
SUS SPEUGS OF ILLEGAL
ACTIVITY.

>> WHERE DOES THE FIRST
DISTRICT SAY ANYTHING ABOUT
THE WINDOW BEING LOWERED?

>> IT'S -- I HAVE THE SLIP
OPINION.

IT'S ON PAGE 3 WHERE OFFICER
BRANDFIELD HAS THE LEGAL
AUTHORITY TO MAKE PERSONAL
CONTACT WITH APPELLANTS AED
ON THE BE IN A POSITION TO
SMELL THE MARIJUANA, WHICH
REQUIRED THE WINDOW TO BE
LOWERED --

>> NOW YOU ARE GOING -- I'M
ASKING YOU -- WHERE IS THE
LANGUAGE IN THE OPINION --

>> THAT'S WHAT I'M READING FROM.

READ THAT, AGAIN I'M LOOKING AT THE SAME OPINION. WHAT IS IT.

>> "ACCORDING TO THE SUPREME COURT RULING OFFICER BRANDFIELD HAS THE LEGAL AUTHORITY TO MAKE PERSONAL CONTACT WITH APPELLANTS SO FAR SO GOOD.

AND TO BE IN A POSITION TO SMELL THE MARIJUANA. WRONG.

BECAUSE THAT WHEN HE KNOCKED ON THE WINDOW ASKED FOR DYE THAI.

THEY HAD TO LOWER THE WINDOW AND I CONTINUE SHOULDN'T HAVE PUT HIS HEAD INSIDE THE CAR.

THAT'S WHAT THE OFFICER DID. THE WINDOW WENT DOWN. THAT'S WHERE I'M SAYING YOU'RE REALLY GOING BEYOND THE OPINION.

IN TERMS OF WHETHER -- WHERE THEY WENT WRONG.

I'M TRYING TO IN OTHER WORDS YOU ARE SAYING THIS IS INCORRECT LEGAL STATEMENT. THAT ACCORDING TO THE SUPREME COURT'S RULING OFFICER BROWN FELT HAD THE LEGAL AUTHORITY TO MAKE PERSONAL CONTACT WITH AN APPELLANT AND TO BE IN A POSITION TO SMELL THE MARIJUANA AT THAT IS INCORRECT LEGAL STATEMENT.

>> TO BE IN A POSITION TO SMELL THE MARIJUANA IS UNDER DIAZ.

>> YES.

>> AND IN THE NEXT PARAGRAPH THE COURT -- COURT SAID "ALTHOUGH OFFICER BROWNFIELD IMPERMISSIBLE ASKED FOR APPELLANTS IDENTIFICATION THE TRIAL COURT DETERMINED THAT THE CONTRABAND WASN'T REQUIRED TO BE SUPPRESSED. AND THEN IT DISCUSSES THE INEVITABLE DISCOVERY RULE.

THAT'S WHERE IT MUSHES OUT
AND IT SEEMS TO RECEDE FROM
THE PREVIOUS STATEMENT
SAYING IF THAT'S WRONG, THEN
THE INEVITABLE DISCOVERY
DOCTRINE.

>> ALTHOUGH THE RO ASKED FOR
APPELLANT'S IDENTIFICATION.
ISN'T THAT A RECOGNITION
THAT UNDER DIAZ HE WAS
PROHIBITED FROM ASKING FOR
IDENTIFICATION?

>> YES, IT IS.

IT SEEMS TO CONTRADICT THE
SENTENCE WE WERE DISCUSSING
FROM THE PREVIOUS PARAGRAPH
WHERE HE SAID HE COULD BE IN
A POSITION TO MAKE THEM ROLL
DOWN THE WINDOW.

>> WELL, ALL THAT SEEMS TO
BE SAYING HE COULD
BE -- WHEN YOU MAKE PERSONAL
CONTACT YOU ARE AT THE
WINDOW EITHER THE DRIVER OR
PASSENGER'S SIDE WINDOW IN
ORDER TO MAKE THE PERSONAL
CONTACT.

AND THEN YOU'RE IN A
POSITION TO SMELL THE
MARIJUANA.

>> NO.

>> THE COURT DID NOT HOLD I
I DON'T SEE IT HERE ANYTHING
ABOUT OPENING THE WINDOW
REQUIRING THE WINDOW TO BE
OPENED OR ANYTHING LIKE
THAT.

>> IF YOU APPLY THE FACTS OF
THE CASE TO THE WRITTEN
OPINION, THAT'S EXACTLY WHAT
THEY ARE SAYING.

BECAUSE THAT'S WHAT THE
FACTS ARE.

THE WINDOW WENT DOWN IN THE
OFFICER TESTIFIED HE DIDN'T
SMELL ANYTHING UNTIL HE PUT
HIS HEAD INSIDE.

IF IT'S OKAY FOR HIM TO BE
IN THAT POSITION TO SMELL
THE MARIJUANA THEN IT'S OKAY
TO LOWER THE WINDER TO PUT
THE HEAD IN THERE.

>> YOU ARE OF THE OPINION
THAT HE PUT HIS HEAD INTO

THE VEHICLE?

>> NO THE OPINION DOESN'T SAY THAT.

THE RECORD DOES.

THERE'S -- THERE'S NO --

>> LET'S SAY WHAT -- WHAT WAS ARGUED BEFORE THE TRIAL COURT?

WAS IT ARGUE BAD OVER THE TRIAL COURT THAT THIS -- IT WAS ILLEGAL BECAUSE THE OFFICER STUCK HIS HEAD THROUGH THE WINDOW AND VIOLATED THAT PRIVACY?

>> IT WAS ARGUED IN THE TRIAL COURT THE START -- STATE ARGUED THAT THE LICENSE PLATE WAS NOT PROPERLY DISPLAYED AND THEREFORE THEY COULD NOT -- COULD MAKE EVERYBODY GET OUT OF CAR IN A TRAFFIC STOP.

AND THE DEFENSE COUNSEL ARGUED THAT ANYTHING BEYOND TELLING THE PEOPLE THAT THEY -- THERE HAD BEEN A MISTAKE MADE AND THEY WERE FREE TO GO VIOLATED DIAZ.

>> MY POINT IS THE TRIAL COURT UNDER -- WASN'T REQUIRED TO MAKE A FACTUAL DETERMINATION WHETHER THE TROOPER PUT HIS HEAD THROUGH THE WINDOW OR NOT.

THAT WAS NOT THE ISSUE BEFORE THE TRIAL COURT.

>> THE TRIAL COURT CONCLUDED THE TAG WAS IMPROPERLY DISPLAYED AND AT THAT POINT THEY HAD A VALID INFRACTION THEY COULD MAKE PEOPLE GET OUT OF THE CAR.

>> WITH OUR ASSISTANCE YOU HAVE EXHAUSTED ALL YOUR TIME INCLUDING THE REBUTTAL TIME.

>> THANK YOU.

THANK YOU VERY MUCH.

WE APPRECIATE THE ARGUMENT ENLIGHTENMENT ON THIS AND WE WILL TAKE THE CASE UNDER ADVISEMENT.

THANK YOU VERY MUCH.