

>> PLEASE RISE.

>> LADIES AND GENTLEMEN, THE  
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> MORNING.

THE NEXT CASE ON OUR DOCKET IS  
THE STATE OF FLORIDA V. BOWERS.

>> MAY IT PLEASE THE COURT,  
COUNSEL, MY NAME IS SARA MACK,  
AND I REPRESENT THE STATE OF  
FLORIDA.

>> LET ME ASK YOU ONE THING.

WE DID SEE, I BELIEVE, THE  
RESPONDENT FILED SOMETHING WITH  
REGARD TO OUR INQUIRY WITH  
REGARD TO WHETHER THIS CASE IS  
APPROPRIATE FOR A SECOND TIER  
CERT, AND I BELIEVE THEY FILED  
SOMETHING.

DID YOU, ALSO, BECAUSE I DON'T  
BELIEVE I'VE SEEN ANYTHING.

>> WE DID NOT, AND THE REASON  
WAS BECAUSE THIS COURT HAS NOT  
REQUESTED SUPPLEMENTAL BRIEFING.

>> I UNDERSTAND.

BUT THE STATE DID FILE  
SOMETHING.

YOU RECEIVED THAT?

>> WHAT?

>> YOU RECEIVED A COPY OF WHAT  
THE STATE FILED?

>> ABSOLUTELY.

>> WHY IS THE STATE NOT CORRECT  
THAT NADER SIMPLY DOES NOT  
SUPPORT WHAT HAPPENED HERE?  
OUTLINE THE FACTS, WE HAD A

COUNTY COURT JUDGE MAKE A  
DECISION WITH REGARD TO  
SUPPRESSION.

>> OKAY.

>> CORRECT?

>> YEAH.

>> AND APPEAL WAS TAKEN TO THE  
CIRCUIT COURT, CORRECT?

>> YEAH.

>> CIRCUIT COURT RENDERED A  
DECISION AND BASED ITS DECISION  
ON THE HOLDING OF ANOTHER  
DISTRICT COURT OF APPEAL OUTSIDE  
OF THAT DISTRICT, CORRECT?

>> CORRECT.

>> HOW CAN A DISTRICT COURT OF  
APPEAL STEP IN IN CERTIORARI,  
NOT AS APPEAL --

>> CORRECT.

>> STEP IN WHEN THAT CIRCUIT  
JUDGE OR JUDGES HAVE FOLLOWED  
THE LAW AS THEY'RE REQUIRED TO  
DO WHICH SAYS, CIRCUIT JUDGES,  
YOU HAVE TO FOLLOW ANOTHER DCA  
IF THERE'S AN OPINION RIGHT ON  
POINT, CORRECT?

>> UH-HUH.

>> SO HOW, HOW CAN YOU STEP IN  
ON CERTIORARI AND SAY, CIRCUIT  
COURT, YOU HAVE ABUSED YOUR  
POWER, YOU HAVE NOT FOLLOWED THE  
LAW, YOU HAVE RENDERED AN  
OPINION THAT'S CONTRARY TO THE  
REQUIREMENTS OF THE LAW?  
HOW, HOW CAN A DCA UNDER THESE  
CIRCUMSTANCES STEP IN?

>> I THINK -- OKAY.

I THINK THERE ARE, OKAY, I'D LIKE TO START OFF WITH ONE POINT, AND THAT IS BASED ON THE ISSUE OF CONFLICT IN THE DISTRICT COURT.

>> YOU DON'T GET TO CONFLICT IF THE DISTRICT COURT SHOULD NOT HAVE TAKEN THIS COURSE ON CERTIORARI.

YOU HAVE TO GET OVER THAT ON INITIAL THRESHOLD.

>> I AGREE, YOUR HONOR.

>> ALL RIGHT.

>> ONCE DISTRICT COURT RULES ON THE ISSUE, IT PREVENTS ANY DISTRICT COURT FROM RULING AGAINST THAT DISTRICT.

>> NO, IT DOESN'T, NOT AT ALL. BECAUSE IF IT'S ON APPEAL OR CERTIFIED BY A COUNTY COURT UP TO THE DCA, THEY CAN THEN -- THEY HAVE JURISDICTION TO DO THAT.

BUT IF THEY DON'T HAVE THE POWER, THEY'RE NOT IN A POSITION TO MAKE ANY RULING BECAUSE THEY SHOULD HAVE NEVER ENTERED OR ALLOWED CERTIARI.

>> THE PROBLEM WOULD HAPPEN IN CASES WHERE ISSUES RARELY COME TO DISTRICT COURTS EXCEPT FOR ON --

>> WELL, NO, AS MOTIONS TO SUPPRESS, THEY GO TO THE CIRCUIT DISTRICT COURT ALL THE TIME.

>> IN THIS PARTICULAR CASE, I  
WOULD AGREE --

>> WELL, TALK ABOUT THIS CASE.

>> IN THIS CASE, YES, I DO  
AGREE.  
BECAUSE OF A MOTION TO SUPPRESS,  
THEY OFTEN DO.  
BUT IN OTHER CASES SUCH AS THE  
NADER CASE, THAT'S AN  
ADMINISTRATIVE LAW CASE.  
OFTEN TIMES THOSE CASES DON'T  
GET TO THE DISTRICT COURT EXCEPT  
THROUGH SECOND TIER CERTIORARI.

>> BUT THEY CAN BE CERTIFIED.  
IS THERE A RULE OF COURT OF  
PROCEDURE THAT COUNTY COURTS --  
THERE'S A REAL PROBLEM AREA THAT  
NEEDS TO BE ADDRESSED, THEY CAN  
CERTIFY IT UP TO THE DCA, RIGHT?

