

>> THE CASE NOW BEFORE THE COURT WAS CALDWELL VERSUS STATE.

>> MAY IT PLEASE THE COURT.

>> OKAY.

>> THIS CHIEF JUSTICE, JUSTS GOOD MORNING MY NAME IS ANDREW CRAWFORD.

I REPRESENT THE PETITIONER IN THIS CASE, ERIC CHRISTOPHER CALDWELL.

THIS CASE ARISES FROM THE CONFLICT IN THE SECOND DISTRICT COURT OF APPEAL WITH THE FOURTH DISTRICT COURT OF APPEAL.

>> LET ME ASK YOU RIGHT FROM THE BEGINNING HERE, ARE YOU ASKING US TO MAKE A PER SE RULE THAT WHENEVER A POLICE OFFICER GIVES A MIRANDA WARNING TO A SUSPECT, OR A PERSON WHO IS INVOLVED IN A POLICE ENCOUNTER, THAT THAT AUTOMATICALLY TRANSFORMS AN ENCOUNTER INTO A DETENTION?

>> BASED ON THE REASONING OF THE FOURTH DISTRICT COURT OF APPEAL THE EN BANC DECISION, I WOULD THINK THAT WOULD BE A PER SE RULE.

HOWEVER, THE COURT COULD ALSO DETERMINE FROM THE FACTS AND CIRCUMSTANCES INVOLVED IN THIS CASE THAT IT WAS IN FACT A SEIZURE.

>> WOULD YOU, IN TERMS OF -- SEIZURE.

UNDER A TOTALITY OF THE

CIRCUMSTANCES REVIEW, IN GM WE TALK ABOUT BLUE LIGHTS BEING A VERY IMPORTANT FACTOR.

>> YES, YOUR HONOR.

>> GIVE ME YOUR, BASED ON THE FACTS OF THIS CASE, DOES THE GIVING OF MIRANDA WARNINGS ACTUALLY MAKE IT MORE SIMILAR TO A CONSENSUAL ENCOUNTER OR MORE SIMILAR TO INVESTIGATORY ENCOUNTER, AND COULD YOU DISCUSS THE APPROACH OF THE SECOND DISTRICT WHICH SEEMS LIKE IT SAID IT WAS A GOOD THING TO DO.

IT ACTUALLY MADE IT LESS COERCIVE?

>> I WOULD RESPECTFULLY DISAGREE WITH THE REASONING OF THE SECOND DISTRICT.

WHEN SOMEONE SPECIFICALLY INVOKES THEIR MIRANDA RIGHTS THEY ARE TOLD THEY HAVE RIGHT TO ATTORNEY, RIGHT TO REMAIN SILENT, RIGHT TO ATTORNEY IF THEY CAN'T AFFORD ONE IF THEY CAN'T AFFORD ONE AND EXERCISE THOSE RIGHTS AT ANY TIME.

>> ISN'T A GOOD IDEA, I GUESS THE REAL QUESTION, ISN'T A GOOD IDEA REALLY, WHEN A POLICE OFFICER, EVEN APPROACHES A CITIZEN AND WHAT IS OTHERWISE A, JUST A CITIZENS ENCOUNTER TO LET THEM KNOW, YES, I WANT TO TALK TO YOU BUT YOU REALLY

DON'T HAVE TO TALK TO ME AND
THAT IF YOU DO TALK TO ME, I
CAN POSSIBLY, I WILL USE WHAT
YOU SAY AGAINST YOU?

I MEAN SHOULDN'T, ISN'T THAT A
GOOD IDEA TO TELL A CITIZEN
THAT?

>> I THINK ONLY IF A CITIZEN IS
IN CUSTODY FOR THE PURPOSES OF
THE FIFTH AMENDMENT THAT THAT
WOULD BE APPROPRIATE IF SOMEONE
IS SPECIFICALLY ADVISED OF
MIRANDA DURING A CITIZENS
ENCOUNTER, THEY SHOULD BE
EXPRESSLY TOLD THEY'RE AT LEAST
FREE TO LEAVE.

>> ARE YOU SAYING IF THEY WERE
TOLD THAT, THE PER SE RULE
WOULD NOT APPLY?

>> POTENTIALLY IF THEY'RE TOLD
THAT THE PER SE RULE WOULD NOT
APPLY.

>> IT IS NOT REALLY A PER SE
RULE.

>> IT IS NOT REALLY A PER SE
RULE, YOUR HONOR, BUT UNDER --

>> BUT HERE, ISN'T IT A
SALIENT FACT THAT THE OFFICER
TOLD THE DEFENDANT THAT HE WAS
NOT UNDER ARREST?

>> IT IS A SALIENT FACT THE
OFFICER IN THIS CASE TOLD THE
PETITIONER HE WAS NOT UNDER
ARREST BUT THAT ONLY FOCUSES ON
THE FIRST PORTION OF WHAT HE
TOLD.

HE SAYS, YOU'RE NOT UNDER
ARREST BUT I NEED TO SPEAK WITH
YOU.

ANOTHER PORTION OF THE
TRANSCRIPT HE SAYS, I WANT TO
SPEAK WITH YOU.

I WILL ADMIT TO THIS COURT,
BASED ON THE, BASED ON THAT
LANGUAGE, A REASONABLE PERSON
BASED ON ALL THE OTHER FACTORS
INCLUDED THAT APPROACHED
MR. CALDWELL IN THIS
SITUATION --

>> WAS IT A CONSENSUAL STOP?
THAT LANGUAGE IS ALLOWED.

I MEAN AN OFFICER CAN WALK UP
TO A CITIZEN AND SAY, I WOULD
LIKE TO TALK TO YOU.

>> SURE.

>> AND THE CITIZEN CAN SAY, NO,
AND WALK AWAY.

>> SURE.

>> WHAT MAKES IT ANY DIFFERENT
IN THIS CASE?

>> IN THIS CASE HE IS
CONFRONTED WITH EVIDENCE OF HIS
GUILT.

HE IS TOLD REPEATEDLY HE IS THE
PERSON THAT APPEARS IN THIS
VIDEO.

WHEN THE OFFICER IS SAYING THAT
HE DIDN'T ACTUALLY KNOW THAT.
HE'S FRISKED.

HE IS PLACED IN THE BACK OF A
LOCKED POLICE CAR.

IN ADDITION --

>> NOW YOU'RE GOING TO, ONCE YOU START TALKING ABOUT THAT, I REALIZE OUR QUESTIONING HAS GOTTEN YOU THERE --

>> YES, YOUR HONOR.

>> NOW YOU'RE NECESSARILY, SAYING THAT WE'VE GOT TO LOOK AT THE TOTALITY OF THE CIRCUMSTANCES?

>> I THINK MENDENHALL MANDATES THAT.

>> TO THE EXTENT THEN THAT THE FOURTH DISTRICT ENUNSI EIGHTS A PER RULE THAT WHENEVER MIRANDA IS ADMINISTERED, IT IS BY NATURE WHAT IS SAID IN MIRANDA, IT IS AT LEAST AN INVESTIGATORY STOP, IF NO REASONABLE PERSON WOULD FEEL FREE TO LEAVE, ARE YOU ACKNOWLEDGING THAT WE CAN NOT HAVE A PER SE RULE UNDER A OTHER FOURTH AMENDMENT CASES AND, AND CASES THAT SAY YOU'VE GOT TO LOOK AT THE TOTALITY OF CIRCUMSTANCES?

>> SPECIFICALLY WHAT THE FOURTH DCA DID, THEY DID LOOK AT TWO CASES.

THEY LOOKED AT MENDENHALL, WHICH IN THAT CASE SAID YOU MUST LOOK AT TOTALITY OF THE CIRCUMSTANCES AND THEN THEY GAVE CERTAIN EXAMPLES IN MENDENHALL.

FOR EXAMPLE, MULTIPLE OFFICERS BEING PRESENT.

THE DISPLAY OF A WEAPON.
LANGUAGE INDICATING COMPLIANCE
AND PHYSICAL TOUCHING OF A
SUSPECT.

>> THAT'S WHY I SAY THOUGH,
THAT YOU, WHEN I ASKED YOU THE
INITIAL QUESTION, IN GM WE SAID
THERE IS NO PER SE RULE BUT
BLUE LIGHTS BEHIND A VEHICLE IS
AN IMPORTANT FACTOR IN
DETERMINING WHETHER SOMEONE
FEELS FREE TO LEAVE.

>> I WOULD ARGUE THAT UNDER GM,
BLUE LIGHTS LIKE MIRANDA
WARNINGS ARE AT LEAST VERY
LEAST ONE OF THE MOST CRUCIAL
FACTORS THIS COURT SHOULD LOOK
AT.

>> THAT CHANGES WHAT A HOLDING
IS.

>> YES, YOUR HONOR.

>> IT SAYS DOESN'T PER SE
TRANSFORM IT, THEN YOU HAVE TO
LOOK AT THE CIRCUMSTANCES.

>> THAT'S CORRECT.

>> AND I THINK THAT, WITH THE
FACTUAL RECORD DEVELOPED AS
WELL AS THE SECOND DISTRICT'S
OPINION READS OR IS THERE MORE
FACTS YOU WOULD WANT TO SHARE
US THAT APPEAR IN THE RECORD
THAT WOULD TEND -- LET ME
FINISH.

