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C.E.L. v. State of Florida

SC08-1898

>> PLEASE RISE.

LADIES AND GENTLEMEN, THE

FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> THE LAST CASE ON THE COURT'S

AGENDA TODAY IS C.E.L. VERSUS

STATE.

>> MAY IT PLEASE THE COURT.

MATTHEW BERNSTEIN FOR C.E.L..

YOUR HONORS, IN THIS CASE TWO

DEPUTIES WALKING THROUGH A

NEIGHBORHOOD IN TAMPA,

AIMLESSLY WALKING AROUND

BASICALLY.

THEY SAID THEY WERE REFERENCING

A DRUG COMPLAINT BUT THAT MAYBE

HAPPENED THE DAY BEFORE.

IT WASN'T A SPECIFIC DRUG

COMPLAINT.

THIS WASN'T A SPECIFIC 911 CALL

WHERE THEY WERE RESPONDING TO A

SPECIFIC CALL.

AS THE OFFICERS WERE PATROLLING

THIS NEIGHBORHOOD THEY SAW

C.E.L. STANDING THERE WITH ONE
FRIEND OR TWO.

ONE OFFICER SAID TWO PEOPLE.
ANOTHER OFFICER SAID THREE
PEOPLE.

THE INDIVIDUAL, C.E.L. AND HIS
FRIENDS WERE DOING NOTHING
WRONG.

OFFICERS DID NOT OBSERVE C.E.L.
DO ANYTHING ILLEGAL.

THEY DIDN'T SOB SERVE HIM DO
ANYTHING WRONG WHAT SORRY.

>> WHAT TIME OF THE DAY OR
NIGHT?

>> ABOUT 9:00 AT NIGHT.

>> AND OFFICERS WERE OR WERE
NOT --

>> THEY WERE WEARING PLAIN
CLOTHES BUT THEY HAD VESTS WITH
SHERIFF MARKED ACROSS THE
FRONT.

>> I THOUGHT, HELP ME ON THIS,
BECAUSE IT CONCERNS ME, YOU
CONCEDE THAT AT THE THAT THE
DEFENDANT TOOK FLIGHT, THAT,
UPON SEEING THE DEPUTIES, THAT
AT THAT POINT UNDER WARDLOW,
REASONABLE SUSPICION DEVELOPED,

IS THAT CORRECT?

>> UH-HUH.

>> SO THAT IS NOT, WE HAVE A SITUATION WHERE SOMEONE COULD HAVE ARGUED BELOW THIS IS NOT LIKE WARDLOW HE WAS HANGING AROUND IN A APARTMENT COMPLEX.

COULD HAVE EXPLAINED HIS BEHAVIOR WHY HE TOOK FLIGHT.

THAT, YOU KNOW, KIDS ARE DIFFERENT THAN ADULTS, NONE OF THAT CAME OUT IN THIS RECORD?

>> NO. I CAN SEE UNDER WARDLOW THEY HAD --

>> CONCERNS ME THERE IS THAT CONCESSION.

SEEMS TO ME WE HAVE ALL THESE CASES INVOLVE JUVENILES AND JUVENILES CERTAINLY, UPON SEEING POLICE ARE PERHAPS GOING TO REACT DIFFERENTLY THAN ADULTS AND, WE ARE CRIMINALIZING A WHOLE GROUP OF KIDS THAT ARE IN, QUOTE, BAD NEIGHBORHOODS.

BUT BE THAT, SINCE IT IS NOT CONTESTED HERE, I WANT TO MAKE SURE WE UNDERSTAND THAT, THEN YOU'RE SAYING YOU AGREE THERE

WAS REASONABLE SUSPICION TO BE
ABLE TO STOP HIM AFTER HE TOOK
FLIGHT?

>> I'M NOT CONCEDING THAT THAT
CONDUCT WAS CRIMINAL.

I'M CONCEDING THERE WAS A
REASONABLE SUSPICION FOR A
TERRY STOP.

>> OKAY.

SO IN THE TERRY STOP, AT THE
POINT THEN THEY CALL OUT, STOP,
AREN'T THEY GIVING A LAWFUL
ORDER?

>> WELL, YOU HAVE TO LOOK,
UNDER THIS COURT'S OPINION IN
TILLMAN, YOU HAVE TO LOOK AT
THE MOMENT THE RESISTANCE
OCCURRED.

THE MOMENT RESISTANCE OCCURRED
IN THIS CASE THE MOMENT HE
STARTED RUNNING.

>> THAT HAS TO BE YOUR POINT.
YOUR POINT, WHICH IS WHAT THE
THIRD DISTRICT SAYS, AND I'M
HAVING, IS THAT THE FLIGHT IS
CONTINUOUS AND THAT, SO THAT
THE PROBABLE, THE REASONABLE
SUSPICION HAS TO DEVELOP BEFORE

HE --

>> STARTED RUNNING.

>> BUT THE SECOND DISTRICT ALL
SAY, NO, YOU START RUNNING, AND
THEN THERE'S A LAWFUL ORDER TO
STOP, BY CONTINUING TO RUN --

>> RIGHT.

>> -- YOU ARE RESISTING.

>> BUT THE POINT IS --

>> IS THAT HOW THEY COME UP
WITH THIS?

>> THE POINT IS ONE CONTINUOUS
FLIGHT.

ONE ACT STARTS AT THE MOMENT HE
STARTED TO RUN.

>> IS THAT A ISSUE OF LAW OR
FACT?

>> THAT'S AN ISSUE OF LAW.

>> WHERE DO WE COME UP WITH
THAT?

IN OTHER WORDS, IF SOMEBODY
STARTED WALKING AND THEN THEY
START RUNNING, --

>> THAT'S WHY IF YOU FOLLOW THE
THIRD DCA'S OPINION AND HOLD
THAT YOU HAVE REASONABLE
SUSPICION BEFORE THE SUSPECT
FLEES, IT OBVIATES THE NEED TO
GET INTO THAT.

IN THIS CASE, C.E.L. WHEN THEY
FIRST SAW HIM THEY HAD ONLY
ENOUGH FOR CONSENSUAL
ENCOUNTER.

ON THAT MOMENT HE RUNS AND IT
IS ONLY CONSENSUAL ENCOUNTER
THEY HAVE NO DUTY TO STOP HIM.

THAT IS DIFFERENT, THAN C.E.L.

RUNS THEY LATER CATCH HIM AND
STOP HIM, GIVE ME YOUR I.D.

WE'LL STOP YOU AND INVESTIGATE
THIS.

THEY HAVE CONVEYED A INTENT TO
DETAIN HIM.

IF HE RUNS AFTER THAT THEN HE
WOULD BE GUILTY OF RESISTING
WITHOUT VIOLENCE.

THAT WOULD BE A SECOND ACT OF
FLIGHT.

WHEN THERE IS ONLY ONE ACT OF
FLIGHT, THEN YOU HAVE TO LOOK
AT THE MOMENT THAT THAT FLIGHT
BEGINS.

SO THAT'S HOW, THAT'S THE
DIFFERENCE BETWEEN THE SECOND
DCA AND THIRD DCA I THINK THE
SECOND DCA FOCUSED TOO MUCH ON
THE ORDER ITSELF.

YOU DON'T FOCUS I DON'T THINK
IT IS PROPER TO FOCUS ON THE
ORDER.

>> IF THEY HAD NOT, FOCUSING ON
THE ORDER BRINGS TO MIND, IF
THE OFFICER HAD NOT SAID STOP,
BUT JUST FOLLOWED, THE
DEFENDANT, I MEAN IS IT REALLY
FOCUSING ON THE ORDER OR, WHAT?
IF HE HAD NOT SAID STOP AND
JUST FOLLOWED THE DEFENDANT,
WOULD, HAVE A DIFFERENT
SITUATION?

>> I DON'T THINK THAT CHANGES
THE ANALYSIS BECAUSE YOU STILL
HAVE TO FOCUS ON THE FLIGHT.
SO, FOR INSTANCE, IF AN OFFICER
SAYS TO SOMEONE, YOU'RE UNDER
ARREST, THAT CONVEYS AN INTENT
TO DETAIN.