>> THEY ABSOLUTELY CAN.  
THE QUESTION, THOUGH, IS DOES  
THE DISTRICT COURT ITSELF HAVE  
ANY REMEDY?  
IF THE QUESTION IS NEVER  
CERTIFIED, THAT WOULD MEAN THERE  
WOULD BE A CASE OUT THERE, AND  
THE DISTRICT COURT WOULD NEVER  
HAVE ANY AUTONOMY --

>> IF SOMEONE APPEALS THE CASE,  
IT'S WITHIN THE JURISDICTION OF  
THAT DISTRICT COURT TO HEAR THE  
CASE, THEY COULD SAY IT'S IN  
CONFLICT, BUT THEY CAN'T CREATE  
CONFLICT.

IS THERE A CASE THAT HOLDS THAT?

>> WELL, PARDO ITSELF WAS.

>> WHAT DOES IT SAY?

>> IT SAYS TWO DISTRICT COURTS  
CAN CONFLICT WITH EACH OTHER.

>> RIGHT.

WHAT DOES IT SAY ABOUT CIRCUIT  
COURTS?

>> THAT THE CIRCUIT COURT HAD TO  
FOLLOW PRECEDENT.

BUT PARDO WAS A --

>> WELL, IF THAT'S THE CASE,  
THEN THE EXCEPTION CONSUMES THE  
RULE BECAUSE THEN A DCA ANYTIME  
THEY WANT TO TAKE A CASE ON CERT  
BECAUSE THEY DISAGREE WITH  
ANOTHER DISTRICT COURT, THEY CAN  
TAKE THE CASE ON CERTIORARI  
WHETHER IT'S IN CONFORMANCE WITH  
IVY OR A LEGION OF CASES,  
PROBABLY TEN.

>> WELL, I THINK --

>> THAT'S WHAT WOULD HAPPEN,  
CORRECT?

>> YOUR HONOR, I THINK THEY  
STILL HAVE TO FOLLOW THE VERY  
STRICT VIOLATION OF A CLEARLY --

>> WELL, THERE IS NO VIOLATION  
IF ANOTHER DISTRICT COURT HAS  
ALREADY RULED ON THE POINT OF  
LAW, IS IT?

>> WELL, YOU STILL HAVE TO  
FIND --

>> YOU JUST DISAGREE WITH IT.

>> NO, IT'S NOT JUST A  
DISAGREEMENT.

YOU STILL HAVE TO FIND IT'S A  
VIOLATION OF A

CLEARLY-ESTABLISHED PRINCIPLE OF LAW.

>> HOW CAN IT BE ESTABLISHED AS A CLEARLY-ESTABLISHED PRINCIPLE OF LAW WHEN THE ONLY LAW ON IT IS ANOTHER WAY, ANOTHER DISTRICT COURT HAS DECIDED IT DIFFERENTLY?

>> YOU WOULD HAVE TO DO THAT THROUGH ANOTHER MECHANISM, THROUGH A STATUTE, THROUGH CONSTITUTION, THROUGH, THERE HAS, THAT IS THE ONLY CASE LAW ON POINT IS THAT STATUTE, OR THAT, SORRY, THAT CASE LAW, THAT WOULD BE, IN NADER, IN PARDO, THERE WERE STATUTES, THERE WERE RULES, THERE WERE CONSTITUTION --

>> CASE LAW ALSO.

>> THERE WAS A CASE LAW BUT THE CASE LAW WAS NOT THE ONLY PIVOTAL THING IN THE CASE.

>> WHAT CASE SAYS IT HAS TO BE ONLY PIVOTAL THING IN A CASE?

>> THAT SAYS, TO BE A DEPARTURE OR CAN NOT BE --

>> YEAH.

>> THIS CASE, IT WAS ALLSTATE, THE ALLSTATE-IVEY CASE I CAN USE CONSTITUTION, CASE LAW, RULES AND STATUTES TO DETERMINE WHAT IS --

>> THE RULE HAS NEVER BEEN INTERPRETED OR THE STATUTE HAS NEVER BEEN INTERPRETED.

THAT'S NOT WHAT WE HAVE HERE.

WE HAVE, WE HAVE ADDITIONAL  
LAW, LET'S TALK ABOUT YOUR  
CASE.

WE HAVE ADDITIONAL LAW THAT WAS  
TO THE CONTRARY.

YOU ADMIT THAT?

>> CORRECT.

>> AND THE DISTRICT COURT  
DISAGREED WITH THAT RESULT.  
AND SAID NO, THAT'S NOT WHAT  
THE LAW OUGHT TO BE.

>> CORRECT.

>> SO THAT'S WHAT I'M SAYING, WE  
HAVE VIOLATED THE STRUCTURE OF  
FLORIDA LAW.

IF WE ARE GOING TO GO THAT  
DIRECTION WE NEED TO CLEARLY  
SAY THE CIRCUIT COURT APPELLATE  
POSTURE IS NOT THE DESIGNED END  
OF THE CASE.

THAT YOU HAVE TWO APPEALS.  
YOU ALSO HAVE AN APPEAL TO THE  
DCA.

>> I THINK, THE CONCERN IS THAT  
ONE, THAT YOU'RE LEAVING  
EVERYTHING UP TO A CIRCUIT  
COURT TO CERTIFY A QUESTION.

>> CIRCUIT COURTS DON'T HAVE A  
POWER TO CERTIFY A QUESTION.

>> TO THE DISTRICT COURT, IF  
THEY'RE --

>> THEY DON'T, CIRCUIT COURTS  
DON'T HAVE POWER TO CERTIFY?  
WHAT RULE SAYS THE CIRCUIT  
COURT CAN CERTIFY A QUESTION?

>> UNDER THE RULE, CAN'T THEY  
CERTIFY, I BELIEVE THEY CAN  
CERTIFY.

>> COUNTY.

>> COUNTY COURT.

I APOLOGIZE.

>> YOU'RE THE STATE, HERE.

>> YES.

>> AND I JUST WANT TO MAKE SURE  
OF SOMETHING.

YOU DID FILE A NOTICE OF  
SUPPLEMENTAL AUTHORITY?

>> I DID.