>> YES, YOUR HONOR.

>> THAT WOULD TEND TO SHOW THIS
DEFENDANT WOULD NOT FEEL FREE

TO LEAVE?

>> I THINK THERE ARE MORE FACTS THAN WAS DEVELOPED BY THE SECOND DISTRICT COURT OF APPEAL, SPECIFICALLY, THE OFFICER DROVE HIS CRUISER UP OVER A CURB, INTO A PARK, BY HIS OWN TESTIMONY, DIRECTED MR.^CALDWELL TO THE REAR OF HIS CRUISER AND INFORMED HIM HE WANTED TO SPEAK WITH HIM IN REFERENCE TO SOME BURGLARIES.

MR.^CALDWELL DENIED INVOLVEMENT.

HE SAID YOU DID IT, YOU DID IT, YOU DID IT MULTIPLE TIMES.

MR.^CALDWELL DENIED THAT.

THE OFFICER --

>> THAT IS IN PART, I THINK IT IS IN THE SECOND DISTRICT OPINION BUT WHAT MIGHT CHANGE THIS FROM OTHER CASES --

>> YES, YOUR HONOR.

>> NOT THAT HE SAID, LISTEN I'M INVESTIGATING A BURGLARY, WE'VE GOT SOME QUESTIONS AND BEFORE I GIVE THOSE QUESTIONS I WANT TO JUST TELL YOU DON'T HAVE TO ANSWER THESE QUESTIONS.

>> RIGHT.

>> HE ACTUALLY GOES, GETS HIM OUT OF A GROUP OF PEOPLE IN THE PARK, DIRECTS HIM OVER TO THE BACK OF THE POLICE CRUISER AND THEN, WHEN HE, THEY START TALKING HE SAYS HE KNOWS THAT

THE DEFENDANT DID IT.
HE IS ACCUSETORIAL IN
QUESTION.

>> YES, YOUR HONOR.

>> DOESN'T SEEM THE SECOND
DISTRICT OR IN YOUR BRIEF, TO
ME THAT IS A PRETTY IMPORTANT
FACTOR OF WHAT ENSUED BEFORE
THE MIRANDA WARNINGS ARE GIVEN,
THAT, BELIES THE ALLEGATION
THAT THIS IS A CONSENSUAL
ENCOUNTER.

DON'T YOU HAVE TO DO ALL OF
THOSE, DON'T YOU HAVE TO HAVE
TO BRING ALL THOSE FACTS IN FOR
US TO AGREE WITH YOUR RESULT
BEING THE SUPPRESSION,
CONFESSION SUPPRESSED.

>> YES, YOUR HONOR.

I THINK MENDENHALL REQUIRES
TOTALITY OF THE CIRCUMSTANCES
APPROACH AND, YOUR HONOR IS
CORRECT IN SAYING HE WAS TOLD
HE WAS THE ONE HO DID IT
MULTIPLE TIMES.

>> JUST A QUICK SEPARATE
QUESTION.

>> CERTAINLY.

>> SOUNDS LIKE I'M ASKING A LOT
OF FRIENDLY QUESTIONS.

BUT THEN, HE DOESN'T CONFESS.
HE THEN IS, SAYS, WELL, LET ME
SEE THE INDIVIDUAL.

AND THE POLICE OFFICER SAID,
WELL THAT'S OVER AT THE
CONDOMINIUM.

YOU WANT TO HAVE A RIDE?
AND THEN, GETTING IN THE CAR HE
SAYS, LISTEN, I NEED TO FRISK
YOU BECAUSE YOU'RE GETTING IN
THE CAR.
SO MY QUESTION IS, AND, IS
THAT, DOES IT BECOME ATTENUATED
HAD THE INITIAL QUESTIONING
BEGAN WHETHER THERE IS A BREAK
SUFFICIENT TO MAKE IT
VOLUNTARY?
>> NO, I DON'T THINK THERE IS.
SPECIFICALLY HE IS FRISKED AND
PUT IN THE BACK OF A LOCKED
POLICE CAR AND CONTINUES TO BE
ACCUSED OF --
>> BUT ISN'T THERE EVERY
INDICATION THAT HE SPECIFICALLY
SAID THAT HE WANTED TO GO IN
THE CAR WITH THE OFFICER?
>> THE OFFICER ACTUALLY ASKED
HIM FIRST.
THAT'S WHAT THE RECORD SAYS.
THE OFFICER ASKED HIM TO GO,
AND HE DID CONSENT BUT THAT WAS
AFTER BEING AED OF THIS CRIME
MULTIPLE TIMES AND BEING READ
HIS MIRANDA RIGHTS.
>> IT SEEMS REALLY A STRETCH TO
ME THAT WE'RE GOING TO SAY, THE
DEFENDANT HAS SAID, I DIDN'T DO
THIS BUT LET ME TAKE A LOOK AT
THIS TAPE.
THE OFFICER OFFERS TO GIVE HIM
A RIDE.
HE ACCEPTS THAT.

THE OFFICER PUTS HIM IN A CAR.
DOES NOT HANDCUFF HIM OR ANY
OTHER ATTEMPT TO RESTRAIN HIM.
THE AND ON THE WAY THEY'RE
TALKING AND HE CONFESSES
WITHOUT EVER EVEN SEEING THE
TAPE.

AND I'M JUST, WHERE ALONG THIS
LINE DID THE OFFICER MAKE HIS
MISTAKE?

>> THE OFFICER MADE HIS MISTAKE
WHEN HE APPROACHED MR.^CALDWELL
IN A PARK, DROVE HIS CRUISER UP
OVER THE CURB, DIRECTED HIM TO
THE REAR OF HIS CRUISER.

>> ISN'T THERE EVIDENCE IN THE
RECORD THIS IS THE KIND OF PARK
WHERE THERE ARE NO PATHS AND
THAT THIS IS WHAT OFFICERS
NORMALLY DO WHEN THEY DRIVE
INTO THIS PARTICULAR PARK
BECAUSE THERE'S NO PATHWAY FOR
CARS TO DRIVE IN.

>> I THINK THAT'S SOMETHING FOR
THE COURT TO CONSIDER BUT THE
FOCUS IS ON WHAT A REASONABLE
PERSON IN MR.^CALDWELL'S
POSITION WOULD HAVE FELT.

>> I HAVE EXPERIENCE DID
MR.^CALDWELL HAVE IN THE
CRIMINAL JUSTICE SYSTEM.

>> HE WAS ON PROBATION.

>> FOR WHAT?

>> ARSON, ARSON I BELIEVE.

>> HAD HE EVER BEEN
INCARCERATED?

>> I THINK HE HAD, YOUR HONOR.

>> LET ME ASK YOU, I STILL WANT TO GO BACK TO BASICS WITH THE WHOLE PER SE RULE.

>> YES, YOUR HONOR.

>> THAT THE FOURTH DCA CAME UP WITH. IT SEEMS TO ME THAT IN DICKERSON JUSTICE REHNQUIST WENT ON TO SAY MIRANDA HAS BECOME EMBEDDED IN OUR CULTURE TO THE POINT ANY WE HEAR IT WE ASSUME IT IS BEING READ, BECAUSE THE PERSON IS BEING ARRESTED.

SO I TAKE IT THAT THE FOURTH DCA'S BASIS FOR BELIEVING THAT HEARING THOSE WARNINGS IS NECESSARY TO CONNOTE TO A PERSON THAT HE IS UNDER ARREST, THAT THAT STEMS FROM THAT CULTURE THAT WE HEAR IT ON TV, WE, IN THE MOVIES AND SO ON AND ON.

BUT IN THIS CASE, IN THIS CASE, YOUR CLIENT SPECIFICALLY ASKED THE OFFICER, AM I UNDER ARREST? AND THE OFFICER SAID NO, YOU'RE NOT.

DOESN'T THAT NEGATE THAT CULTURE SO TO SPEAK?

>> NO, JUSTICE, LABARGA, I WOULD ARGUE IT DOES NOT.

HE WAS SPECIFICALLY TOLD NO, YOU'RE NOT UNDER ARREST BUT I NEED TO SPEAK WITH YOU, I NEED TO SPEAK WITH YOU OR I WANT TO

SPEAK WITH YOU.

I THINK THAT LANGUAGE IS
ADDICTIVE NOT BEING ABLE TO
LEAVE.

I WOULD SUGGEST TO A REASONABLE
PERSON THAT THEY'RE NOT FREE TO
LEAVE UNDER THOSE
CIRCUMSTANCES.

>> IF MIRANDA HAD NOT BEEN
GIVEN, SHOULD THE CONFESSION BE
ADMITTED?

>> THE CONFESSION SHOULD NOT
BE ADMITTED BECAUSE IT WAS
ILLEGAL STOP.

>> SO MIRANDA, NOT THE FACT
THAT THE MIRANDA GIVEN BY
ITSELF CREATED THIS?