THEN THE PERSON RUNS, I DON'T
THINK THEY WOULD HAVE TO SAY
STOP IN ORDER FOR THAT FLIGHT
TO CONSTITUTE RESISTING.

>> THIS CASE IS ONE WITH OF THE
MOST TROUBLING CASES THAT I
HAVE SEEN BECAUSE WHAT WE ARE
DOING, AND WHAT THE SECOND
DISTRICT OPINION SAYS TO ME, IS

THAT PEOPLE WHO LIVE IN POOR
NEIGHBORHOODS THAT ARE LIKELY
TO BE HIGH-CRIME AREAS, ARE
GOING TO BECOME CRIMINALS IF
THEY RUN FROM THE POLICE.
AND WE KNOW THAT IN THOSE
NEIGHBORHOODS, MANY OF THOSE
PEOPLE HAVE SOME REASON TO RUN
FROM THE POLICE.

>> YES.

>> YET IF THEY LIVE IN MY
NEIGHBORHOOD BASICALLY AND DID
THE SAME THING NOTHING WOULD
EVER HAPPEN TO THEM.
SO THIS IS TO ME, ONE OF THE
MOST TROUBLING CASES I HAVE
EVER SEEN.

THAT WE ARE GOING TO
CRIMINALIZE A WHOLE GROUP OF
PEOPLE BECAUSE THEY DON'T WANT
TO BE BOTHERED WITH THE POLICE.

>> WELL IF YOU HOLD THAT YOU
HAVE TO HAVE REASONABLE
SUSPICION BEFORE THE PERSON
FLEES YOU WOULD NOT BE
CRIMINALIZING THAT CONDUCT.

>> ISN'T THE BASIC PROBLEM WITH
WARDLOW, IN OTHER WORDS IF YOU

READ JUSTICE STEVENS DISSENT.

JUSTICE STEVENS DISSENT IS

EXPRESSING WHAT JUSTICE QUINCE

HAS STATED.

WHAT CONCERNS ME HERE WITHOUT

QUESTIONING WHETHER WARDLOW

ALMOST ANNOUNCED A PER SE RULE,

YOU KNOW THE, WHOEVER

REPRESENTED MR. ^C.E.L. BELOW

JUST SIMPLY CONCEDED THAT.

RATHER THAN TRYING TO SHOW THAT

MAYBE HE HAD AN INNOCENT REASON

FOR LEAVING.

OR ANYTHING OF THAT.

BUT WE DON'T, BUT WE'VE GOT TO

DEAL WITH THE FACT THAT YOU

HAVE JUST SAID NO, THERE WAS

REASONABLE SUSPICION TO STOP

HIM.

ONCE HE STARTED RUNNING EVEN

THOUGH HE COULD HAVE BEEN

RUNNING BECAUSE HE WAS LATE FOR

DINNER OR GOING RUNNING TO A

FRIEND'S HOUSE OR RUNNING

BECAUSE YOU SEE POLICE AROUND

AND YOU DON'T WANT TO HAVE TO

TALK TO POLICE.

>> I THINK THE DIFFERENCE

THOUGH, THE BIG DIFFERENCE IN

WARDLOW IT IS NOT CRIMINAL.

MINIMAL INTRUSION.

THAT IS THE SUPREME COURT

LANGUAGE, MINIMAL INTRUSION TO

INVESTIGATE FURTHER.

SO THE SUPREME COURT DIDN'T

CRIMINALIZE THAT CONDUCT.

THEY SAID IT PROVIDES SUSPICION

FOR INVESTIGATORY STOP.

>> THIS IS THE PROBLEM.

THEY SAY IT PROVIDES THE

ABILITY FOR POLICE TO DETAIN

SOMEONE FOR AN INVESTIGATORY

STOP.

IN ORDER TO DO THAT, THEY HAVE

TO BE ABLE TO ISSUE LAWFUL

ORDERS TO PEOPLE WHO ARE

FLEEING TO STOP.

WARDLOW SO I GUESS I'M HAVING

TROUBLE UNDERSTANDING THIS

IDEA, ALTHOUGH IT IS APPEALING

FROM A PUBLIC POLICY POINT OF

VIEW, HOW UNDER THE LAW WE GET

TO YOUR, TO YOUR ARGUMENT OTHER

THAN SAYING, LISTEN THIS IS

NOT, COULD NOT BE WHAT THE

SUPREME COURT INTENDED.

IT COULDN'T BE WHAT THE

LEGISLATURE INTENDED FOR

RESISTING ARREST.

THAT THERE HAS TO BE A SEPARATE

ACT THAT OCCURS AFTER THE

LAWFUL ORDER IS ISSUED.

AND I AM NOT SURE I KNOW IT IS

HOW WE GET THERE.

>> WHAT I THINK SPECIFICALLY

HAPPENS IN THIS HIGH-CRIME

NEIGHBORHOODS IS THE POLICE

DRIVE UP.

JUST LIKE EIGHT OR NINE GUYS,

HANGING OUT.

AS SOON AS THEY SEE A POLICE

CAR, THEY BOLT.

IN WARDLOW, IF THE POLICE WAS

TO CHASE THEM, THAT GIVES THEM

SUSPICION, REASONABLE SUSPICION

TO CONDUCT A TERRY STOP.

ONCE THEY STOP THEM, THEY PAT

THEM DOWN, FIND NOTHING, THEY

GOT TO LET THEM GO.

>> RIGHT.

>> THIS INSTANCE, IF THEY HAVE

FIND SOMETHING, THEY HAVE

SUSPICION TO STOP THEM AND CAN

ARREST THEM FOR POSSESSION OF

WHATEVER.

>> ONLY IF THAT REASONABLE

SUSPICION RIPENS INTO PROBABLE
CAUSE FOR ARREST.

>> NOW THIS INSTANCE, I THINK
THIS IS THE CAUSE OF THIS,
AT LEAST WHAT THE SECOND DCA
SAID THE REASON THAT ABLE TO
CHARGE HIM WITH OBSTRUCTION OR
RESISTING ARREST WITHOUT
VIOLENCE BECAUSE THE OFFICER
ORDERED HIM.

>> RIGHT.

>> AND I BELIEVE THAT THE JUDGE
THAT WROTE THE OPINION
BASICALLY SAID, THE OFFICER HAD
A LEGAL RIGHT TO BE IN A
POSITION HE WAS IN TO ORDER HIM
TO STOP.

OKAY? HOW IS, AS FAR AS THE DID NOT
HAVE THE OBSTRUCTION CHARGE IN
THE BOOKS, THEN IN THIS CASE,
ONCE THEY STOPPED HIM AND FOUND
NOTHING THEY HAD TO LET HIM GO.

BUT WE DO HAVE THAT LAW.

HOW IS THAT NOT OBSTRUCTION
WHEN AN OFFICER HAS A LEGAL
RIGHT TO BE WHERE HE IS AT AND
COMMANDS SOMEONE TO STOP?

>> AS I SAID YOU HAVE TO LOOK,

IT IS ONE ACT OF FLIGHT.

ONE ACT OF FLIGHT.

YOU HAVE TO LOOK AT THE FLIGHT
ITSELF.

FOR INSTANCE IF AN OFFICER SAYS
YOU'RE UNDER ARREST, DON'T SAY
ANYTHING ELSE, AND THE SUSPECT
SAYS, YES, SIR.

OFFICER SAYS, OH, THAT IS
OBSTRUCTION, NO, IT IS NOT.

UNDER THE CASE LAW THAT TO
INTERFERE WITH THE LAWFUL
DUTIES.

IT WOULD HAVE TO INTERFERE WITH
THE ARREST.

IN THIS CASE YOU HAVE TO LOOK
AT THE FLIGHT.

AND THE FLIGHT BEGAN WHEN THE
OFFICER ONLY HAD ENOUGH FOR A
CONSENSUAL ENCOUNTER.

EVEN THOUGH HE IS LAWFULLY
ORDERING HIM TO STOP YOU KIND
OF SPLITTING UP ONE ACT, IT
CREATES KIND OF A MESS AND
THERE IS NO REAL BRIGHT LINE.