>> I THINK YOU SAID, THAT YOU  
DIDN'T THINK, SO YOU DID FILE,  
YOU'RE THE ONE THAT FILED, WITH  
PARDO, SCHWARTZ, FPL VERSUS  
DANIA?

OKAY. IN THIS CASE YOU REALLY  
WANT US  
TO QUASH THE SECOND DISTRICT?

>> I DO.

>> OKAY. SO, AND YOU, IF IT  
COULD BE QUASHED ON THE  
BASIS THAT CERT WAS  
IMPROPER ON WHAT JUSTICE LEWIS  
IS SAYING OR COULD BE QUASHED  
ON THE CERTIFIED CONFLICT UNDER  
YOUR POSITION THAT THE FELLOW  
OFFICER RULE WAS, IS NOT AS  
SECOND DISTRICT SAYS BUT AS THE  
FOURTH DISTRICT WHICH IS PRETTY  
CRITICAL ISSUE OF LAW.

IN THE OTHER CASE, NOT BOWERS,  
THE NADER CASE, THAT CAME UP  
FROM A, AND THAT'S I THINK WE

HAVE, WE'RE NOT ORAL ARGUMENT  
BUT IN THAT CASE THE STATE  
LIKES WHAT THE APPELLATE COURT  
DID, CORRECT?

YOU'RE ARGUING IN THAT CASE I  
GUESS, AND I HAVEN'T --

THERE'S NO WAY FOR THERE TO BE  
A CERTIFICATION BECAUSE THAT  
DOESN'T COME TO THE COUNTY  
COURT?

THAT WENT ADMINISTRATIVE TO,  
CIRCUIT COURT UP TO THE  
APPELLATE COURT?

>> CORRECT.

>> BUT IT DOES STRIKE ME, I  
MEAN THERE'S TWO WAYS TO LOOK  
AT THIS BECAUSE WE STILL HAVE  
TO GET, WE RESOLVE THE  
CERTIFIED CONFLICT ISSUE, THAT  
WITH PARDO AND WITH COMBS AND  
WITH OUR PRECEDENT THAT WE  
REALLY DIDN'T ENVISION A  
SITUATION WHEN ENUNCIATING THE  
LIMITED SCOPE OF CERT REVIEW  
THAT A CIRCUIT COURT IS NOT  
FUNCTIONING EXACTLY LIKE AN  
APPELLATE COURT WHEN THERE'S  
PRECEDENT FROM ANOTHER DISTRICT  
AND THAT'S WHAT JUDGE ALTENBERG  
TALKED ABOUT IN BOWERS.

THE CONCERN THAT THERE IS  
REALLY A LIMITATION WHAT COULD  
BE REVIEWED.

HERE, FOR EXAMPLE, IF MISSION  
BOWERS, WANTED TO ARGUE THAT  
THE CASE OUT OF THE FOURTH

DISTRICT WAS INCORRECTLY  
DECIDED, A NORMAL, SHE REALLY  
DOESN'T HAVE THAT ABILITY TO DO  
THAT RIGHT?

BECAUSE THE COUNTY COURT HAS TO  
FOLLOW FERRER AND THE CIRCUIT  
COURT HAS TO FOLLOW FERRER.

>> CORRECT.

>> SO IT SEEMS TO ME AS I  
LOOKED AT ALL THESE CASES AND  
COMBS WAS WHERE ONE WE EXPANDED  
CERT, WHERE A CIRCUIT COURT CAN  
NOT DECIDE AN ISSUE OR A DEFENDANT  
IS PREVENTED FROM ARGUING THAT  
ANOTHER DISTRICT IS WRONG, HOW  
WOULD YOU FRAME THAT SCOPE OF  
CERT IN THAT SITUATION  
WHERE THERE IS CLEAR  
DISAGREEMENT WITH THE  
PRINCIPLE?

AND THE CIRCUIT COURT AGAIN  
CAN'T CERTIFY THE QUESTION.  
SO HOW WOULD YOU FRAME A NARROW  
EXCEPTION THAT SAYS, REALLY  
WHEN THERE'S A, WHEN THE  
CIRCUIT COURT IS BOUND TO  
FOLLOW A SEPARATE CIRCUIT, A  
SEPARATE DISTRICT, THE DEFENDANT  
OR THE STATE  
IS PRECLUDED FROM BEING ABLE TO  
ARGUE SOMETHING IS DECIDED  
WRONGLY IN ANOTHER DISTRICT AND  
IT AFFECTS SUBSTANTIAL RIGHTS?

>> I THINK THAT'S, YOU KNOW  
THAT IS WHAT JUDGE ALTENBERG IS  
GETTING AT IN NADER.

THE COURT'S POSITION TO BE  
CONFLICTED.

>> YOU NEVER ARGUED IN THIS  
CASE THAT THE SECOND DISTRICT  
WAS WRONG BECAUSE IT DIDN'T  
MEET THE CIRCUMSTANCES, DID NOT  
FIT THE REQUIREMENTS FOR CERT?

>> NO.

>> AND YOU DIDN'T ARGUE THAT?  
DID YOU ARGUE THAT IN THE  
SECOND DISTRICT?

>> NO.

>> YOU CERTAINLY HAVE NOT  
ARGUED THAT IN THIS COURT, HAVE  
YOU?

>> NO, WE HAVE NOT.

>> IF WE REVERSED ON THAT  
BASIS, WE WOULD BE REVERSING ON  
THE BASIS OF AN ARGUMENT THAT  
HAS NOT BEEN PRESENTED BY THE  
PARTIES, CORRECT?

>> THAT IS CORRECT.

>> CAN YOU CONFER JURISDICTION  
ON THE COURT BY NOT OBJECTING  
TO JURISDICTION?

>> CAN YOU CONFER JURISDICTION  
ON A COURT, I THINK I'M  
CONFUSED, I APOLOGIZE.

>> ON JURISDICTION.

>> THAT IS CORRECT, YOUR HONOR.  
YOU CAN NOT CONFER  
JURISDICTION.

YOU ARE CORRECT.