>> I THINK THE BASED ON THE
TOTALITY OF THE CIRCUMSTANCES
WITH MIRANDA BEING ABSOLUTELY
CRUCIAL FACTOR HERE THAT WOULD
SUGGEST A REASONABLE PERSON IN
MR.^CALDWELL'S POSITION WOULD
NOT HAVE FELT FREE TO LEAVE.

I THINK THE IMPORTANT THING IS
TO FOCUS ON THE FOURTH
AMENDMENT AS OPPOSED TO THE
FIFTH AMENDMENT JURISPRUDENCE
WITH REGARD TO MIRANDA.

>> I THOUGHT IN YOUR INITIAL
RESPONSE JUST NOW, YOU
INDICATED THAT THE MIRANDA,
GIVING OF THE MIRANDA WARNING
WAS NOT ABSOLUTELY CRUCIAL PART
OF IT.

>> I SAID --

>> BECAUSE THE QUESTION WAS, IF THE MIRANDA WARNING HAD NOT BEEN GIVEN SHOULD THE CONFESSION STILL HAVE BEEN SUPPRESSED? AND YOU SAID YES.

>> YES.

>> WELL, IT WASN'T ENTIRELY CRUCIAL THAT THE MIRANDA WARNING WAS GIVEN, RIGHT?

>> WELL, IT WAS ONE OF THE FACTORS IN THIS CASE THAT WAS VERY CRUCIAL I THINK, YOUR HONOR.

>> BUT IF THERE WAS AN ILLEGAL, YOU ARE BASICALLY NOW ARGUING, AS I UNDERSTAND IT, FROM THE TIME, THE OFFICER PULLED UP AND, TO THE PARK AND WENT OVER THE CURB, AND BACK INTO THE DEFENDANT, THAT THAT WAS AN ILLEGAL STOP?

>> THAT COUPLED WITH ALL THE OTHER FACTORS.

THAT COUPLED WITH THE OTHER FACTORS BUT AGAIN MIRANDA IS A VERY CRUCIAL POINT THAT THE OFFICER READ HIM.

>> OKAY. BUT AGAIN, IF YOU GO BACK AND TAKE MIRANDA OUT OF IT, WHERE WAS THE ILLEGALITY?

>> WHEN HE DIRECTED HIM TO THE REAR OF THE CRUISER, CONFRONTED WITH HIM EVIDENCE.

>> HE CAME?

>> HE DID COME.

>> HE CAME OKAY.

AT THAT POINT THERE WAS
SOMETHING WRONG?
>> AFTER HE WAS CONFRONTED WITH
EVIDENCE OF HIS GUILT IN MULTIPLE,
FRISKED AND --
>> AND HE SAID I DIDN'T DO IT?
>> CORRECT.
>> OKAY. THEN WHAT? I'M TRYING
TO GET TO THE POINT WHERE YOU ARE
SAYING THAT THE OFFICER DID
SOMETHING IMPROPER.
THE OFFICER CONFRONTED THE
DEFENDANT, ASKED HIM TO COME
OVER IN SOME MANNER.
THE DEFENDANT CAME OVER.
THE OFFICER SAYS, I WANT TO
TALK TO YOU.
I BELIEVE YOU WERE INVOLVED IN
THAT BURGLARY AT THE VINOY.
THE DEFENDANT SAYS NO AND THEN WHAT?
IS THAT AN ENCOUNTER AT THAT POINT?
>> NO, IT'S A SEIZURE AT THAT
POINT.
>> THE SEIZURE OCCURRED WHEN?
>> AFTER HE WAS CONFRONTED WITH
EVIDENCE OF HIS GUILT MULTIPLE
TIMES AND DIRECTED TO THE REAR
OF HIS CRUISER.
>> THE STATE CONCEDES I THINK
HERE THERE IS NO --
>> THERE IS NO REASONABLE
SUSPICION.
>> LET ME ASK, AN OFFICER
ENCOUNTERS A CITIZEN.
>> YES, YOUR HONOR.
>> ASKS THE CITIZEN TO COME

OVER AND TALK AND THE CITIZEN
COMES.

WHAT CAN THE OFFICER TALK
ABOUT?

>> THE OFFICER --

>> I MEAN, IT'S CLEAR IN THIS
CASE THE OFFICER WANTED TO TALK
ABOUT A BURGLARY.

ARE YOU SAYING THAT THE OFFICER
CAN NOT IN A CITIZEN ENCOUNTER,
TALK ABOUT ANY CRIMINAL
ACTIVITIES?

>> NO, YOUR HONOR.

AND THAT'S NOT WHAT THE CASE
LAW HOLDS.

INITIALLY HE APPROACHES
MR.^CALDWELL AND SAID, I WANT
TO SPEAK TO YOU IN REFERENCE TO
SOME BURGLARIES.

THEN THE OFFICER ACCUSES HIM OF
DOING THOSE BURGLARIES MULTIPLE
TIMES.

I THINK UNDER MENDENHALL
SPECIFICALLY, THAT, EXAMPLE,
THAT THE SUPREME COURT GIVES,
ABOUT --

>> WHEN YOU SAY MULTIPLE TIMES,
WHAT EXACTLY BECAUSE I'M HAVING
A HARD TIME.

>> YES, SIR.

>> EXACTLY WHAT WAS SAID.
HOW DID THE MULTIPLE TIMES
OCCUR?

>> HE SAID HE DID THE BURGLARY.
THE OFFICER TOLD MR.^CALDWELL
HE DID THE BURGLARY.

>> OKAY.

>> THAT HE APPEARED IN THIS VIDEO. TOO MUCH POINTED TO HIM AND THAT HE DID IT MULTIPLE TIMES PRIOR TO EVEN GETTING IN THE POLICE CAR.

SOME OF IT WAS SAID ALSO IN THE POLICE CAR.

BUT THAT LANGUAGE I THINK IS A FAR DIFFERENCE FROM SAYING, I WANT TO TALK TO YOU ABOUT SOME BURGLARIES AS OPPOSED TO ACTUALLY PHYSICALLY ACCUSING SOMEBODY AND MAKING THEM THE FOCUS OF AN INVESTIGATION.

>> BUT THE QUESTION HERE IS WHETHER THE DEFENDANT BELIEVED HE WAS NOT FREE TO LEAVE.

>> CORRECT.

>> THE QUESTION IS WHAT A REASONABLE PERSON IN HIS POSITION WOULD HAVE UNDERSTOOD WHETHER HE WAS FREE TO GO OR NOT.

>> EXACTLY.

>> I GO BACK TO WHAT THE OFFICER SAID TO THE DEFENDANT, TELLING HIM THAT HE WAS NOT UNDER ARREST.

ISN'T THAT A POWERFUL FACTOR IN THIS CONTEXT AND IN ANY CONTEXT?

NOT SAYING THAT IS A PER SE FACTOR.

THAT EVERY SINGLE TIME THE POLICE SAY, YOU'RE NOT UNDER

ARREST, THAT THAT WOULDN'T NECESSARILY, WITHOUT REGARD TO ANYTHING ELSE, BE AN INDICATION THAT A REASONABLE PERSON WOULD CONCLUDE THAT HE WAS FREE TO LEAVE. BUT ISN'T IT PRETTY SIGNIFICANT?

AND DON'T WE HAVE TO LOOK AT THAT AND GIVE THAT WEIGHT WHEN WE'RE EVALUATING THE TOTALITY OF THE CIRCUMSTANCES?

>> I THINK THAT'S SOMETHING FOR THE COURT TO CONSIDER BUT I WOULD ASK THE COURT NOT TO FOCUS ON JUST THAT ONE SENTENCE.

THE QUESTION WAS, AM I UNDER ARREST?

NO, BUT I NEED TO ASK YOU SOME QUESTIONS.

OR, NO, I WANT TO ASK YOU SOME QUESTIONS.

I THINK, I WOULD FOCUS ON THE SECOND PART OF THE OFFICER'S RESPONSE AS OPPOSED TO THE FIRST PART OBVIOUSLY HE UNDERSTANDS HE WANTS TO ASK HIM SOME QUESTIONS.

THAT'S WHY HE APPROACHED HIM AND IS TALKING TO HIM.

I MEAN THAT'S, THAT'S, KIND OF PART OF THE WAR AND WOOF OF ANY OF THESE ENCOUNTERS.

THE POLICE WANT TO TALK TO SOMEBODY.

THAT'S WHY THEY TAKE PLACE.

SO TO GIVE THAT, TO SAY THAT
COUNTER ACTS THIS EXPLICIT
ADVICE TO THE DEFENDANT THAT HE
IS NOT UNDER ARREST SEEMS TO ME
BE MAKING A GREAT DEAL OUT OF
VERY LITTLE.

>> WELL HE IS ALSO NEVER
SPECIFICALLY TOLD THAT HE IS
FREE TO LEAVE.

THAT IS NOTHING FOR THE
COURT TO CONSIDER.

>> WELL, I MEAN, -- STATED BY
THE OFFICER THAT HE WASN'T
UNDER ARREST, WASN'T AN OBLIQUE
PASSING REMARK IN THE MIDDLE OF
A CONVERSATION.

IT WAS IN DIRECT RESPONSE TO
YOUR CLIENT QUESTION.

SO I JUST DON'T KNOW WHAT ELSE
THE POLICE OFFICER HAS TO DO TO
CONVEY THAT TO YOUR CLIENT?