FOR INSTANCE IF THE OFFICER
YELLS STOP AND YOU TAKE THREE
MORE STEPS, I DON'T KNOW WHAT
THAT WOULD BE.

>> WHAT YOU'RE SAYING IS, THAT
IT IS AN ILLEGAL STOP, I MEAN,
OBSTRUCTION DOESN'T APPLY
BECAUSE IT FOLLOWS FROM THE
SAME FLIGHT?

>> RIGHT.

>> ONE INCIDENT.

>> RIGHT.

>> BUT THAT FLIGHT GAVE THE
OFFICERS THE RIGHT TO BE
PRESENT AND TO COMMAND THAT
THEY STOP.

>> WELL, IN THE DTB OPINION
THEY QUOTE, CONCURRENCE FROM
FLIGHT.

WHICH STATES WARDLOW DEALS WITH
THE CONSEQUENCE OF THE ACTIONS.

SO IF THIS WERE TO ARISE IN A
MOTION TO SUPPRESS WHICH WE'RE
NOT DEALING WITH HERE, BUT
WHERE WARDLOW IS USUALLY
APPLICABLE IN A FOURTH
AMENDMENT SUPPRESSION CONTEXT
THE THEN THE OFFICER HAS THE
RIGHT TO STOP THEM, IF THEY
BELIEVE THEY HAVE WEAPONS THEY
CAN PAT THEM DOWN.

>> YOU HAVEN'T ANSWERED WHAT

JUSTICE LABARGA WAS ASKING,
WHAT I ASKED PREVIOUSLY, WHICH
IS IF HE HAS GOT THE LAWFUL
DUTY WHICH ARISES AS HE BEGAN
TO, AS THE DEFENDANTS BEGAN TO
RUN AND THE OFFICER HAS A
LAWFUL DUTY TO ASK HIM TO STOP,
HOW IS HIM, HOW IS C.E.L. NOT
STOPPING AFTER BEING TOLD TO
STOP NOT OBSTRUCTING THE
OFFICER IN A LAWFUL PERFORMANCE
OF HIS DUTY AND LAWFUL
PERFORMANCE OF HIS DUTY BEING
HE HAD A RIGHT TO HAVE AN
INVESTIGATORY STOP AT THAT
TIME?

I DON'T LIKE IT BUT I'M JUST
TRYING TO UNDERSTAND HOW YOU
CAN SAY BY SAYING, CONTINUOUSLY
RUNNING THAT REALLY DOESN'T
SOLVE THE PROBLEM JUSTICE
QUINCE IS TALKING ABOUT WHICH
IS STILL WE'RE PUTTING PEOPLE
IN POSITIONS HAVING TO BE
SUBJECT TO INVESTIGATORY STOPS.
SO I'M STILL NOT SURE I GET
YOUR, WHERE, AS A MATTER OF LAW
THE RESISTING ARREST STATUTE
MUST BE APPLIED THE WAY YOU

ARE, YOU KNOW, ARE URGING?

>> LIKE I SAID I HATE TO

REITERATE, IF TILLMAN SAYS THE

POINT THE RESISTANCE OCCURS, SO

THIS COURT, IF THIS COURT

ADOPTS C.E.L., THEN THE

RESISTANCE WOULD BE DEFIANCE OF

THE ORDER WHICH IS NEVER UNDER

FLORIDA LAW, NEVER CONSTITUTED

DEFIANCE.

THE DEFIANCE IS ACTION ITSELF.

>> I THOUGHT IT IS RUNNING

AFTER ISSUANCE OF THE LAWFUL

ORDER?

>> IT IS THE RUNNING AS A

WHOLE.

>> ISN'T THAT WHAT THE SECOND

DISTRICT SAID?

IT IS CONTINUOUS RUNNING AFTER

BEING LAWFULLY ORDERED TO STOP?

>> WELL THE SECOND DCA SAID IT

IS DEFIANCE OF ORDER AND

CONTINUING TO RUN.

BUT THERE'S ONLY ONE ACT OF

FLIGHT.

I THINK THAT'S, THAT'S THE REAL

STICKING POINT.

UNDER TILLMAN THIS COURT COULD

HOLD INTEREST IS ONLY ONE ACT
OF RESISTANCE, ONLY ONE ACT,
AND AT THAT MOMENT WHEN THE
RESISTANCE BEGAN THERE WAS ONLY
ENOUGH FOR CONSENSUAL
ENCOUNTER.

>> IS IT REALLY ILLOGICAL
TO SAY IF YOU'RE RUNNING AND
YOU ARE ORDERED TO STOP AND YOU
DON'T, THAT THAT IS SOMEHOW
DIFFERENT THAN IF YOU'RE
RUNNING, ORDERED TO STOP, YOU
STOP FOR A MOMENT AND THEN RUN
AGAIN?

I'M MISSING THE LOGIC BEHIND
THIS.

>> I MEAN THE DTB OPINION SAYS
AND PARKER OPINION FROM THE
FIRST DCA CIRCULAR LOGIC TO
HAVE THE FLIGHT CONSTITUTE
REASONABLE SUSPICION AND
PROBABLE CAUSE TOGETHER AT THE
SAME TIME.

>> YOU KNOW, I READ ALL THOSE
OPINIONS, AND I AM VERY
SYMPATHETIC TO YOUR SIDE BUT I
HAVE TO SAY, ANSWER WHAT
JUSTICE LEWIS HAS JUST ASKED,
PERMUTATION, WHICH IS, SOMEONE

STOPS FOR A MOMENT AND THEN
STARTS RUNNING AGAIN, THAT THEN
IT IS NOT CONTINUOUS ACT OF
FLIGHT BUT YET SAME ACT OF
RESISTING THE OFFICER SO THAT
HE CAN'T OR SHE CAN'T
INTERROGATE THE DEFENDANT.

>> I'M NOT SAYING THAT THE
OFFICERS CANNOT INTERROGATE THE
DEFENDANT.

UNDER --

>> HOW CAN THEY IF THE PERSON
CONTINUES TO RUN?

THAT'S THE RESISTING IS THAT
THEY'RE RESISTING THE OFFICER
IN BEING ABLE TO INTERROGATE.

AND WHETHER WE LIKE WARDLOW OR

NOT, IT'S THE LAW IN THIS STATE

AND YOU HAVE NOT, AS I HAVE,

SAID, DONE ANYTHING TO TRY TO

DISTINGUISH WHAT MIGHT HAPPEN

WITH JUVENILES THAN WHAT

HAPPENS WITH ADULTS AS TO

WHETHER THERE ARE OTHER REASONS

FOR UNPROVOKED FLIGHT.

SO WE NOW ARE TALKING ABOUT

THEY HAVE A RIGHT TO TALK TO

HIM BUT, NO, THAT SOMEONE CAN

FRUSTRATE THAT RIGHT BY

CONTINUING TO RUN.

HOW IS THAT LOGICAL THE OTHER

WAY?

THAT IS TO SAY, THAT NO,

BECAUSE THEY KEPT ON RUNNING,

IT'S ALL PART OF THE SAME

FLIGHT?

DID SOMETHING HAPPEN

DIFFERENTLY?

THE OFFICER ORDERED THEM TO

STOP.

>> RIGHT, I UNDERSTAND THAT.

BUT IT'S STILL ONE --, IF THE

OFFICER, IF THE DEFENDANT

STOPS, THE OFFICER EFFECTUATE

AS TERRY STOP AND CONVEYS TO

HIM HE IS DETAINED IN WHATEVER

MANNER, IN WARDLOW THEY

CORNERED HIM WHICH CONVEYS A

INTENT TO DETAIN THEN YOU RUN

AWAY FROM THAT, AND YOU START

RUNNING THERE IS REASONABLE

SUSPICION, THAT'S THE

DIFFERENCE.

SO IT IS NOT A MATTER OF, I

THINK THAT IS THE LEGAL WAY TO

DO IT.