>> IS THERE ANOTHER BASIS HERE  
FOR CERT?

I WAS LOOKING AT THE CASE OF

FLORIDA POWER & LIGHT VERSUS DANIA AND IT SEEMS TO ME THAT WHAT THE CIRCUIT COURT DID IS, IT TOOK AND REWEIGHED EVIDENCE THAT THE COUNTY COURT HAD ALREADY LOOKED AT AND SAID, WE LOOK AT THAT EVIDENCE THAT WAS PRESENTED, THE COUNTY COURT ALLOWED TO FELLOW OFFICER TO TESTIFY, AND WE DON'T THINK, I DON'T THINK AS A COUNTY JUDGE THAT THAT EVIDENCE IS SUFFICIENT AND THE, THE APPELLATE, THE CIRCUIT COURT SAYS NO, I THINK THAT EVIDENCE IS SUFFICIENT.

DOESN'T THAT VIOLATE THE REWEIGHING OF THE EVIDENCE? THAT A CIRCUIT COURT IS NOT ALLOWED TO DO IN JUST LIKE AN APPELLATE COURT CAN'T REWEIGH THE EVIDENCE?

>> SUFFICIENCY AND CREDIBILITY ARE TWO, EXCUSE ME, TWO SEPARATE THINGS.

BUT THE FELLOW OFFICER RULE DOES, IT HELPS CREATE SUFFICIENT EVIDENCE.

CREDIBILITY AND WEIGHING OF EVIDENCE IS SOMETHING ELSE. THE TRIAL COURT COULD HAVE DETERMINED THAT HE DID NOT FIND THE OFFICERS CREDIBLE BUT THE, WHAT THE OFFICER TESTIFIED TO WAS SUFFICIENT, BECAUSE HE IS TESTIFYING TO WHETHER OR NOT

THE STOP WAS A VALID STOP.  
WHETHER OR NOT SHE ACTUALLY  
WENT INTO THE INTERSECTION AND  
VIOLATED --

>> I THOUGHT THE CIRCUIT --  
COUNTY COURT FOUND BASED ON  
EVEN THAT, THERE WAS NOT  
PROBABLE CAUSE TO ARREST THE  
DEFENDANT?

>> HE DOESN'T ACTUALLY STATE  
THAT.

THE STATE ARGUES THAT IS NOT  
WHAT HE FOUND.

WHAT HE FINDS IS IF THE  
OFFICER IS NOT, ONLY ACTUAL  
FINDING HE MAKES THAT THE  
OFFICER IS NOT THERE,  
HE IS GOING TO GRANT  
THE SUPPRESSION MOTION.

>> HE ALLOWS THE TESTIMONY  
THOUGH.

>> HE ALLOWS THE TESTIMONY,  
CORRECT.

>> THE TESTIMONY CAME IN.

>> THE TESTIMONY CAME IN.

THE STATE WOULD SAY THAT, THAT  
THAT WAS MORE OF A SUFFICIENCY  
DETERMINATION, NOT A  
CREDIBILITY.

HE DIDN'T FIND THAT HE WAS NOT  
A CREDIBLE WITNESS.

BUT HE FOUND THAT WASN'T  
SUFFICIENT.

IN FACT THE FELLOW OFFICER RULE  
FINDS THAT IS SUFFICIENT  
TESTIMONY BECAUSE HE TESTIFIED

TO THE FACT SHE DID IN FACT GO  
INTO THE INTERSECTION IN  
VIOLATION OF THE STATUTE.

>> RESPECTFULLY --

>> DOESN'T NECESSARILY MADE IT  
SUFFICIENT, DOES IT?

IT SIMPLY MEANS WE'LL ACCEPT  
THE EVIDENCE BUT THAT DOES NOT  
NECESSARILY MEAN THAT WHATEVER  
EVIDENCE THAT OFFICER GAVE IS  
SUFFICIENT TO DEMONSTRATE  
THERE WAS A PROPER STOP.

THERE IS A DIFFERENCE BETWEEN  
ACCEPTING EVIDENCE AND THEN  
FINDING THE EVIDENCE SUFFICIENT  
TO GET TO THE LEVEL OF WHETHER  
IT WAS, THE STOP WAS CORRECT.  
ISN'T THERE A DIFFERENCE THERE?

>> IF YOU'RE DOING A REASONABLE  
SUSPICION, PROBABLE CAUSE  
DETERMINATION.

>> UNDER A, UNDER A, THAT  
TYPE, BUT THIS IS A PROBABLE  
CAUSE FOR A STOP UNDER A, UNDER  
A TRAFFIC VIOLATION.

>> RIGHT.

>> THE TRIAL COURT, I'M  
CONCERNED ABOUT THE FACT THAT  
THE TESTIMONY OF THE OFFICER  
DID NOT PROVIDE SUFFICIENT  
DETAIL WITH WHAT ABOUT WHAT THE  
OTHER OFFICER HEARD.

IT WASN'T DETAILED ENOUGH.

WHOEVER WAS TESTIFYING DIDN'T  
KNOW ENOUGH ABOUT IT.

>> THE TESTIMONY THAT WAS,

WHILE THE STATE WOULD SAY THAT THE TESTIMONY THAT WAS PROVIDED DID HAVE ENOUGH DETAIL.

ALL THAT --

>> ALL THEY NEED TO SAY SHE WENT INTO THE INTERSECTION AND THAT WAS SUFFICIENT.

>> ALL I'M SAYING UNDER OUR SYSTEM OF LAW, IT IS FOR THE TRIAL COURT TO FINDER OF FACT TO DECIDE WHETHER THERE IS ENOUGH CREDIBLE EVIDENCE TO FIND PROBABLE CAUSE.

WHAT THE CIRCUIT COURT DID IS REWEIGHED THAT EVIDENCE AND CAME TO A DIFFERENT CONCLUSION.