>> HE COULD SIMPLY TELL HIM HE
IS FREE TO LEAVE.

>> HAVE WE EVER SAID THAT THAT
WAS NECESSARY IN A POLICE
ENCOUNTER, A CITIZEN ENCOUNTER?

>> THIS COURT HAS NEVER HELD
THAT, NO, BUT THIS COURT HAS
HELD, WHETHER OR NOT A PERSON
IS TOLD THEY'RE FREE TO LEAVE
IS SOMETHING FOR THE COURT TO
CONSIDER.

>> WELL, YOU ARE WELL INTO YOUR
REBUTTAL NOW, IF YOU WANT TO
SAVE SOME TIME.

>> I'D LIKE TO SAVE SOME TIME,

YOUR HONOR.

>> OKAY. THANK YOU.

>> GOOD MORNING, YOUR HONORS.

DIANA BOCK APPEARING ON BEHALF
OF THE STATE OF FLORIDA, THE
RESPONDENT IN THIS CASE.

I BELIEVE YOUR HONORS AS
PRESENTED TO THE COURT AND
PRESENTED TO THE SECOND
DISTRICT BELOW THE QUESTION WAS
WHETHER OR NOT MIRANDA, GIVING
OF THE MIRANDA WARNING ITSELF
WAS THAT DEFINING MOMENT WHICH
THE CONSENSUAL ENCOUNTER BECAME
INVESTIGATORY STOP.

>> LET ME ASK YOU THIS.

THE RECORD INDICATES THAT THE
DEFENDANT WAS TOLD THAT HE HAD
THE RIGHT TO REMAIN SILENT AND
THEN THE OFFICER WENT ON AND
TALKED ABOUT, YOU HAVE THE
RIGHT TO HAVE AN ATTORNEY.
AND WHEN DO YOU, WHEN DOES A
DEFENDANT HAVE THE RIGHT TO
HAVE AN ATTORNEY?

>> BEFORE ANY QUESTIONING WOULD
OCCUR.

>> ANY CUSTODIAL QUESTIONING?

>> CORRECT, IN A FIFTH AMENDMENT
CONTEXT, YOUR HONOR.

>> SO WOULD HAVE A REASONABLE --
THE QUESTION IS, WOULD A
REASONABLE PERSON, AFTER GIVING
WARNINGS THAT HE HAS THE RIGHT
TO HAVE AN ATTORNEY PRESENT,
BELIEVE THAT HE IS IN SOME KIND

OF CUSTODIAL SITUATION?

>> I DON'T BELIEVE THAT WOULD BE NECESSARILY TRUE.

I THINK THAT THE COURT IS, HAS EXPRESSED THIS MORNING, IT IS TOTALITY OF CIRCUMSTANCES APPROACH UNDER MENDENHALL.

>> BUT THE PROBLEM IS AND I APPRECIATE MY COLLEAGUE'S QUESTIONING, THE SIMPLE ANSWER WOULD BE, WE NEVER REQUIRED IT BUT IF YOU'RE GOING TO HAVE A CONSENSUAL ENCOUNTER AND ALSO GOING TO CREATE SITUATION THAT COULD BE CONSIDERED COERCIVE, WHICH IS, HAVE THESE OTHER CIRCUMSTANCES COME OVER AND COME OVER AND NOW I'M ACCUSING YOU OF A CRIME, THE EASY SOLUTION WOULD BE FOR THE OFFICERS TO SAY SOMETHING TO THE EFFECT, I'D LIKE TO TALK TO YOU BUT I WANT YOU TO KNOW YOU'RE NOT OBLIGATED TO TALK TO ME AND YOU'RE FREE TO LEAVE. IT SEEMS TO ME THE PROBLEM WITH THESE AND TODAY WARNINGS BEING GIVEN IN SO-CALLED CONSENSUAL ENCOUNTER, IS THAT THE VERY PURPOSE OF MIRANDA WAS TO MINIMIZE THE COERCIVE EFFECTS OF THE CUSTODIAL INTERROGATION, SO THAT A PERSON WHO IS UNDER CUSTODIAL INTERROGATION, NOT ARREST, THEY'RE ALWAYS, THEY'RE ALWAYS SAY, YOU'RE NOT UNDER

ARREST.

THEY'RE NOT FREE TO LEAVE
BECAUSE THEY CONTINUE TO
QUESTION THEM FOR, YOU KNOW, IN
CUSTODY FOR HOURS, AND SO, THEY
ARE NEVER TOLD THEY'RE FREE TO
LEAVE.

SO WHY, THE ISSUE THAT, IT
SEEMS TO ME THE SECOND DISTRICT
LOOKS AT MIRANDA AS IF THIS
HELPS TO SHOW IT IS A
CONSENSUAL ENCOUNTER, AND
THAT'S MY INITIAL PROBLEM WITH
THE SECOND DISTRICT OPINION
AND SOME OF THE QUESTIONING
THIS MORNING IS AS IF THAT IS
A GOOD THING.

WE OUGHT TO ENCOURAGE OFFICERS
TO GO UP TO PEOPLE AND BEFORE
STARTING TALKING TELLING THEM,
I WANT YOU TO KNOW YOU HAVE THE
RIGHT TO REMAIN SILENT,
ANYTHING YOU SAY CAN AND WILL BE
USED AGAINST YOU IN A COURT OF
LAW.

YOU HAVE A RIGHT TO TALK TO A
LAWYER AND IF YOU CAN'T AFFORD
LAWYER, ONE CAN BE APPOINTED
FOR YOU AT ANY TIME.

THAT THAT WOULD BE A GOOD THING
IN A CONSENSUAL ENCOUNTER.

SO PLEASE HELP ME WITH THIS
IDEA THAT WE'RE LOOKING AT
MIRANDA AS IF IT IS GOING TO
HELP SHOW IT IS CONSENSUAL
ENCOUNTER WHICH IS DIRECTLY

OPPOSITE WITH WHAT A REASONABLE
PERSON WOULD THINK.

THAT IS LONG-WINDED QUESTION

BUT I THINK YOU --

>> I THINK THE ANSWER IS PRETTY
STRAIGHTFORWARD.

THE TIMING OF THAT WARNING GAVE
THIS PARTICULAR DEFENDANT
INFORMATION HE NEEDED TO
EXERCISE HIS SO HE DID NOT LOSE
THEM.

NOW WHETHER OR NOT IT IS IN
FOURTH OR FIFTH AMENDMENT, OF
COURSE YOU WILL LOOK AT THAT
WITHIN THE CONTEXT THAT
STATEMENT.

BUT IN THE FOURTH AMENDMENT
CONTEXT, WHAT THE OFFICER WAS
SAYING, AND IT WASN'T
IMMEDIATE.

IT WASN'T FIRST THING HE SAID
TO HIM.

YOU HAVE OTHER THINGS THAT
HAPPEN BEFORE THAT.

YOU HAVE THE OFFICER PULLING
INTO THE PARK.

NO LIGHTS, NO SIREN, NO
EXPEDIENCY.

NORMAL ROUTINE PRACTICE AT
THAT PARK.

YOU HAVE HIM EXITING THAT
VEHICLE AND ASKING THE YOUNG
MAN IF HE WOULD COME OVER TO
SPEAK WITH HIM.

>> OKAY. THE SECOND DISTRICT OPINION
SAYS HE DIRECTED HIM TOWARDS

THE BACK, HIM BACK TOWARDS THE
POLICER, DIRECTED HIM BACK.

>> RIGHT.

AFTER HE HAD ASKED HIM TO COME
TALK WITH HIM.

HE THEN ASKED HIM TO MOVE TO
THE BACK.

>> THE SECOND DISTRICT OPINION
SAYS THAT, WHAT DOES THE RECORD
SHOW ABOUT WHETHER HE SAID,
COME ON, HEY, --

>> ONLY THING WE HAVE IS
OFFICER CRISCO'S STATEMENT.
WE HAVE A DEPOSITION OF OFFICER
CRISCO.

WE HAVE TWO EVIDENTIARY
HEARINGS, ONE VIOLATION OF
PROBATION AND ONE SUPPRESSION
HEARING.

IN ALL THOSE HIS STATEMENTS ARE
CONSISTENT.

HE ASKED THE YOUNG MAN TO COME
SPEAK WITH HIM.

IF HE WOULD SPEAK WITH HIM.

THE YOUNG MAN CAME TO HIS
VEHICLE.

HE THEN ASKED HIM TO STEP
TOWARD THE BACK, DISTANCING HIM
FROM THE OTHER YOUNG MEN THAT
WERE IN THE PARK SO HE COULD
SPEAK WITH HIM PRIVATELY.

>> SO THE LANGUAGE OF THE
SECOND DISTRICT, HE DIRECTED
HIM TOWARDS THE BACK OF THE
POLICE CRUISER, IS THAT
ACCURATE?