IS, YOU HAVE BEFORE YOU FLEE,

AND THEN, YOU KNOW, ONE, YOU
HAVE TO LOOK AT THAT MOMENT
RIGHT BEFORE THE RESISTANCE
OCCURS.

IT IS NOT THE ORDER IN OF
ITSELF.

IF AN OFFICER SAYS YOU ARE
UNDER ARREST AND YOU PUNCH THE
OFFICER, THE OFFICER DOESN'T
HAVE TO SAY DON'T PUNCH ME.

>> I THOUGHT YOU MADE AN
ARGUMENT IN YOUR BRIEF I GUESS
YOU'RE NOT MAKING FURTHER BUT
WHICH IS, HOW IS THE PERSON WHO
IS FLEEING, SINCE A PERSON HAS
A RIGHT TO FLEE IF IT IS A,
UPPER MIDDLE CLASS, WHITE
NEIGHBORHOOD AND THEY HAVE A
RIGHT WHEN POLICE COME TO RUN
AWAY WHICH IS PROBABLY WHERE
THEY WON'T RUN AWAY, HOW IS THE
DEFENDANT SUPPOSED TO KNOW THAT
IT IS A LAWFUL ORDER?
BUT YOU HAVEN'T, YOU KNOW, YOU
SORT OF THROW THAT OUT BUT
YOU'RE NOT ARGUING IT HERE
TODAY AND I DON'T KNOW IF YOU
ADVANCED THAT BEFORE.

>> WHATEVER I DON'T GET TO I
LIKE TO RELY ON MY BRIEF.

>> IS THAT A VALID ARGUMENT?
NOT ONLY ARE WE CREATING TWO
CLASSES OF ADULTS AND
JUVENILES, THOSE THAT LIVE IN
HIGH-CRIME AREAS.

>> RIGHT.

>> WHO CAN'T LEGITIMATELY RUN
AWAY FROM POLICE AND THOSE IN
NON-HIGH-CRIME AREAS THAT CAN
AND HOW IS THAT PERSON RUNNING
IS SUPPOSED TO KNOW IF HE OR
SHE IS ACTUALLY COMMITTING A
CRIME?

>> I DON'T THINK THERE IS ANY
WAY TO KNOW.

THE STATUTE DOESN'T PUT YOU ON
NOTICE WHAT CONSTITUTES --

>> SHOULD THAT BE AN ARGUMENT
THERE ARE CONSTITUTIONAL
PROBLEMS OF TREATING PEOPLE
UNEQUALLY AND THEREFORE WE
SHOULD INTERPRET THE STATUTE IN
A VERY STRICT WAY? I HAVEN'T
HEARD YOU MAKE THAT ARGUMENT
BUT THAT'S --

>> I THINK YOU CAN DO IT ON
EQUAL PROTECTION BASIS OR ON

DUE PROCESS BASIS.

>> BUT YOU DON'T MAKE THAT
ARGUMENT IN THE TRIAL COURT OR
BEFORE THE SECOND DISTRICT HAVE
YOU, DID YOU?

>> NO. THAT WOULD BE AS APPLIED
ANALYSIS.

BUT IF THIS COURT DOES HOLD IN
LINE WITH C.E.L. THAT WILL
DEFINITELY COME UP IN THE
FUTURE BECAUSE A STATUTE HAS TO
PUT AN INDIVIDUAL ON NOTICE
WHAT CONSTITUTES A CRIME.

THIS IS NOT, IT IS WITHIN 1,000
FEET OF A SCHOOL.

>> CAN WE JUST TODAY, JUST THIS
MORNING, ALL OF SUDDEN CHANGE
ALL THE ISSUES IN THIS CASE --

>> NO, NO, I'M SAYING THE
HOLDING IN C.E.L. OPENS UP
THESE POSSIBILITIES.

IT CREATES A VERY MESSY
SITUATION.

I THINK THE LOGICAL AND LEGAL
WAY TO DO IT IS WHAT THE THIRD
DCA DID.

IN LINE WITH TILLMAN, HOLD THAT
YOU HAVE TO LOOK AT THE POINT

THE RESISTANCE OCCURS WHICH IS
BEFORE YOU FLEE, THE MOMENT YOU
START RUNNING.

AND IF I COULD RESERVE THE REST
OF MY TIME FOR REBUTTAL.

>> THANK YOU.

>> MAY IT PLEASE THE COURT,
DIANA BOCK, ASSISTANT ATTORNEY
GENERAL APPEARING ON BEHALF OF
THE STATE THE RESPONDENT IN
THIS CASE.

I THINK THE KEY ISSUE HERE IS
TIMING AS JUSTICE LEWIS HAS
DISCUSSED IT IS THE TIMING OF
WHEN THE ORDER WAS GIVEN.

TIMING AT WHICH POINT
REASONABLE SUSPICION OCCURRED
AND WHAT HAPPENED AFTER THAT.

IN THIS INSTANCE, THAT POLICE
OFFICER GAVE A LAWFUL COMMAND.

THERE IS NO CONTEST BELOW OR
HERE THAT AT THE TIME HE GAVE
THAT COMMAND HE HAD THE LEGAL
AUTHORITY TO DO SO, THAT HE DID
SO, THAT HE WAS TRYING TO DO AN
INVESTIGATORY STOP.

HE WAS THWARTED FROM DOING
THAT.

THAT THE DEFENDANT HEARD HIM

AND MADE A CHOICE TO CONTINUE
TO RUN.

>> WHAT KIND OF ARGUMENTS CAN A
DEFENDANT MAKE IN RESISTANCE TO
THIS KIND OF THING?

IS THERE ANY, IF A POLICE
OFFICER COMES IN AND SAYS, THIS
IS A HIGH-CRIME NEIGHBORHOOD,
AND THE DEFENDANT SAY NO IT
WASN'T.

>> YES IT CAN, YOUR HONOR.

>> WHAT WOULD HAVE TO DO TO
SHOW THAT?

>> I THINK YOU COULD GIVE IS A
TIS CALL DATA, POLICE DATA,
REPORTING DATA.

THAT WOULD BE A POSSIBILITY.

>> THIS IS ABOUT THE WORST CASE
I HAVE EVER SEEN.

>> IT IS A TROUBLING CASE, YOUR
HONOR.

>> THAT PEOPLE WHO HAVE NO
OTHER CHOICE ABOUT WHERE THEY
LIVE, ESPECIALLY A JUVENILE.
IF THIS IS WHERE HIS PARENTS
LIVE, THIS IS WHERE HE HAS TO
LIVE.

AND HE HAS, CAN'T DO ANYTHING

BUT STOP AND HAVE A THE POLICE
INTERROGATE HIM WHETHER HE IS
DOING ANYTHING OR NOT.

THIS IS, TO ME, THE ULTIMATE IN
A POLICE STATE.

>> WELL, TWO THINGS, YOUR HONOR.

FIRST OF ALL, I WOULD DISAGREE
TO SOME DEGREE IT IS BASED ON
WHERE THEY LIVE ALONE.

IF I HAD BEEN STANDING THERE
AND I HAD RUN IN THAT SAME
AREA, I TOO WOULD HAVE BEEN
SUBJECT TO THAT STOP WHETHER I
LIVED THERE OR NOT.

THE OTHER THING IS HE HAD A
CHOICE TO WALK AWAY.

>> YOU MIGHT NOT BE SUBJECT TO
THE STOP.

FIRST OF ALL, YOU KNOW, WARDLOW
SAYS IT'S, USE OF THE
TERM UNPROVOKED.

>> UNPROVOKED.

>> FLIGHT. WHEREAS I GUESS
SOMEBODY, THEY
COULD GO, THEY COULD ACTUALLY,
OFFICER WAS COMING UP TO THEM
THEY COULD ACTUALLY WALK AWAY
AND GO ABOUT THEIR BUSINESS,
WHICH DEFIES MY UNDERSTANDING

OF HOW SOMEBODY IS GOING TO DO
THAT.

BUT, IN TERMS OF THIS STATUTE,
AND I'D LIKE TO, YOU KNOW, IN
TERMS OF WHAT WE'RE CRYIZING
HERE.