MY VIEW WOULD BE, JUST ALTERNATIVE, THAT UNDER FLORIDA POWER & LIGHT VERSUS DANIA, THE CIRCUIT COURT DEPARTED FROM ESSENTIAL PRINCIPLES OF LAW BY REWEIGHING EVIDENCE.

I WAS ON THE DISTRICT COURT WHEN DANIA, SO I'M FAMILIAR WITH THAT CASE, ON THIS CONFLICT ISSUE THOUGH AND I KNOW YOUR REBUTTAL, PROBABLY WANT TO GET TO THAT, I DON'T SEE HOW THE FELLOW OFFICER RULE IS PROPERLY APPLIED AS THE FOURTH DISTRICT HAS BEEN INTERPRETING IT.

I THINK, THIS IS A HUGE QUESTION.

IT WAS NOT EVER MEANT TO BE A RULE OF EVIDENCE AS JUDGE

FULLMER SAYS BUT IT WAS TO HELP PUT TOGETHER WHEN YOU HAVE AN INVESTIGATION IN THE FIELD, YOU KNOW OFFICERS OUGHT TO BE ABLE TO RELY ON OFFICERS BUT NOT TO ALLOW HEARSAY EVIDENCE THAT CAN'T BE CROSS-EXAMINED INTO A SUPPRESSION HEARING.

WHAT'S, I'M SURE YOU WANT TO AT, WE DO REACH THE CONFLICT ISSUE.

>> YES.

>> THE MERITS OF THAT ISSUE.

>> AND I THINK, THE, THE ACTUAL, AS TO THE FELLOW OFFICER RULE, THE FELLOW OFFICER RULE IS AN ISSUE OF PROBABLE CAUSE.

DEVELOPING PROBABLE CAUSE BETWEEN TWO OFFICERS.

THE PROBLEM, AND THE REAL CONFLICT BETWEEN THESE TWO CASES IS WHAT EVIDENCE, AND I DON'T MEAN EVIDENCE IN WHAT GOES INTO THE HEARING BUT WHAT A COURT ACTUALLY LOOKS AT WHEN THEY'RE DETERMINING WHAT, WHEN TWO OFFICERS ARE COMMUNICATING AND WHAT THEY CAN LOOK AT.

THE PROBLEM WITH WHAT THE SECOND DISTRICT DID, THEY STOPPED LOOKING AT THE COMMUNICATION BASED ON WHEN THE MOTION TO SUPPRESS WAS FILED.

IF THE, BECAUSE THE MOTION TO SUPPRESS WAS FILED AT THE

ACTUAL STOP, THEY STOPPED  
LOOKING AT ANY COMMUNICATION  
THAT HAPPENED AFTER THAT.

INSTEAD OF LOOKING AT WHOLE --

>> -- A DEFENDANT GOING TO  
CROSS-EXAMINE AN OFFICER WHO  
WASN'T THERE ABOUT WHETHER  
THERE WAS PROBABLE CAUSE TO  
STOP THE PERSON TO BEGIN WITH?

HOW, IT IS ESSENTIAL SIXTH  
AMENDMENT VIOLATION.

>> BUT THIS IS, AND THAT GOES  
TO THE HEARSAY ISSUE, BUT THIS  
IS A, THIS IS A, THIS HAPPENS  
IN EVERY SITUATION WITH THE  
FELLOW OFFICER RULE.

WHENEVER A FELLOW OFFICER COMES  
IN TO TESTIFY TO ANYTHING THAT  
WAS COMMUNICATED BY SOME OR THE  
PERSON.

THE DEFENDANT NEVER --

>> THE, THE ACT THAT IS BEING  
CHALLENGED WAS AN ACT THAT WAS  
DONE BY ANOTHER LAW ENFORCEMENT  
OFFICER BEFORE THIS OFFICER WAS  
EVER ON THE SCENE.

>> CORRECT.

>> THAT SEEMS TO DISTINGUISH  
THIS FROM THE TYPICAL FELLOW  
OFFICER CIRCUMSTANCE WHERE YOU  
HAVE AN OFFICER WHO RELIES ON  
THINGS THAT HAVE BEEN TOLD HIM  
AND EFFECTS A STOP OR AN ARREST  
BASED ON THAT INFORMATION.  
SO THAT INFORMATION HAS BEEN  
CONVEYED TO HIM IN HIS MIND IS

PART OF WHAT GIVES HIM PROBABLE  
CAUSE TO UNDERTAKE THE ACT,  
WHICH IS CHALLENGED.

NOW, AND OBVIOUSLY HE CAN SAY  
WHAT HE HAD BEEN TOLD THAT WAS  
RELEVANT TO WHETHER HE HAD  
PROBABLE CAUSE.

HERE, YOU'RE KIND OF GOING,  
YOU'RE BRINGING IN SOMEBODY  
THAT REALLY WAS A STRANGER TO  
THE, THAT PROBABLE CAUSE  
DETERMINATION THAT WAS MADE BY  
THE OFFICER WHO EFFECTED THE  
STOP.

>> WELL, I THINK, THE REASON  
HE'S NOT THE STRANGER IS  
BECAUSE, IT'S THE WHOLE  
INVESTIGATION ITSELF.

IT DOESN'T, THE INVESTIGATION  
ENDS JUST BECAUSE --

>> ONE OF THE POINTS YOU MADE  
IF WE ADOPTED THE VIEW OF THE  
SECOND DISTRICT THAT WE WOULD,  
IN EFFECT, INTERFERE WITH THE  
WAY THESE INVESTIGATIONS ARE  
CONDUCTED.

THAT'S NOT CORRECT.

THIS IS NOT ABOUT THE WAY THE  
INVESTIGATION IS CONDUCTED.

IT IS ABOUT WHO HAS TO SHOW UP  
IN COURT AT THE SUPPRESSION  
HEARING, ISN'T THAT CORRECT?

>> IT'S ABOUT BOTH BECAUSE IT'S  
ABOUT THE REALITY OF HOW THESE  
INVESTIGATIONS ACTUALLY OCCUR  
OUT IN THE FIELD.