>> I WOULD SAY DIRECTING IS
CORRECT.
COMMANDING IS NOT.
HE DID NOT COMMAND HIM TO THE
BACK OF THE VEHICLE.
>> THEN THE NEXT THING THAT
HAPPENED THERE WAS A
CONVERSATION AND IS IT TRUE AT
THAT POINT THAT THE OFFICER
SAID, I, THERE IS A BURGLARY, I
KNOW YOU DID IT?
>> I DON'T BELIEVE IT IS, I
KNOW YOU DID IT.
I BELIEVE, WHAT ALL THE
STATEMENTS OFFICER CRISCO SAYS,
IT IS YOU ON THE TAPE.
I BELIEVE IT IS YOU.
>> SECOND DISTRICT OPINION SAID
HE DID. IT IS NOT CORRECT?
>> I DO NOT BELIEVE THE RECORD
SHOWS THAT HE SAID, I KNOW YOU
DID IT.
I BELIEVE YOU DID IT.
I BELIEVE YOU ARE THE ONE ON
THAT TAPE.
>> JUST THOSE FACTORS, THAT I'M
A CITIZEN, I'VE BEEN DIRECTED
TO THE BACK OF THE POLICE
CRUISER AND A OFFICER
COMES UP AND SAYS HE IS
INVESTIGATING A CRIME.
I SAW THE VIDEOTAPE AND I KNOW YOU
DID IT. NOW LET'S TALK.
IS A REASONABLE PERSON GOING TO FEEL
FREE TO LEAVE?
>> I WOULD BELIEVE THAT THEY

WOULD BE FREE TO LEAVE, YES.

>> SO UNDER OUR CASES OF,
WHERE FLIGHT, SO IF
MR. ^CALDWELL HAD TAKEN OFF AND RAN,
HAD WALKED AWAY --

>> EVEN IF HE RAN AWAY, UNLESS
IT'S SHOWN HIGH-CRIME AREA WE DON'T
HAVE A PROBLEM WITH HIM RUNNING
AWAY.

THE ONLY PROBLEM WE HAVE HERE
IS THAT THE OFFICER GAVE A
PRECAUTIONRY WARNING AND NOW
THAT IS BEING HELD AGAINST THIS
OFFICER FOR TAKING THAT STEP TO
BE SURE THIS MAN KNEW HIS
RIGHTS.

>> IT SEEMS WE'RE MAYBE TURNING
CONCEPT OF WHAT A CONSENTUAL
ENCOUNTER IS ON ITS HEAD AS TO
WHAT MY DEFINITION IS OF A
CONSENTUAL ENCOUNTER, SOMEONE
FREE TO LEAVE AND THE
INTERMEDIATE POPPEL STEP OF
INVESTIGATORY STOP WHICH CAN
ONLY OCCUR
WHERE THERE IS SUSPICION.

>> HOWEVER, AT NO TIME DURING
THE ENCOUNTER DID THIS OFFICER
IN ANY WAY EXERCISE AUTHORITY
OVER THIS INDIVIDUAL.

HE ASKED HIM TO COME TO THE
CAR. HE DID.

HE ASKED HIM TO GO TO THE BACK.
WHEN YOU SAY DIRECT, I THINK
YOU'RE ATONING THAT COMMAND,
SECOND DISTRICT IS ATONING THAT

OR YOU'RE INTERPRETING THEIR
WORD DIRECT AS A COMMAND.
IT WASN'T A COMMAND.
AT NO TIME DOES OFFICER CRISCO
SAY, I COMMANDED HIM TO THE BACK
OF THE VEHICLE.
HE ASKED HIM TO STEP TO THE
BACK OF THE VEHICLE AND HE
AGREED.
THEY ENGAGED IN SOME
CONVERSATION.
AT THAT POINT, OFFICER CRISCO
SAID, I'VE SEEN THIS TAPE. I
BELIEVE THAT IS YOU ON THE
TAPE.
>> THAT KIND OF, THAT KIND OF
CONVERSATION TAKING PLACE,
HAVEN'T WE HELD BEFORE THAT
THAT'S AN IMPORTANT PART OF
DETERMINING WHETHER THERE IS
EVEN A CUSTODIAL INTERROGATION
AND THE NEED FOR MIRANDA
WARNINGS?
>> I DO BELIEVE THAT THE COURT
HAS BUT AGAIN LOOKING AT THE
TOTALITY --
>> THAT IS ONE FACTOR.
I UNDERSTAND.
ISN'T THAT A SIGNIFICANT ONE?
BECAUSE THAT CONVERTS MANY
TIMES, IT CONVERTS AN
OTHERWISE, WHAT'S BEEN
DETERMINED TO BE A CONSENTUAL
ENCOUNTER, THE CONFRONTATION
WITH THE EVIDENCE OF A CRIME
AND ACCUSATIONS OF A CRIME, A

SIGNIFICANT FACTOR IN SAYING
NO, THAT IS A CUSTODIAL
INTERROGATION?

>> I THINK IT IS A FACTOR, YOUR
HONOR, AND I WOULD BE
DISINGENUOUS TO SAY, OTHERWISE --

>> AGAIN A SIGNIFICANT FACTOR
THIS COURT HAS HELD?

>> AS ARE MANY OTHER FACTORS
PRESENT IN THIS CASE.

THAT BEING THIS OFFICER IN NO
WAY ADVISED THIS INDIVIDUAL
THAT HE HAD TO COME SPEAK WITH
HIM.

WHEN HE STARTED TO QUESTION HIM
ABOUT THE VIDEOTAPE HE --

>> THAT IS NOT A PER SE RULE
EITHER.

>> IT IS NOT A PER SE RULE, NO,
IT IS NOT.

I'M LOOKING AT TOTALITY,
CORRECT.

>> RIGHT. AND THE MERE FACT THAT
SOMEONE SAYS YOU'RE NOT UNDER
ARREST CERTAINLY IS NOT
EQUIVALENT OF OKAY, GO ON YOUR
WAY?

>> I THINK THAT AT THAT POINT
IT HAS GIVEN PAUSE TO THIS
INDIVIDUAL TO KNOW THAT THIS IS
A SERIOUS ISSUE BUT LOOK, I'VE
BEEN TOLD, I AM NOT UNDER
ARREST.

>> BUT AGAIN, I COME BACK
TO THE BASIS OF THE DISCUSSION,
USE OF THE WORD, ARREST, DOES

NOT INDICATE THAT YOU'RE
OTHERWISE FREE TO GO ON YOUR
WAY.

I MEAN THAT HAPPENS, THAT
HAPPENS VIRTUALLY IN EVERY
CUSTODIAL INTERROGATION WE SEE
GOING BEHIND DOORS, NO, YOU'RE
NOT UNDER ARREST.

BUT THAT DOES NOT CONVERT THAT
INTO A CONSENSUAL DISCUSSION
SIMPLY BECAUSE YOU SAY YOU'RE
NOT UNDER ARREST BECAUSE --
>> WHAT YOU'RE SAYING BEFORE IT
WAS MADE, IT HAD MORPHED
SOMEHOW FROM THE ORIGINAL
CONSENSUAL ENCOUNTER AND I
DON'T BELIEVE THESE ACTS
SUPPORT THAT.

>> DO ALL OF THESE MORPH FROM A
CONSENSUAL ENCOUNTER?
ISN'T THAT HOW THESE ALWAYS
HAPPEN?

YOU MAY SPEAK TO SOMEONE IN
THEIR HOME CASUAL WAY COME ON
DOWN TO THE POLICE DEPARTMENT
WITH US AND THEY PUT THEM IN A
ROOM.

THIS IS HOW THESE THINGS, THEY
ALWAYS GO ON PROGRESSION AND
YOU HAVE TO LOOK AT THEM FROM
THE BEGINNING AND YOU CAN'T
JUST USE LATE THE BEGINNING
FROM WHAT'S GOING ON IN THE
MIDDLE.

>> I AGREE WITH YOU YOUR HONOR.
I DON'T DISWITH THAT.

WHEN YOU, UNDER FACTS HERE
THAT NEVER HAPPENED.
WE NEVER MORPHED FROM
CONSENSUAL ENCOUNTER TO
INVESTIGATORY STOP.
THIS DEFENDANT WAS FREE TO
LEAVE.
HE WAS NOT UNDER ARREST.
HE WAS NOT BEING DETAINED AND
IT WAS HIS CHOICE.
HE ENGAGED WITH THIS OFFICER IN
A CONVERSATION REGARDING
WHETHER OR NOT HE WAS PRESENT
ON A TAPE OF A CRIME.
THE OFFICER SAID, I BELIEVE IT
IS YOU.
THE DEFENDANT SAYS, IT'S NOT
ME.
IT IS NOT ME ON THAT TAPE.
>> WHAT IS, THE CASE, FROM ALSO
FROM THE SECOND DISTRICT, J.C.
VERSUS STATE, THAT WAS CITED AS
AS SUPPLEMENTAL AUTHORITY, IN
THAT CASE THE OFFICER SAID,
I'VE GOT TO TALK TO YOU FOR A
MINUTE, HANG ON.
THEY WERE WEARING BADGES.
WAS THIS MAN IN UNIFORM?
>> YES. THIS OFFICER WAS IN UNIFORM.
>> EXITED THE CAR WHILE
APPROACHING J.C. TOLD HIM TO
HANG ON.
SUCH A STATEMENT AMOUNTS TO
ORDER AND SHOW OF AUTHORITY AND
THEN THEY GO ON AND FIND IT TO
BE A, AN INVESTIGATORY STOP.