>> THE RESISTANCE.

>> THE, WHY SHOULDN'T WE
STRICTLY CONSTRUE IT TO SAY
THAT, AS THE THIRD DISTRICT HAS
AND THE FIRST DISTRICT, THAT
THE -- CRIMINALIZING.

REASONABLE SUSPICION FOR THE
FLIGHT ITSELF WHICH CREATES THE
REASONABLE SUSPICION TO ALSO
CONSTITUTE RESISTING ARREST
BECAUSE OF WHAT JUSTICE QUINCE
SAYS?

AND IT IS IN THE BRIEF AT LEAST
IN THE THIS COURT THAT AS FAR
AS C.E.L. IS CONCERNED, HE
DOESN'T KNOW THAT THERE, THAT
HE IS, HOW DOES KNOW, THIS IS,
QUOTE, A HIGH-CRIME AREA?
HOW DOES KNOW WHETHER OR NOT,
QUOTE, THE RIGHT TO RUN AWAY
WHEN POLICE ARE THERE?
HE MIGHT HAVE THE RIGHT

WHEN HE GOES TWO MILES TO THE
NORTH OR SOUTH, BUT HE DOESN'T
HAVE THE RIGHT THERE.

SO GIVEN THAT, GIVEN THAT WE,
THIS IS, WE'RE TALKING ABOUT
CRIMINALIZING AN ACT OF
RUNNING, WHICH AT ITS OUTSET
WAS NOT, WAS NOT IMPROPER, WHY
SHOULDN'T WE STRICTLY CONSTRUE
IT AS THE THIRD DISTRIBUTE HAS
INTERPRETED THE STATUTE?

>> FIRST OF ALL, IT'S NOT
CRIMINALIZING THE FLIGHT.

I THINK THAT IS A MISNOMER.

WHAT IT IS CRIMINALIZING THE
INTERVENING CAUSE OF THE ORDER
TO STOP AND THE CONTINUATION OF
THAT FLIGHT.

>> BUT YOU UNDERSTAND IN THIS
CASE THERE WERE SEVERAL
INDIVIDUALS WHO WERE ARRESTED
AND, AT THE SAME TIME.

>> WE'RE TALKING ABOUT C.E.L.
NOW?

>> C.E.L..

I'M GETTING SOME PICTURE OF
WHAT JUSTICE LABARGA HAS SAID.
WHICH THERE ARE KIDS HANGING
AROUND SOMEPLACE AND MORE

LIKELY KIDS THAT ARE
AFRICAN-AMERICAN THAN THEY ARE
TO BE WHITE KIDS BECAUSE OF
WHAT JUSTICE STEVENS DISSENT IS
EXPLAINS.

AND SO ALL OF A SUDDEN THE
POLICE COME.

THEY CREATE A SITUATION WHERE
NOW EVERYBODY SAYS, WE DON'T
WANT TO TALK TO THE POLICE.

NO, NO, THAT, NOTHING GOOD WILL
COME OUT OF THAT FOR US.

SO WE'RE LEAVING.

BUT THEY'RE KIDS.

SO THEY RUN.

THEY DON'T WALK FAST.

AND WE'RE REALLY SAYING, THAT,

THAT CAN GIVE RISE TO A
RESISTING ARREST WITHOUT
VIOLENCE?

>> NO, WE'RE NOT.

WE'RE SAYING THAT WHEN THOUGH
TAKE FLIGHT IN HIGH-CRIME AREA
THEY HAVE NOW TRIGGERED
WARDLOW.

ONCE YOU'VE TRIGGERED WARDLOW,
THERE IS A REASONABLE SPECIAL
SHUN ON BEHALF OF A POLICE

OFFICER, WHO BRINGS WITH HIM
MUCH KNOWLEDGE, NOT SIMPLY THE
FACT THAT THIS CHILD FLED BUT A
LOT OF KNOWLEDGE ABOUT THIS
AREA IN PARTICULAR AT LEAST IN
OUR CASE.

ONCE HE HAS THE REASONABLE
SUSPICION, ONCE HE HAS THE
LEGAL AUTHORITY ESTABLISHED
UNDER WARDLOW, HE MAKES A
LEGALLY AUTHORIZED COMMAND.

THE COMMAND IS DISOBEYED.
IT IS THE DISOBEYANCE OF THE
COMMAND THAT IS THE RESISTANCE
THAT IS CHARGED.

>> HOW DOES THE STATE RULE THAT
IT IS A HIGH-CRIME AREA?

IS IT JUST THE POLICE OFFICER
TESTIFYING BASED ON MY 24 YEARS
OF LAW ENFORCEMENT EXPERIENCE
THIS IS A HIGH CRIME AREA?

THAT'S IT?

>> THAT IS CERTAINLY A MAJOR
FACTOR.

I THINK THAT IS WHAT HAPPENED
BELOW HERE.

TWO OFFICERS WITH SPECIFIC
KNOWLEDGE.

>> I'M SURE THE PROSECUTORS

DON'T BRING IN PEOPLE WITH
STATISTICS AS TO HOW MANY
CRIMES ARE CONDUCTED IN A
PARTICULAR NEIGHBORHOOD TO
PROVE IT IS A HIGH-CRIME AREA.

>> I DON'T BELIEVE THEY DID
HERE. BUT WHAT THEY DID SAY HERE,
BOTH OFFICERS TESTIFIED, ONE
FIVE YEARS EXPERIENCE IN THAT
AREA.

THE OTHER SIX.

MULTIPLE ARRESTS,
MULTIPLE COMPLAINTS.

IN FACT THE, MOST RECENT
COMPLAINT THE DAY BEFORE.

>> SAY I LIVE IN A GOOD
NEIGHBORHOOD, NOT A HIGH-CRIME
AREA.

I HAPPEN TO LIVE IN ONE OF
THOSE AT HOME.

AND, THERE'S A STRING OF
BURGLARIES.

KIDS DECIDE THEY'RE GOING TO
BURGLARIZE EVERY HOME IN THAT
NEIGHBORHOOD.

SUDDENLY THERE IS 40
BURGLARIES.

DOES THAT MAKE MY NEIGHBORHOOD

A HIGH-CRIME AREA?

DOES THAT MEAN MY KIDS CAN'T
RUN?

>> I BELIEVE SOMEONE COULD MAKE
THAT ARGUMENT.

WOULD THEY MAKE THAT ARGUMENT?

I DON'T KNOW.

TELL YOU WHAT.

IT IS NOT AT THIS LEVEL WE MAKE
THE DECISION.

THE FILTER OCCURS AT TRIAL
LEVEL WHERE EVIDENCE CAN BE
BROUGHT IN AND RESOURCES ARE
AVAILABLE TO CHALLENGE THAT
ISSUE.

THAT'S NOT WHAT WE'RE DOING ON
APPEAL.

>> AS I WAS PREPARING FOR THIS
CASE, I HAPPENED TO TURN THE
TELEVISION ON "NBC NEWS." AND
THERE IS A CASE SOMEWHERE UP
NORTH, WHERE A BROTHER, THE
BROTHER IS ABOUT 26 YEARS OLD
OR SOMETHING LIKE THAT AND HIS
YOUNGER BROTHER, ABOUT 14 OR 15
AND THE YOUNGER BROTHER HAS
LIKE A LEARNING DISABILITY.
AND, THE BIG BROTHER WAS
DRIVING IS PULLED OVER BY THE

POLICE BECAUSE THE TAG HAD A
PROBLEM WITH IT.
DIDN'T HAVE A STICKER,
SOMETHING WRONG WITH THE TAG.
AND ASKED POLICE OFFICERS
PULLED BEHIND THEM AND THE BIG
BROTHER, SLOWED THE CAR DOWN
ENOUGH, THE YOUNGER BROTHER,
WHO HAS A LEARNING DISABILITY
GOT SCARED, PETRIFIED,
OPEN THE DOOR AND RAN.
AND THE UNDER WARDLOW THE
POLICE OFFICER TESTIFIED, WHO I
AM SURE IS GOING TO TESTIFY IN
THIS HIGH-CRIME NEIGHBORHOOD
THAT GAVE HIM THE RIGHT TO
CHASE HIM.
HE CHASED HIM.
HE TASED HIM AND KILLED HIM.
NOW, WHAT IS INTERESTING ABOUT
THAT IS, HAD HE PERHAPS DRIVEN
THE CAR, THE BIG BROTHER DRIVEN
THAT CAR FIVE MORE BLOCKS DOWN
THE ROAD, THAT KID GOTTEN OUT
OF THE CAR, RUN HOME AND GONE
TO MAMA. I'M SCARED.
POLICE CAUGHT MY BROTHER AND
NOTHING WOULD HAVE HAPPENED.