THESE OFFICERS ARE OFTEN  
COMMUNICATING WITH INDIVIDUALS,  
WHETHER IT BE OTHER OFFICERS,  
CONFIDENTIAL INFORMANTS,  
UNKNOWN TIPSTERS --

>> THE STOP, WHAT DID THE  
OFFICER WHO TESTIFIED HAVE TO  
DO WITH THE STOP?

>> THE OFFICER WHO TESTIFIED  
WAS NOT THERE AT THE STOP.

>> RIGHT.

SO HIS INFORMATION, IS  
INFORMATION THAT HAPPENED  
LATER, CORRECT?

>> IN TERMS OF WHETHER HE WAS  
ACTUALLY THERE?

>> YES.

>> YES.

>> SO HOW, I GUESS THE QUESTION  
IS, HOW IN THE WORLD DO YOU  
HAVE SOMEONE COME IN, AFTER THE  
FACT -- WE NEED SOMEONE WHO HAS  
THE INFORMATION BEFORE THE  
STOP.

>> HE HAD THE INFORMATION.

>> HIS OWN INFORMATION.

>> HE HAD INFORMATION FROM THE  
COMMUNICATION THAT OCCURRED  
BETWEEN THOSE TWO OFFICERS.

>> WHY DIDN'T THE OFFICER WHO  
GOT THE TIP --, I CAN GUESS --

[INAUDIBLE]

HERE'S THE PROBLEM I'M HAVING.  
ARRESTING SOMEBODY IN THIS  
COUNTRY, FROM MY PERSPECTIVE,  
IS STILL A BIG DEAL.

YOU'RE PLACING HANDCUFFS.  
YOU'RE PLACING THEM IN THE BACK  
OF A POLICE CAR.

THIS IS A BIG DEAL.

DON'T YOU THINK THE YOUNG LADY  
WHO WAS ARRESTED HERE SHOULD  
HAVE BEEN ABLE TO CONFRONT THE  
OFFICER WHO ARRESTED HER ON THE  
PROBABLE CAUSE DETERMINATION  
DURING THE MOTION TO SUPPRESS  
HEARING?

>> TWO THINGS.

THE OFFICER WHO ACTUALLY  
ARRESTED HER WAS THE ONE WHO  
TESTIFIED.

>> THE ONE WHO, ONE WHO STOPPED  
HER.

>> THE ONE WHO STOPPED HER --

>> SHE WOULDN'T BE IN JAIL IF  
THE GUY HADN'T STOPPED HER.

>> THE ONE WHO STOPPED HER WAS  
NOT THERE AND HE WORKED THE  
NIGHT SHIFT AND SLEPT IN.

>> THAT IS TOO BAD.

THAT IS PART OF BEING A POLICE  
OFFICER. PART OF THE JOB.

>> I UNDERSTAND.

IT IS NOT ALWAYS BE A GOOD  
REASON.

SOMETIMES THERE IS IT EXCELLENT  
REASON WHY THE OFFICER ISN'T  
THERE THE FACTS ARE THE FACTS.

I CAN'T CHANGE THE FACTS.

BUT, --

>> DON'T YOU SEE THE PROBLEM  
HERE IS, THE OFFICER WHO

ACTUALLY DID THE STOP MAY HAVE SAID, LOOK, I STOPPED HER BECAUSE SHE WAS IN THE INTERSECTION, BUT YOU CAN'T QUESTION HIM ABOUT, WELL HOW FAR WAS THAT CAR, OR, ALL THE DETAILS THAT WENT INTO WHY HE BELIEVED THAT WAS A LEGAL STOP. ALL HE HAS IS THE FINAL INFORMATION THAT THE OFFICER WHO DID THE STOP GAVE HIM. AND HE DOESN'T HAVE ANY OF THE DETAILS.

WHAT THE OFFICER ACTUALLY SAW, IN RELATIONSHIP TO THE STOP. THAT'S THE PROBLEM THAT YOU HAVE WITH THIS KIND OF INFORMATION.

>> AND I DO UNDERSTAND THAT, YOUR HONOR.

THE RIGHT TO CONFRONT AND THE RIGHT TO CROSS-EXAMINE, HE STILL, THE DEFENDANTS STILL HAVE THOSE RIGHTS AT TRIAL. THOSE RIGHTS DON'T JUST GO AWAY.

>> BUT HOW, IF IN FACT, THE OFFICER ISN'T THERE?

>> THE OFFICER WILL BE THERE FOR TRIAL.

THIS IS A PRETRIAL SUPPRESSION HEARING.

WE'RE NOT SAYING --

>> THIS IS CONDITION PRECEDENT TO THE TRIAL?

YOU HAVE TO SATISFY THAT BEFORE

THE TRIAL, DON'T YOU?

IN THE MOTION TO SUPPRESS,  
PROBABLE CAUSE, THE STOP?

>> CONDITION, NOT A CONDITION  
PRESENT.

YOU DON'T --

>> YOU'RE SAYING IT IS OKAY NOT  
TO APPEAR AT A SUPPRESSION  
HEARING BUT THEN YOU APPEAR IN  
COURT AND THAT MAKES IT OKAY?

>> THAT'S NOT WHAT I'M  
SAYING YOUR HONOR.

I'M SAYING THAT IN TERMS OF THE  
RIGHT TO CONFRONT, THE RIGHT TO  
CROSS-EXAMINE ALL OF THOSE ARE  
TRIAL RIGHTS THAT THE DEFENDANT,  
THAT, ALL YOUR WITNESSES, WHEN  
YOU GO TO TRIAL, THAT'S WHEN  
ALL YOUR WITNESSES WILL BE  
THERE.

YOU GET THE RIGHT, WHAT THE  
STATE IS NOT SAYING THAT YOU  
DON'T, WE'RE TAKING THOSE  
RIGHTS AWAY.

>> MISS MACK, YOU'VE GONE OVER  
NOW ABOUT THREE MINUTES.