>> YES THEY DO.

>> I'M JUST HAVING, I, THERE IS SORT OF A NICETIES HERE AND WE'RE, IT SEEMED THAT THIS WAS J.C. PLUS.

THAT IS THE DIRECTING TOWARDS THE BACK OF THE CAR, ACCUSING HIM OF A CRIME THAT HE SAID HE DID AND THEN, GIVING MIRANDA WARNINGS WHICH, AS, WHETHER IT'S PART OF OUR POPULAR CULTURE IS A WARNING DESIGNED TO BE USED DURING CUSTODIAL INTERROGATION.

SO, I JUST, YOU KNOW, I'M STILL HAVING A PROBLEM I GUESS SEEING HOW THIS IS NOT AN INVESTIGATORY STOP?

HOW MR.^CALDWELL HAVE FELT FREE TO LEAVE.

NOT THAT HE WAS BEING ARRESTED BUT THAT HE WOULD FEEL FREE TO LEAVE?

>> FIRST OF ALL, I THINK J.C. IS DISTINGUISHABLE BECAUSE IN J.C. THE COURT FOUND THE WORDS, HANG ON, IN CONTEXT AND TONE USED BY THE OFFICER WAS IN FACT MEANING STOP! HANG ON, I NEED TO TALK WITH YOU.

THAT'S NOT WHAT THIS OFFICER DID.

AND I THINK THAT'S WHERE THE COURT IN J.C. MADE SOME KIND OF A FINDING THAT WAS BEYOND THE SCOPE OF THE FACTS OF OUR CASE

TODAY.

I THINK IT IS DISTINGUISHABLE
IN THAT FACT.

BUT I THINK YOU ALSO HAVE TO
LOOK AT MIRANDA.

>> LET ME, HOW DOES THE SECOND
DISTRICT ON A REVIEW OF THE
TRIAL COURT THEY WERE REVERSING
KNOW THAT HANG ON, WAS SAID IN
A WAY THAT INDICATED A SHOW OF
AUTHORITY BUT HERE, DIRECTING
THE GUY FROM AWAY FROM HIS
FRIENDS, TO THE BACK OF THE CAR
AND THEN ACCUSING HIM OF A
CRIME, AND THEN READING MIRANDA
RIGHTS WAS NOT A SHOW OF
AUTHORITY?

TELL ME, I'M NOT SURE, I'M SURE
I UNDERSTAND HOW AN APPELLATE
COURT --

>> FIRST OF ALL, I DON'T KNOW
ALL THE FACTS OF J.C., SO I
DON'T KNOW WHAT THE COURT HAD
BEFORE IT WHEN IT MADE ITS RULE
BUT I KNOW THE COURT IN J.C.
MADE REFERENCE TO SPECIFIC
FACTS OF HANG ON, SAME TYPE OF
TERM YOU SAY, STOP, I WANT TO
TALK TO YOU, HANG ON.
THAT WAS, THOSE TYPE OF WORDS
WERE NOT USED BY OFFICER
CRISCO.

WHEN I KNOW WE'RE SAYING DIRECT
HIM TO THE BACK OF THE CAR,
AGAIN, IT WAS NOT DIRECTING HIM
BY COMMAND.

IT WAS DIRECTING HIM TO PLEASE
STEP TO THE BACK BECAUSE HE
WANTED TO DISTANCE THIS
PARTICULAR INDIVIDUAL FROM THE
GROUP OF YOUNG MEN WHOM HE WAS
STANDING IN THE PARK.

SO I THINK THAT IS A
DIFFERENCE.

I DON'T THINK IT IS A SMALL
DIFFERENCE.

I THINK IT IS A SIGNIFICANT
DIFFERENCE.

THERE WAS NO COMMAND GIVEN.
IN ADDITION, WE HAVE TO LOOK AT
MIRANDA, WHAT THE PURPOSE OF
MIRANDA WAS.

IT WAS NOT TO PUT A
STRAIGHTJACKET ON THESE RIGHTS.
IT WAS NOT TO REQUIRE, I THINK
AS MIRANDA SAID, TO HAVE SOME
TYPE OF A LAWYER AT EVERY
POLICE STATION TO MAKE SURE
WHEN WE HAVE TO TRIGGER THESE
RIGHTS.

IF YOU FOLLOW THE FOURTH
DISTRICT, AND YOU FIND THAT BY
GIVING MIRANDA, WE NOW HAVE
CAUSED THIS TO BECOME AN
INVESTIGATORY STOP AND WE MUST
HAVE REASONABLE SUSPICION
BEFORE WE DO THAT YOU HAVE
NARROWED THAT WINDOW.

>> YOU WOULD AGREE THEN, IT IS
NOT PER SE RULE.

>> I WOULD CERTAINLY AGREE.

>> TOTALITY OF THE

CIRCUMSTANCES RIGHT?

>> CORRECT, YOUR HONOR.

>> UNDER THE TOTALITY OF CIRCUMSTANCES SHOULD GIVING OF MIRANDA BE A FACTOR.

>> A FACTOR, YES, ABSOLUTELY A FACTOR.

HOWEVER YOU HAVE TO LOOK AT IT IN THE CONTEXT OF THE EVENTS.

>> LET ME ASK YOU ON THE FACTOR BECAUSE YOU THINK THIS IS IMPORTANT AND I STARTED THE QUESTIONING OF COUNSEL IN THIS WAY, IS IT A FACTOR THAT WEIGHS IN FAVOR OF THEIR BEING A COERCIVE EFFECT, NOT FREE TO LEAVE, WHICH IS, AT LEAST WHAT THE FOURTH DISTRICT WAS SAYING, OR IS IT A FACTOR THAT IT IS ACTUALLY, SHOWS THAT IT IS A CONSENSUAL ENCOUNTER WHICH IS WHAT THE SECOND DISTRICT SAID? WHAT IS THE STATE'S POSITION ON THAT, WHETHER IT IS SOMETHING THAT WOULD WEIGH IN FAVOR OF IT BEING CONSENSUAL OR IS IT A FACTOR THAT WEIGHS IN FAVOR OF IT BEING CUSTODIAL, NOT CUSTODIAL, INVESTIGATORY BECAUSE CUSTODIAL IS NOT --

>> THE, OUR POSITION IS THE SECOND GOT RIGHT.

THIS IS A POINT IN TIME YOU ARE ADVISING AN INDIVIDUAL, A CITIZEN OF RIGHTS AT A TIME THEY MAY WELL NEED TO EXERCISE

THEM.

>> WHY WOULDN'T YOU THEN, SO THE STATE WOULD TELL POLICE THAT ON CONSENSUAL ENCOUNTERS THE FIRST THING THEY SHOULD SAY TO DEFENDANTS IS, THAT THEY ISSUE THEIR MIRANDA WARNINGS?

>> ABSOLUTELY NOT, YOUR HONOR.

>> SEE BECAUSE I WOULD THINK IF WE'RE REALLY TRYING TO MAKE SURE THAT CITIZENS KNOW THEY'RE FREE TO LEAVE A CONSENSUAL ENCOUNTER, THAT WE OUGHT TO HAVE, THERE OUGHT TO BE A DIFFERENT CUSTOMIZED WARNING IN THAT SITUATION WHICH IS I WOULD LIKE TO TALK TO YOU BUT I WANT YOU TO KNOW YOU'RE NOT OBLIGATED TO TALK TO ME AND YOU'RE FREE TO LEAVE.

IF I'M A REASONABLE PERSON THAT AT LEAST HELPS ME KNOW THIS IS REALLY A CONSENSUAL ENCOUNTER.

BUT IF FIRST THING I HEAR AS A CITIZEN, WHEN I'M STOPPED BY THE POLICE IS, HELLO, I'D LIKE TO TALK TO YOU AND, ADMINISTER THE MIRANDA WARNINGS, I CAN'T IMAGINE A REASONABLE PERSON WOULD FEEL FREE TO GO, I'M LEAVING?

>> AGAIN, YOUR HONOR, I NEED TO BRING IT INTO THIS CONTEXT BECAUSE IT WASN'T THE FIRST THING THE OFFICER SAID TO THIS YOUNG MAN.

IT WAS DOWN THE ROAD A LITTLE BIT.
>> BUT THE QUESTION CAME AS TO WHETHER, WHAT I THOUGHT WE WERE SAYING AFTER JUSTICE POLSTON SAID IT IS ONE OF THE FACTORS.
>> IT IS.
>> AND YOU SAID YOU AGREED WITH THAT, I SAID IS IT A FACTOR THAT WOULD WEIGH IN FAVOR OF IT BEING A PERSON WOULD NOT FEEL FREE TO LEAVE AND LIKE A GOOD THING, YOU SAY OH IT IS A GOOD THING.
>> YES.
>> AND I WOULD WANT EVERY OFFICER TO GIVE THIS, IT WOULD BE HELPFUL TO THE STATE AND THAT'S WHAT I --
>> I DIDN'T SAY I WOULD ASK EVERY OFFICER TO GIVE IT. THIS CONSENSUAL ENCOUNTER GOT TO A POINT WHERE THE OFFICER WAS SAYING, I BELIEVE IT'S YOU, THE DEFENDANT WAS SAYING NO, IT'S NOT ME ON THAT TAPE. I DON'T BELIEVE YOU HAVE ME ON THAT TAPE.
AT THAT POINT THE OFFICER SAID, I'M GOING TO GIVE YOU YOUR MIRANDA RIGHTS.
WHEN HE WAS ASKED WHY HE DID THAT ON THE STAND AT THE HEARING, EVIDENTIARY HEARING, THE OFFICER RESPONDED, BECAUSE, I FELT THAT HE MIGHT MAKE STATEMENTS THAT LATER I WOULD

WANT TO BE ADMISSIBLE.