SEE, THAT IS THE PROBLEM WITH
IT.

PERHAPS TWO OR THREE BLOCKS CAN
MAKE A DIFFERENCE WHETHER
SOMEONE HAS TO STOP OR SOMEONE
DOESN'T HAVE TO STOP.

>> I THINK WHAT WE MIGHT BE
MISSING HERE AND I DON'T MEAN
TO DISCREDIT THIS ARGUMENT IN
THE LEAST, IT IS A VERY STRONG
CONCERN, BUT WHAT WE'RE TRYING
TO DO NOW IS SAY THAT THE
POLICE OFFICER IS NOT ABLE TO
RELY ON HIS OWN KNOWLEDGE.
THAT POLICE OFFICER IS IN THE
FIELD.

THAT POLICE OFFICER SEES WHAT
IS OCCURRING.

>> STILL THE CONCERN IS HE
DOESN'T HAVE ANY KNOWLEDGE
ABOUT THIS PERSON THAT IS NOW A
CRIMINAL.

>> NOT THE PERSON, YOUR HONOR,
BUT THE CIRCUMSTANCES HE IS
PRESENTED WITH THIS PERSON.

>> WHAT WERE THE CIRCUMSTANCES?
WHAT WAS THE TESTIMONY IN THIS
CASE ABOUT EXACTLY WHAT THEY
WERE DOING?

THIS IS APARTMENT COMPLEX.

>> THIS IS AN APARTMENT
COMPLEX, CORRECT.

>> WAS IT A POOR NEIGHBORHOOD?

>> YES, I BELIEVE IT WAS.

>> ARE WE NOW SAYING POOR
NEIGHBORHOODS ARE THEREFORE
HIGH-CRIME NEIGHBORHOODS?

>> I MOST CERTAINLY AM NOT.

>> WAS IT A DRUG HOUSE HE WAS
IN?

>> NO, IT WAS NOT.

>> APARTMENT BUILDING WHERE
PEOPLE LIVE.

>> APARTMENT BUILDING WHERE
PEOPLE LIVE.

>> 9:00 AT NIGHT.

NOT IN THE MIDDLE OF 3:00 IN
THE MORNING.

>> NO, IT WAS NOT.

IT WAS 9:00.

>> AND WE APPARENTLY,
MR. ^C.E.L. LIVED VERY CLOSE TO
HERE, ABOUT A MILE FROM THERE,
WITH HIS MOTHER ACCORDING TO
JUDGE ALL THE TERN BERG'S
OCCURRENCE.

WHAT IS IT THAT BROUGHT THE

POLICE TO THE APARTMENT

COMPLEX?

>> THEY WERE ON PATROL.

>> ROUTINE PATROL.

>> ROUTINE PATROL.

BECAUSE THIS IS HIGH-CRIME

AREA.

>> THIS IS DIFFERENT FROM

WARDLOW, I THINK WE MORPHED

FROM WARDLOW AND ACCEPTED IT,

WARDLOW THERE WERE COMPLAINTS

THEY WERE INVESTIGATING,

SPECIFIC COMPLAINTS ABOUT DRUGS

AND THEN WHEN THEY APPROACHED

THEY SAW THE DEFENDANT RUNNING

WITH A SOMETHING UNDER HIS ARM.

AND AGAIN --

>> A OPAQUE BAG.

>> OPAQUE BAG, THAT MIGHT NOT

HAVE ALSO CREATED REASONABLE

SUSPICION.

HERE WE'RE TALKING ABOUT

OFFICERS CAN GO INTO ANY PLACE

IN A POOR NEIGHBORHOOD WHERE

THERE HAS BEEN CRIME, AND, WHEN

YOUNG PEOPLE SEE THESE POLICE,

AGAIN, AND THEY RUN, EVEN

THOUGH THERE WAS NO REASON TO

DETAIN THEM, THEY ARE RESISTING

ARREST WHEN THE POLICE NOW SAY
STOP?
AND SO, IS THAT WHAT WE'RE --
>> A, YOU'RE NOT RESISTING
ARREST.
THAT'S NOT WHAT YOU'RE CHARGED
WITH.
IT IS OBSTRUCTING OFFICER FROM
MAKING INVESTIGATORY STOP.
AND DDP TALKED ABOUT RESISTING
ARREST WHICH WAS A LITTLE BIT
DIFFERENT.
BUT IT'S NOT WHAT WE'RE SAYING.
BECAUSE YOU'RE NOT CONSIDERING
THE FACT OF WARDLOW KICKING IN
THE REASONABLE SUSPICION.
AND THEN, A BREAK, AN
INTERVENING CAUSE, IF YOU WILL,
BY THE COMMAND WHICH WAS
LAWFUL.
AND THEN A CHOICE WAS MADE TO
CONTINUE TO RUN.
WHAT WE'RE, WHAT I HEAR THE
COURT'S CONCERN IS, IS HOW DO
WE STOP THE CHILD FROM RUNNING.
HOW DO WE STOP THAT FROM
TRIGGERING WARDLOWE?
WE CAN'T. IT DOES.

>> UNDER WARDLOWE, THEY USE
THE TERM FLIGHT.

UNPROVOKED FLIGHT.

>> UNPROVOKED, HEADLONG FLIGHT.

>> SO IF THESE SAME DEFENDANTS
HAD BEEN WALKING FAST AS
OPPOSED TO ACTUALLY RUNNING,
CLE -- C.E.L. WAS ACTUALLY
WALKING VERY FAST OUT OF THIS
NEIGHBORHOOD, IS THAT FLIGHT
ALSO?

>> I CAN'T ANSWER THAT.

AND THAT WOULD BE ANSWERED
THROUGH THE FILTER OF THE TRIAL
COURT.

THAT'S WHY THIS KIND AFTER
RECORD YOU CAN'T MAKE THAT
CALL.

>> IT SEEMS TO ME THAT MOVEMENT
AWAY, WHETHER IT IS A RUN, OR
WALK, IS STILL FLIGHT.

>> IT IS NOT.

>> AWAY FROM THE DEFENDANT,
FROM THE POLICE.

>> IT IS NOT.

WARDLOW IS SPECIFIC.

WARDLOW SAYS, UNPROVOKED
HEADLONG FLIGHT.

IT DOESN'T SAY POWER WALKING.

IT DOESN'T SAY JOGGING.

IT SAYS FLIGHT.

>> YOU'RE INTERPRETING FLIGHT

AS RUNNING?

>> YES I AM.

I BELIEVE THAT IS WHAT THE
UNITED STATES SUPREME COURT
DID.

THEY INTERPRETED IT AS HEADLONG
FLIGHT, RUNNING.

IN WARDLOW, AND I DISAGREE A
LITTLE BIT WITH YOUR
RECOLLECTION OF THE FACTS WITH
WARDLOW ONLY TO THE POINT THERE
WAS A CARAVAN OF POLICE CARS,
FOUR, I BELIEVE, STARTED INTO
AN AREA WHERE THERE HAD BEEN
REPORTS OF DRUG ACTIVITIES.

THEY WERE LOOKING TO SEE WHAT
WAS GOING ON THERE THEY KNEW
THERE WOULD BE LOOKOUTS.

THEY KNEW THERE WOULD BE
RUNNERS.

THEY FEARED THERE WOULD BE
WEAPONS.

THE FOURTH VEHICLE --

>> ISN'T THAT WHAT YOU JUST
SAID DIFFERENT FROM THIS KIND

OF CASE?