I REALIZE WE HAVE ENCOURAGED  
YOU TO DO THAT BUT, I WILL GIVE  
YOU A MINUTE TO CONCLUDE LATER.

>> THANK YOU, YOUR HONOR.

>> GOOD MORNING, YOUR HONOR.  
MY NAME IS CHRISTOPHER COSDEN.  
I'M FROM THE WILBUR SMITH LAW  
FIRM IN FORT MYERS.

I REPRESENT MICHELLE BOWERS.

>> WHY DON'T YOU START WITH HER

FINAL STATEMENT WHICH I BELIEVE SHE SAYS IS, YOU DON'T, YOU DON'T HAVE A RIGHT AT THE SUPPRESSION HEARING TO CONFRONT THE PERSON WHO ACTUALLY DID THE STOP BUT YOU WOULD AT TRIAL.

>> ABSOLUTELY WRONG, YOUR HONOR.

IN MANY CASES, PROBABLY MOST CASES WHERE THERE ARE MOTIONS TO SUPPRESS, THE CASE TURNS ON THE MOTION TO SUPPRESS.

THIS CASE IS A PERFECT EXAMPLE.

IF THE EVIDENCE SAYS, THAT AROSE FOLLOWING THE STOP COMES IN, THERE IS PROBABLY NOT GOING TO BE A TRIAL.

THEREFORE, THE TESTIMONY AT THE HEARING ON THE MOTION TO SUPPRESS IS CRITICAL FOR THE DETERMINATION OF THE CASE.

IN THIS CASE, IF THE EVIDENCE, EXCUSE ME, THAT WAS, DEVELOPED AT THE, FOLLOWING THE STOP, WERE TO COME IN, THERE WOULD ALMOST CERTAINLY BE NOT BE A TRIAL.

FOR THOSE OF US WHO TOIL IN THE TRENCHES OF THE TRIAL COURTS, THAT IS EXTREMELY IMPORTANT.

IN THE TRIAL COURTS WE OFTEN SEE JUDGES MISINTERPRET THIS COURT'S OPINION IN LARA VERSUS STATE TO ALLOW ANY HEARSAY AT THE TIME OF A HEARING ON A MOTION TO SUPPRESS.

NOW, THE FACTS IN LARA DO NOT SUPPORT THAT.

WE CAN GO THROUGH THE ANALYSIS IN LARA BUT WHAT OFTEN HAPPENS, AS IN THIS CASE, IS THAT THE STATE FAILS TO DISTINGUISH OUT OF COURT STATEMENTS WHICH MAY BE ADMISSIBLE TO ESTABLISH PROBABLE CAUSE, FROM OTHER OUT OF COURT STATEMENTS.

NOW, TO BE ADMISSIBLE, TO BE OUTSIDE THE HEARSAY RULE, A STATEMENT, AN OUT OF COURT STATEMENT, WOULD HAVE TO HAVE INDEPENDENT EVIDENTIARY SIGNIFICANCE.

FOR EXAMPLE, A PERSON GOES TO THE FRONT DOOR OF A RESIDENCE, KNOCKS.

THE DOOR IS ANSWERED.

A PERSON WITH APPARENT AUTHORITY SAYS, PLEASE COME IN, OR, SAYS, NO, STAY OUT, GO AWAY.

THOSE WORDS, THE WORDS SPOKEN BY THE RESIDENT, HAVE INDEPENDENT EVIDENTIARY SIGNIFICANCE.

THEY ARE OUTSIDE OF THE HEARSAY RULE.

THAT IS ESSENTIALLY WHAT THIS COURT HELD IN LARA.

>> BUT IF YOU'RE A DIFFERENT, NOW I HAVEN'T REALLY LOOKED AT THIS ISSUE IN DEPTH.

HAVE THERE BEEN DIFFERENT RULES

ESTABLISHED AS FAR AS THE  
ADMISSION OF HEARSAY IN  
SUPPRESSION HEARINGS THAT WOULD  
BE DIFFERENT THAN THE RULES OF  
EVIDENCE AT TRIAL?

BECAUSE IN THE EXAMPLE YOU JUST  
GAVE, WHETHER IT'S, A STATEMENT  
THAT'S PART OF THE RES GESTAE,  
MIGHT BE ADMISSIBLE AT TRIAL  
AND SUPPRESSION HEARING.

WHERE HAVE WE HELD THAT PURE  
HEARSAY, WHICH THIS IS, IS  
ADMISSIBLE IN A SUPPRESSION  
HEARING?

>> THIS COURT HAS NOT SO HELD.

>> OKAY. LARA AND THE  
CASES FOLLOWING LARA ARE OFTEN  
MISQUOTED IN THAT HOLDING.  
BUT THIS COURT HAS NOT SO HELD.  
UNFORTUNATELY BACK TO THE TRIAL  
COURTS FOR A MOMENT, THERE ARE  
MANY TRIAL JUDGES IN FLORIDA  
WHO SEEM TO THINK INCORRECTLY  
THAT ANY HEARSAY IS ADMISSIBLE  
AT A HEARING ON A MOTION TO  
SUPPRESS.

FOR THAT REASON I'M, PART OF  
THE REASON I'M HERE IS TO ASK  
THIS COURT TO PLEASE WRITE AN  
OPINION CLARIFYING THAT VERY  
IMPORTANT AND OFTEN  
MISUNDERSTOOD POINT OF LAW.

>> LET'S LOOK AT ISSUE IN YOUR  
CASE.

YOUR CASE TURNED ON THAT THE  
FELLOW OFFICER RULE, WHICH, AT

THE TIME THERE WAS, THERE'S A CASE AND STILL IS, OUT OF THE FOURTH DISTRICT, THAT WOULD SAY THAT THAT EVIDENCE WAS ADMISSIBLE.

NOW, AT, I DON'T KNOW IF WE HAVE A TRANSCRIPT OF THE COUNTY COURT HEARING.

DID YOU ARGUE TO THE COUNTY JUDGE THAT FERRER WAS WRONGLY DECIDED?