AND I ADVISED HIM OF THAT.

BY GIVING HIM HIS MIRANDA.

>> IF THIS IS CONSENSUAL

ENCOUNTER, IS THE PART OF THE

MIRANDA WARNING THAT THE

SUSPECT IS ENTITLED TO A LAWYER

AT THE STATE EXPENSE, A CORRECT

STATEMENT?

>> I DON'T KNOW THAT IT WOULD

BE A CORRECT STATEMENT AT THAT

POINT IN TIME, HOWEVER, WHAT IT

WOULD MEAN IS, THAT THE

QUESTIONING WOULD STOP UNLESS

THE OFFICER WANTED TO --

>> MY QUESTION IS VERY SIMPLE

ONE.

IS, IS A SUSPECT ENTITLED UNDER

OUR JURISPRUDENCE, UNDER

OUR AMERICAN JURISPRUDENCE AT GOVERNMENT

EXPENSE AT TIME OF CONSENTUAL

ENCOUNTER A LAWYER?

>> CONSENSUAL ENCOUNTER, NO,

YOUR HONOR.

>> THAT IS A FALSE STATEMENT?

YOU'RE ENTITLED TO A LAWYER,

THAT IS BEING USED SEEMS TO ME,

THAT IN A WAY, I'M NOT SURE

EVEN MOST LAWYERS WOULD

UNDERSTAND YOU'RE FREE TO GO

ONCE LAW ENFORCEMENT START

READING YOU MIRANDA RIGHTS.

>> AGAIN I HAVE TO GO BACK TO

MIRANDA ITSELF.

I'M NOT TRYING TO BE

DISINGENUOUS TO MY RESPONSE TO

YOU.

I DO BELIEVE YOU WOULD NOT BE ENTITLED TO ATTORNEY IN CONSENSUAL ENCOUNTER.

>> THAT IS CLEAR.

>> WHAT HE WAS TOLD YOU DON'T HAVE TO ANSWER ANY OF MY QUESTIONS.

>> YOU'RE ENTITLED TO LAWYER.

>> IF YOU TRY TO FORCE ME TO ANSWER ANY OF MY QUESTIONS YOU CAN STOP ME.

>> DOESN'T SAY ANYTHING ABOUT FORCE.

IT IS PART CORRECT.

>> IT IS PART CORRECT.

>> AND PARTLY INCORRECT.

>> BUT YOU CAN'T GET PARTIAL MIRANDA.

>> PARTLY CORRECT. WHAT WE'RE LOOKING AT, YOU CAN HAVE A LAWYER, MY FRIEND IF YOU DON'T HAVE THE MONEY WE'RE GOING TO GIVE YOU ONE.

>> BEFORE YOU ANSWER ANY OF MY QUESTIONS.

>> BUT THAT'S NOT TRUE.

>> IT IS NOT TRUE IN CONSENSUAL ENCOUNTER.

>> RIGHT.

>> I AGREE WITH YOUR HONOR.

>> YEAH.

>> HOWEVER WHEN YOU LOOK AT MIRANDA, THE PURPOSE OF MIRANDA TO PUT AN INDIVIDUAL ON NOTICE OF HIS RIGHTS AND THOSE RIGHTS

HE DOES NOT HAVE TO ANSWER ANY OF THE QUESTIONS OF THIS OFFICER.

AND THAT GIVING OF THE MIRANDA, IF YOU READ THAT, AS BEING A RESTRICTION WITH PENALTY OF SUPPRESSION, IF YOU GIVE THEM TOO SOON, AND UNDER THE FIFTH, PENALTY OF SUPPRESSION, IF YOU GIVE THEM TOO LATE YOU HAVE NARROWED THE WINDOW FAR BEYOND WHAT MIRANDA EVER INTENDED TO STAND FOR.

>> EXCEPT THAT YOU HAVE, YOU, HAVE SAID WHEN YOU GIVE MIRANDA YOU HAVE TO GIVE ALL THE PARTS.

>> I BELIEVE YOU DO.

>> THAT'S BECAUSE MIRANDA IS DESIGNED FOR CUSTODIAL INTERROGATION, TO MINIMIZE THE COERCIVE EFFECTS.

IF YOU'RE HAVING A CONSENSUAL ENCOUNTER, THERE IS NO REASON TO GIVE MIRANDA.

THE PERSON IS NOT BEING, IF A PERSON IS FREE TO LEAVE, THAT'S WHAT THEY SHOULD BE TOLD.

IF THIS IS TRULY CONSENSUAL, THERE WOULD BE NO RISK TO STATEMENTS THAT HE MADE BE SUPPRESSED.

>> THAT IS NOT NECESSARILY TRUE, YOUR HONOR.

HOWEVER, WHAT I WILL SAY IS THAT, WHEN YOU'RE LOOKING AT MIRANDA, IN GIVING OF MIRANDA,

WHAT YOU HAVE TO LOOK AT IS, AT THAT POINT IN TIME, HAVE WE PUT THE INDIVIDUAL ON NOTICE?

I THINK THIS IS CRITICAL.

AND THAT'S WHY THE SECOND DISTRICT SAID IT'S A GOOD THING.

WHY I BELIEVE THE SIXTH CIRCUIT SAID IT IS A GOOD THING.

WHAT YOU'RE DOING AT THAT POINT IN TIME YOU'RE GIVING THEM A NOTICE OF THEIR RIGHTS WHEN THEY CAN EXERCISE THEM AT A TIME THAT IS BEST FOR THAT INDIVIDUAL.

THIS, IT CAN'T BE, YOU THOUGHT OF AS COERCIVE IN THIS CONTEXT WHEN ALL IT IS TRYING TO DO IS SAY, YOU HAVE RIGHTS.

YOU MAY NEED TO EXERCISE THOSE RIGHTS.

TO THE EXTENT THEY ARE EXERCISEABLE, YOUR HONOR.

AND SO, I THINK THAT WHAT YOU'RE TRYING TO SAY HERE IS, IF WE GIVE THEM PREMATURELY, THEY'RE ACTING AS COERCIVE AGENT THAT OVERRIDES ALL OTHER CIRCUMSTANCES THAT WERE, THAT OCCURRED AT THAT TIME UNDER THE MENDENHALL ANALYSIS.

AND I DON'T THINK WE CAN DO THAT.

>> THE QUESTION WE'RE HEAR ABOUT IS, IS IT NOT, WHETHER A REASONABLE CITIZEN IN THAT

POSITION HAVING, HEARD KINDS OF THINGS, HAVING EXPERIENCED THESE EVENTS, WOULD FEEL FREE THAT HE OR SHE COULD JUST WALK AWAY FROM LAW ENFORCEMENT? ISN'T THAT REALLY BOTTOM LINE TEST?

>> I THINK THAT IS THE BOTTOM LINE TEST AND I THINK THIS CASE IN PARTICULAR, IT HAS BEEN MET.

>> -- IF WE SAY IN THIS CASE ONCE ALL THIS OCCURRED, MAN, YOU CAN LEAVE, I MEAN EVEN IF LAW ENFORCEMENT TRIES TO STOP YOU OR WHATEVER, THAT YOU'RE FREE TO LEAVE, ISN'T THAT SORT OF A DANGEROUS PRECEDENT FOR BOTH LAW ENFORCEMENT AND CITIZENS ON THE STREET? THAT WE MISINTERPRET THESE THINGS?

ISN'T THERE A NEED FOR SOME CLARITY JUST AS PRACTICAL MATTER ON STREET TO AVOID HARM AND DANGER TO BOTH SIDES?

>> CLARITY IS ALWAYS BENEFICIAL, YOUR HONOR, CERTAINLY IT BE, WE WOULDN'T BE HERE IF IN FACT THE STATEMENT IS MADE, IF IT'S REQUIRED AND I DO NOT KNOW OF ANY CASE LAW THAT DOES REQUIRE THIS, JUSTICE PARIENTE'S REQUEST TO TELL EVERYONE THAT YOU ARE FREE TO LEAVE.

I DON'T SAY THAT'S A BAD THING.