>> ABSOLUTELY NOT.

IN THIS CASE YOU HAVE AN
APARTMENT COMPLEX THAT IS NOT
ONLY IN A HIGH-CRIME AREA AS
TESTIFIED TO AT TRIAL BUT HAD
REPORTS OF CRIMINAL ACTIVITY
THE DAY BEFORE AND THAT'S WHY
THE PATROLS WERE STEPPED UP.
SO THERE IS NO DIFFERENCE
THERE.

THE ONLY DIFFERENCE THEY WERE
TARGETING A SPECIFIC AREA
DRIVING INTO IT VERSUS ROUTINE
PATROL BECAUSE OF THE REPORTS
OF CRIME.

THE ONLY DIFFERENCE IS THEY
WERE GOING IN A CARAVAN, THIS
WAS A TWO-MAN UNIT.

WHAT YOU HAD WITH THE FOURTH
CAR IN THAT CARAVAN, UNDER
WARDLOW BREAK OFF WHEN THEY SAW
THIS INDIVIDUAL WITH AN OPAQUE
BAG UNDER HIS ARM, LOOK AT THEM
AND RUN.

THEY THEN CORNERED HIM WITH
THEIR VEHICLE,GOT OUT,
AND APPROACHED HIM.

THAT'S THE FACTS OF WARDLOW.

THOSE PARALLEL TO SOME DEGREE
THE FACTS OF OUR CASE BELOW.
HERE YOU HAD TWO OFFICERS,
EMBLAZENED ACROSS THEIR CHEST
IS SHERIFFS OFFICE.

THEY'RE IN HIGH-CRIME AREA
DOING THEIR JOB.

THEY GET THERE THEY GET OUT OF
THE VEHICLE.

THEY'RE WALKING THROUGH THE
AREA.

THEY SEE C.E.L..

THEY SAY, WE WANT TO TALK TO
THESE GUYS.

THEY START TOWARD THEM.

THEY RUN.

THAT'S WHEN THE ORDER IS GIVEN.

WARDLOW HAS BEEN TRIGGERED.

THE ORDER IS GIVEN.

THEY CONTINUE TO RUN.

YOU NOW HAVE, EXCUSE ME, THE
VIOLATION HE IS CHARGED WITH,
OBSTRUCTING AN OFFICER.

YOU CAN'T GET AROUND THAT.

I THINK THAT IS THE STRONGEST
POINT I CAN MAKE.

>> WELL, I THINK THE STRONGEST
POINT YOU PROBABLY MAKE IS THAT

YOU HEAR A LOT OF CASES, AND
YOU SEE A LOT OF THINGS HAPPEN
DURING A LEGAL CAREER, AND YOU
SEE SOME THAT ARE THE MOST
TROUBLING THAT YOU WOULD NEVER
BELIEVE WHEN YOU STARTED THIS
PATH THAT YOU WOULD EVER SEE.

>> THAT IS TRUE.

>> MAYBE THIS IS ONE CASE THAT
OUGHT TO BE ADDRESSED THROUGH
CONSTITUTIONAL ARGUMENTS AND
ATTACKS PROBABLY AT THE TRIAL
LEVEL.

BUT, AGAIN --

>> FILTER THAT NEEDS TO BE --

>> AGAIN YOU SEE, WHEN THIS
COURT PASSES ON SOMETHING LIKE
THAT IT BECOMES THE LAW OF THE
LAND FOR FLORIDA.

>> ABSOLUTELY.

>> YOU SEE WHERE THIS JOURNEY
TAKES US TO A PLACE WE NEVER
BELIEVED WE WOULD EVER BE.

>> I UNDERSTAND THAT, YOUR
HONOR.

AND I'M NOT DISREGARDING THAT
ARGUMENT AT ALL.

>> WE UNDERSTAND.

THESE ARE THE KINDS OF CASES

THAT BAD FACTS, BAD LAW,
MISDIRECT A SYSTEM OF JUSTICE.

>> AND I THINK THAT,
THERE IS A FILTER FOR THAT.

AND I DON'T WANT TO HAVE THAT
LOST IN THE SHUFFLE HERE.

WHAT WE'RE DOING HERE IS
UPHOLDING WARDLOW AND UPHOLDING
THE STATE STATUTE AS IT HAS
BEEN APPLIED.

>> I THINK THE ARGUMENT IS,
THIS IS WHERE THERE IS PERHAPS
ROOM FOR INTERPRETATION.

THE ARGUMENT IS THAT, WARDLOW
DID NOT ENVISION CRIMINALIZING
THE ACT OF FLIGHT.

AND THEREFORE, AS JUSTICE
CANADY AND IN HIS MAJORITY
OPINION SAYS WE'RE DEALING WITH
INTERPRETATION OF A STATE
STATUTE.

AND, ARE YOU SAYING THAT THE
THIRD DISTRICT, THE FIRST
DISTRICT, THE FOURTH DISTRICT,
ALL INTERPRETED THE STATUTE IN
AN IMPERMISSIBLE WAY THAT THIS
COURT COULD NOT ALSO, STRICTLY
CONSTRUING THE STATUTE,

INTERPRET IT IN THAT SAME WAY?

>> YES, I AM.

WHAT I AM SAYING IS THAT THE
POINT IN TIME THAT THEY FOUND
RESISTANCE UNDER TILLMAN IS
INCORRECT.

BECAUSE THERE HAD BEEN NO ORDER
GIVEN.

THE RESISTANCE DID NOT OCCUR
UNTIL THERE WAS DISOBEDIENCE TO
THE ORDER.

SO YES, YOUR HONOR, I AM.

UNDER OUR CIRCUMSTANCES HERE IT
WOULD BE A MISAPPLICATION TO
FIND THAT THE RESISTANCE
OCCURRED AT THE MOMENT HE BEGAN
TO RUN. IT DIDN'T.

AND IT WAS NOT CRIMINALIZED.

>> WELL IT IS RESISTANCE THOUGH
THAT OCCURRED AT MOMENT,
RESISTANCE THAT IS WHAT WARDLOW
SAYS CREATES REASONABLE
SUSPICION.

>> IT IS FLIGHT.

>> CALL INNOCENT PEOPLE RUNNING
THEY CALL THEM FUGITIVES.
THAT IS WHAT THE MAJORITY
OPINION IN WARDLOW SAYS.
THAT THEY'RE FUGITIVES.

>> THAT IS CORRECT.

BUT THEY'RE NOT CRIMINALIZING.

>> IN A HIGH-CRIME AREA AS A
FUGITIVE IS THE WAY SUPREME
COURT HAS CHARACTERIZED IT.

>> FOR THE PURPOSES OF
REASONABLE SUSPICION.

BUT NOT RESISTANCE.

WHAT IT IS, IT'S A FACTOR.

IT IS THEIR REACTION.

IN FACT THEY TALK ABOUT HUMAN
NATURE.

THEY TALK ABOUT REACTION OF A
HUMAN BEING IN A SITUATION.

AND LAW ENFORCEMENT OFFICER CAN
CONSIDER THAT.

>> IF THE OFFICER, FOR WHATEVER
REASON, NEVER ACTUALLY SAID
STOP.

>> YEAH.

>> THEN THERE IS NO RESISTANCE.

>> THERE WAS NO RESISTANCE,
YOUR HONOR.

>> AND AGAIN, IF --

>> BUT HE IS CHASING HIM.

>> IF HE IS CHASING HIM BUT
DOESN'T GIVE HIM A COMMAND --

>> AFTER HIM, CAR AFTER HIM OR

WHATEVER IT IS BUT NEVER SAYS

STOP?

>> A DEFENDANT IS NOT CHARGED

WITH BEING A MIND READER, YOUR

HONOR, BUT IS CHARGED WITH

FOLLOWING THE LAW WHEN GIVEN A

LAWFUL ORDER.

>> IF HE IS NOT A MIND READER,

THEN HOW DOES THE DEFENDANT

KNOW HE IS IN A HIGH-CRIME AREA

AND, WHEN HE IS TAKING FLIGHT?

>> THE DEFENDANT DOESN'T HAVE

TO KNOW.

THE LAW ENFORCEMENT OFFICER HAS

TO KNOW.

BECAUSE IT IS HIS LEGAL DUTY

THAT IS TRIGGERED.

WHAT THE DEFENDANT HAS TO KNOW

THAT A LAW ENFORCEMENT OFFICER

GAVE HIM A LEGAL COMMAND.

GAVE HIM A COMMAND.

LATER YOU CAN CHALLENGE THE

LEGALITY OF IT.

>> IF IT WAS WHEREVER JUDGE

ALTERBURN SAYS THE OTHER AREA

IS, NICER AREA, IT WOULDN'T BE

A LAWFUL COMMAND IN UPPER CLASS

AREA?

>> WOULD GO OUT ON MOTION TO

SUPPRESS OR MOTION TO DISMISS.

>> WOULDN'T THAT SIT ON WHETHER
IT WAS HIGH-CRIME AREA?

INSTANCE JUSTICE LABARGA GAVE
OF MULTIPLE BURGLARIES, VERY
NOT NECESSARILY IMPROBABLE
CIRCUMSTANCE WHERE THERE ARE
SOME --

>> I AGREE.

>> VERY NICE HIGH-CRIME AREAS
THAT OCCUR.

UNFORTUNATELY TO THE RESIDENTS
WHO LIVE THERE THE SAME AS
OTHER PLACES.

>> THE SAME RULE WOULD APPLY.

>> SAME CIRCUMSTANCES COULD
APPLY --

>> NO MATTER WHERE.

WHICH IS WHY I MADE THE
DISTINCTION.

THAT IT DOESN'T MATTER WHO
LIVES THERE.

IT MATTERS WHO IS THERE.

AND WHAT THEY'RE DOING AT THAT
POINT IN TIME.

IT'S THE LOCATION THAT IS UNDER
SCRUTINY BY THE POLICE OFFICER.

IT'S THE LOCATION THAT THE

OFFICER CAN RELY UPON AS PART
OF WHAT HE CHOOSES TO DO.

HE'S THERE.

HE'S IN THE MOMENT.

SEES WHAT SEES.

THAT CAN NOW BE REVIEWED AT THE
TRIAL COURT.

THEY WILL FILTER THAT
INFORMATION.

THE RESOURCES ARE THERE TO
QUESTION THAT INFORMATION
THAT'S NOT HERE BEFORE THIS
COURT AND WAS NOT BEFORE THE
SECOND DISTRICT COURT OF
APPEAL.

THAT'S WHAT I'M SAYING.

THAT'S WHY I'M SAYING FLIGHT
ALONE IS NOT CRIMINALIZED HERE.

IT IS AT THE POINT THE LAW
ENFORCEMENT OFFICER GAVE THE
COMMAND.

A CHOICE WAS MADE AT THAT
POINT.

IT WAS THE WRONG CHOICE FOR
THIS MAN.

AND THAT IS AN UNFORTUNATE
THING BUT IT IS THE LAW AND WE
WOULD ASK YOU TO UPHOLD IT.

THANK YOU.

>> MR.^BERNSTEIN.

>> IF THIS COURT DOES UPHOLD
THE DECISION BELOW, THEN, AS
JUDGE ALTENBERG POINTED OUT
BELOW IT WOULD ALLOW OFFICERS
TO ARREST PEOPLE AT WILL BY
THEM YELLING THEM TO STOP.
YOU WOULD FOCUS ON THE ORDER TO
STOP.

>> AGAIN THE RUNNING DOESN'T
AUTHORIZE AN ARREST.

>> WELL THE STATE IS ARGUING
THAT IT DOES.

>> NO I DON'T THINK SO.

I DON'T HEAR THAT AT ALL.

I HEAR THE STATE SAYING IS
THAT, WARDLOW BECOMES
OPERATIVE.

I THINK I HEARD YOU SAY THE
SAME THING WHEN THEY START
RUNNING WHICH GIVES YOU
AUTHORIZATION FOR A TERRY STOP.
AND THEN, AN ARREST IS
SOMETHING DIFFERENT THAN THAT.

>> RIGHT, RIGHT.

>> IT ONLY AFTER THAT LAWFUL
ORDER TO STOP, MR.^TERRY, STOP.
THAT MR.^TERRY KEPT ON WALKING

DOWN THE STREET OR RUNNING DOWN
THE STREET IN CLEVELAND, OHIO.
THAT'S WHEN IT BECOMES A
CRIMINAL VIOLATION.

THAT'S WHAT THE STATE'S
ARGUING.

>> BUT I THINK TO LOOK AT THAT
IS CIRCULAR YOU HAVE THE FLIGHT
PROVIDE THE BASIS FOR BOTH AT
THE SAME TIME.

TWO STEPS AND YOU HAVE
REASONABLE SUSPICION AND
PROBABLE CAUSE AT THE SAME
TIME.

>> SEE, I'M HAVING A HARD TIME
WITH YOUR ARGUMENT IN GETTING
THERE.

I COULD PROBABLY DEAL WITH SOME
CONSTITUTIONAL ISSUES OR
SOMETHING LIKE THAT.

BUT TO DRAW THIS, I THINK MOST
RESPECTFULLY, PRETTY PHONY
DISTINCTION BETWEEN STARTING TO
RUN OR CONTINUING TO STOPPING
FOR A MOMENT AND CONTINUING
FURTHER, I THINK THOSE ARE
ARTIFICIAL DISTINCTIONS AS
WELL.

>> WELL, IT IS NOT STOPPING FOR

A MOMENT.

IT IS ONCE THEY EFFECTUATE A
STOP AND CONVEY A INTENT TO
DETAIN, THEN YOU RUN AGAIN.

THEN AT THE MOMENT THAT THAT
SECOND FLIGHT BEGINS, --

>> THAT WOULD REQUIRE READING
AN AWFUL LOT INTO A STATUTE
WITH REGARD TO THE ISSUE,
WHETHER IT IS A LAWFUL ORDER AT
THE TIME THE ORDER IS ISSUED,
ISN'T IT?

>> I THINK THE ISSUE IS WHETHER
THE ACTION.
YOU HAVE TO LOOK AT THE ACTION.
AND THE ACTION STARTED BEFORE
THERE WAS A LAWFUL ORDER.

>> THAT IS CIRCULAR.
YOU COME RIGHT BACK TO THAT.

>> I THINK THAT IS THE LEGAL
WAY TO DO IT UNDER TILLMAN, I
UNDERSTAND THAT THIS COURT, I
UNDERSTAND THAT -- BUT I THINK
IF YOU DON'T DO THAT AS I SAID
BEFORE YOU WILL ALLOW OFFICERS
TO GO INTO THESE NEIGHBORHOODS
AND BASICALLY ARREST WHOEVER
THEY WANT WHICH IS WHAT

HAPPENED IN THIS CASE.

BECAUSE HE WASN'T DOING

ANYTHING WRONG?

>> HE DID HAVE, IN THE END HE

HAD AN ARREST WARRANT.

>> RIGHT.

WARDLOW PROVIDES, WARDLOW

PROVIDES THE PARADIGM TO DEAL

WITH THAT.

YOU CAN INVESTIGATE FURTHER.

YOU FIND OUT HE HAS A WARRANT

AND CAN ARREST HIM.

BY QUASHING THE DECISION BELOW

YOU WOULDN'T INTERFERE WITH ANY

INVESTIGATORY DUTIES OF POLICE

AND EVENTUALLY STOP HIM AND

DETERMINE TO INVESTIGATE HIM

FURTHER.

WE WOULD ASK THAT YOU QUASH THE

DECISION BELOW AND ADOPT THE

RULE IN DTB.

THANK YOU.

>> THANK YOU VERY MUCH.

THANK BOTH OF YOU FOR YOUR

ARGUMENTS.

THE COURT WILL NOW BE IN RECESS

UNTIL TOMORROW MORNING.

>> PLEASE RISE.

SUPREME COURT IS NOW ADJOURNED.