I SIMPLY SAY THERE IS NO CASE
LAW TO SUPPORT THAT
REQUIREMENT.
AND THIS OFFICER, IN THIS
CONTEXT DID NOTHING TO ESCALATE
THIS FROM THE INITIAL
CONSENSUAL ENCOUNTER TO
INVESTIGATORY STOP.
YOU HAVE TO LOOK AT WHAT CAME
AFTER AS WELL.
HOW THIS DEFENDANT ACTED AFTER
HE WAS TOLD HIS MIRANDA RIGHTS
AND AFTER HE WAS TOLD HE WAS
NOT UNDER ARREST.
HE CONTINUED TO ENGAGE IN
CONVERSATION WITH THE OFFICER
VOLUNTARILY.
HE CONTINUED TO SAY THIS IS NOT
ME.
I'M NOT ON THAT TAPE.
TO THE POINT WHERE HE ACTUALLY,
AT ONE POINT SAYS, I WANT TO
SEE THE TAPE.
AND THAT'S WHAT PROMPTS THEN
THE VERY BRIEF PAT-DOWN FOR
SAFETY PURPOSES TO PUT HIM IN
BACK OF THE VEHICLE TO
TRANSPORT HIM TO THE VINOY.
IT WAS HIS REQUEST TO SEE THE
TAPE THAT WAS AT OFFICER.
YOU HAVE TO LOOK BEFORE BUT
THIS PARTICULAR CASE WHAT CAME
AFTER AND HOW THE DEFENDANT
REACTED TO THAT INFORMATION AND
I THINK THE CASE IS GOOD.

>> WITH THAT YOU HAVE USED UP

YOUR TIME.

>> THANK YOU VERY MUCH.

>> THANK YOU.

MR.^CRAWFORD.

>> IF IT PLEASE THE COURT, THE STATE IS CORRECT YOU HAVE TO LOOK AT EVERYTHING THAT OCCURRED EVEN AFTER THE MIRANDA STATEMENTS.

>> LET ME ASK YOU THIS, IF OFFICER SIMPLY SAID THE FIRST PART OF MIRANDA, WHICH IS, ANYTHING, YOU KNOW, YOU DON'T, I'M NOT SURE EXACTLY HOW IT GOES BUT, YOU KNOW, ANYTHING THAT YOU SAY MAY BE USED AGAINST YOU, IF THE OFFICER HAD STOPPED AT THAT POINT, WOULD THERE BE A PROBLEM IN THIS CASE?

>> I STILL THINK THERE WOULD BE BASED ON THE TOTALITY OF THE CIRCUMSTANCES THAT PRESENTED MR.^CALDWELL AT THE TIME.

AND ESPECIALLY AFTER HE IS PUT IN BACK OF A LOCKED POLICE CAR.

>> WE HAVEN'T EVEN GOTTEN TO THE POLICE CAR YET.

WHAT WE HAVE IS AN OFFICER GIVING THE PARTIAL MIRANDA WITHOUT EXPLANATION OF, YOU KNOW YOU'RE ENTITLED TO A LAWYER BUT THE PART THAT TELLS THE PERSON THAT, BASICALLY, YOU DON'T HAVE TO TALK TO ME BUT

IF YOU DO, ANYTHING YOU SAY WILL BE USED AGAINST YOU.

IF THE OFFICER STOPPED AT THAT POINT WOULD THERE BE A PROBLEM?

>> I BELIEVE THERE WOULD BE.

>> WHAT WOULD THE PROBLEM BE?

>> THE PROBLEM WOULD BE NOT WHOLE MIRANDA WARNINGS, SOMETHING SIMILAR TO THAT, THERE WOULD STILL BE A PROBLEM BECAUSE AGAIN, HE IS BEING CONFRONTED WITH EVIDENCE OF HIS GUILT MULTIPLE TIMES.

NOT SAYING, WAY IT ON THE TALK TO YOU IN REFERENCE TO SOME BURGLARIES BUT SPECIFICALLY SAYING, YOU'RE THE ONE THAT COMMITTED THESE BURGLARIES.

THAT'S THERE IN THE RECORD.

I THINK THAT WOULD SUGGEST TO A REASONABLE PERSON IN HIS POSITION --

>> YOUR ARGUMENT HIS AT THE TIME THAT THE OFFICER EVEN BECKONED THE DEFENDANT OVER, THAT THIS WAS AN INVESTIGATORY STOP?

>> WHEN YOU BECKONED HIM OVER, SPECIFICALLY MADE HIM AWARE THAT HE WAS, THAT HE WAS THE ONE WHO DID THIS CRIME, READ HIM HIS MIRANDA RIGHTS, AGAIN YOU HAVE TO LOOK AT TOTALITY OF THE CIRCUMSTANCES.

YOU CAN'T JUST LOOK AT ONE

FACTOR.

YOU HAVE TO LOOK AT THE
TOTALITY OF THE CIRCUMSTANCES
THAT PRESENTED MR. CALDWELL AT
THE TIME.

>> YOU KEEP SAYING THAT.

BUT IT SEEMS YOU ALWAYS GO BACK
TO EVEN AT BEGINNING THERE WAS
SOMETHING WRONG, THAT THIS WAS
INVESTIGATORY STOP.

SO ARE YOU REALLY SAYING THAT?

>> YES.

>> BUT THEN YOU MIX IT UP WITH
ALL THE OTHER FACTORS.

SO WHEN IS THIS AN
INVESTIGATORY STOP?

AT WHAT POINT DID IT BEGIN.

>> ONCE HE WAS DIRECTED TO THE
REAR OF CRUISER.

>> OKAY.

>> ONCE HE WAS SPECIFICALLY
TOLD THAT HE WAS FOCUS OF A
CRIMINAL INVESTIGATION AND READ
HIS MIRANDA RIGHTS.

AT THAT POINT THERE WOULD BE A
SEIZURE.

>> OKAY.

>> HOW DOES THIS FACTOR INTO
THAT LINE OF CASES THAT
ADDRESSED LAW ENFORCEMENT
PULLING UP TO A GROUP OF FOLKS
AND ASKING FOR IDENTIFICATION?
WE KNOW THAT THEY, UNDER U.S.
SUPREME COURT LAW YOU DON'T
HAVE TO DO THAT.

BUT IN RESPONSE TO THAT, TAKE

OUTSIDIFICATION AND THEN THE OFFICER, THEN GOES TO CHECK THAT OUT AND THE QUESTION WHETHER THAT BECOMES A SEIZURE OR CONSENTUAL ENCOUNTER, ISN'T THAT QUITE SIMILAR TO WHAT'S GOING ON HERE.

>> NO.

>> NOT AT ALL? WHY NOT.

>> I THINK THE FACTS ARE VERY DISTINGUISHABLE.

HE IS NOT ASKING FOR IDENTIFICATION OBVIOUSLY BUT HE SAYS I WANT TO SPEAK TO YOU. I RECOGNIZE YOU, IT'S ABOUT SOME BURGLARIES.

TELLS HIM HE IS THE ONE THAT APPEARS IN THIS VIDEO.

CONFRONTS HIM MULTIPLE TIMES SAYING YOU'RE THE ONE THAT DID THIS.

>> REALLY NOT AT THE OUTSET WHERE THEY JUST SPEAK AND SAY, HELLO, I WANT TO TALK TO YOU? IT REALLY DEVELOPS WHAT YOU'RE SAYING IS NECESSARY.

>> CORRECT.

>> SO IT IS NOT THAT INITIAL STEP OF LAW ENFORCEMENT PULLS UP, I WANT TO TALK TO YOU, THAT DOESN'T DO IT?

>> NO.

>> OKAY.

>> IT WOULD HAVE TO BE, CONFRONTING WITH EVIDENCE OF GUILT, MIRANDA WARNINGS, AND

OFFICER ADMITTED HE DIDN'T HAVE ANY REASONABLE SUSPICION.

>> I MEAN IS THAT, WOULD YOU REALLY SAY THAT A FRISK IN AND OF ITSELF IF I VOLUNTARY LITTLE AGREE TO GET INTO A POLICE VEHICLE AND THAT IS THE YOU HAVE TO BE FRISKED THAT IS UNDERSTANDABLE FOR OFFICER SAFETY, THAT THAT BECOMES A SEIZURE OR YOU'RE IN CUSTODY?

>> ABSOLUTELY.

THERE'S CASE LAW THAT SAYS, ONCE SOMEONE IS EVEN ADVISED THEY'RE GOING TO BE PATTED DOWN AND SECOND DISTRICT COURT OF APPEAL AUTOMATICALLY CONVERTS.

>> THAT CONTEXT THOUGH?

>> NOT NECESSARILY A POLICE CAR BUT, THE COURT, THE COURTS ROUTINELY HELD UNLESS THERE IS REASONABLE SUSPICION THAT A PERSON IS ARMED, THEY CAN'T PAT SOMEBODY DOWN.

>> I UNDERSTAND THE TERRY TEST AND ALL THOSE ARTICUABLE CASES, I'M TALKING ABOUT TO GET INTO A POLICE CAR.

I'D LIKE TO TALK WITH YOU, COLD OUTSIDE OR RAINING OR THEY FRISK YOU BEFORE YOU GET IN THE BACK SEAT, THAT IS AUTOMATICALLY A SEIZURE.

>> I THINK IT WOULD BE, YOUR HONOR.

>> UNDER THOSE CIRCUMSTANCES.

>> WITH THAT YOU HAVE USED ALL OF
YOUR TIME.
THANK YOU VERY MUCH FOR YOUR
ARGUMENTS HERE TODAY.