>> NO, YOUR HONOR.

THERE IS A TRANSCRIPT OF THE COUNTY COURT HEARING IN THE RECORD.

THE FELLOW OFFICER RULE WAS ONLY MENTIONED VERY BRIEFLY, ONE LINE, BY THE PROSECUTOR IN THE COUNTY COURT.

THERE WAS NO ARGUMENT AT ALL IN THE COUNTY COURT ABOUT THE FELLOW OFFICER RULE.

>> -- ADMISSIBILITY OF THE FELLOW OFFICER'S TESTIMONY IN THE COUNTY COURT?

>> THERE WAS AN OBJECTION TO THE ADMISSIBILITY OF THE OFFICER'S TESTIMONY.

THE TESTIMONY IN THE COUNTY COURT, AND I CAN QUOTE IT EXACTLY, BY THE PROSECUTOR'S QUESTION, WHAT DID OFFICER SUSKOVICH TELL YOU? ANSWER, HE TOLD ME WENT THROUGH A RED LIGHT ON PARKWAY, WESTBOUND. HE ATTEMPTED TO STOP --

[INAUDIBLE]

AND BACKED UP.

THAT WAS THE CHALLENGED  
TESTIMONY.

>> AND WHAT DID YOU CHALLENGE  
IT BASED ON?

>> THE CHALLENGE WAS BASED ON  
AN INABILITY TO CROSS-EXAM  
IN THAT TESTIMONY.

>> ON HEARSAY?

>> ON HEARSAY AND RIGHT TO  
CONFRONTATION.

>> SO YOU DIDN'T SPECIFICALLY,  
AND DID THE STATE THEN SAY,  
WELL, WE HAVE A RIGHT TO DO  
THIS UNDER FERRER?

>> NO, YOUR HONOR THE STATE DID  
NOT ARGUE THAT.

>> BUT THE JUDGE ALLOWED THE  
EVIDENCE IN BUT THEN SAID THE  
EVIDENCE WASN'T SUFFICIENT TO  
FIND PROBABLE CAUSE.

>> THAT'S CORRECT.

THAT IS EXACTLY CORRECT.

>> STATE THEN APPEALS TO THE  
CIRCUIT COURT?

>> CORRECT.

>> WHAT DO THEY RAISE ON APPEAL  
TO -- ARE THERE BRIEFS IN THE  
RECORD AS TO WHAT THE STATE  
ARGUED?

>> I DON'T THINK THE BRIEFS ARE  
IN THE RECORD, YOUR HONOR, BUT  
THE CIRCUIT COURT REVERSED  
BASED ON FERRER.

THE CIRCUIT COURT APPLIED, AND

MISAPPLIED THE FELLOW OFFICER  
RULE.

>> SO THE APPELLATE -- SO THE  
STATE ARGUED THAT FERRER  
REQUIRED SOMETHING THAT --  
BECAUSE, THIS IS WHY THIS WHOLE  
THING IS SCREWED UP BECAUSE  
THAT IS NOT EVEN A BASIS THEN  
THAT WAS, MAYBE PRESERVED BELOW  
BY THE STATE.

>> THAT'S CORRECT, YOUR HONOR.

>> ALL RIGHT.

SO YOU HAVE THEN, THEY TALK  
ABOUT FERRER.

ARE YOU ABLE TO, BEFORE THE  
CIRCUIT COURT SAY, FERRER IS  
WRONGLY DECIDED?

>> NO, YOUR HONOR.

WE HAD NO OPPORTUNITY TO DO  
THAT.

>> WELL, DID YOU TRY TO?

>> NO, YOUR HONOR.

WE HAD NO ORAL ARGUMENT IN THE  
CIRCUIT COURT.

>> DID YOU FILE A BRIEF?

>> YES, YOUR HONOR.

>> DID YOU SAY THAT FERRER WAS  
WRONGLY DECIDED?

>> THE STATE DID NOT ARGUE  
FERRER IN THEIR INITIAL BRIEF  
IN THE CIRCUIT COURT AS I  
RECALL.

I WROTE THE BRIEF IN CIRCUIT  
COURT.

WE DIDN'T ARGUE FERRER.

>> SOMEHOW THE CIRCUIT COURT

COMES UP WITH FERRER?

>> YES.

>> BUT THEY, DID YOU ARGUE IN YOUR BRIEF THE BASIS WAS THE RULING WAS INSUFFICIENT EVIDENCE EVEN ON THE HEARSAY THAT WAS PRESENTED?

>> YES, YOUR HONOR.

>> AND BY THE CIRCUIT COURT -- OKAY, SO THE CIRCUIT COURT RULES AGAINST YOU.

YOU PETITION THE DISTRICT COURT, BASED ON CERT.

DOES YOUR PETITION SAY BASED ON THE DANIA VERSUS FPL, JUST UNDER THAT BASIS THAT THE, WHAT THE CIRCUIT COURT DID WAS REWEIGH THE EVIDENCE?

>> YES, YOUR HONOR, WE DID ARGUE THAT IN THE DISTRICT COURT.

>> THAT'S A BASIS BY ITSELF OF CERT?

>> ABSOLUTELY.

>> OKAY.

THE SECOND BASIS THOUGH IS THAT YOU THEN, I ASSUME ARGUED THAT FERRER, WAS WRONGLY DECIDED?

>> WE DIDN'T ARGUE THAT FERRER WAS WRONGLY DECIDED.

WE ARGUED THAT THE FELLOW OFFICER RULE HAD NO APPLICATION. FELLOW OFFICER RULE GOES TO IMPUTATION.

GOES TO COMMUNICATIONS BETWEEN OFFICERS TO ESTABLISH PROBABLE

CAUSE.

>> SO, DO YOU THINK THERE IS NO CONFLICT THEN>

>> NO, I DO THINK THERE'S A CONFLICT SO FERRER HAS TO BE --

>> SO FERRER HAS TO BE WRONG BECAUSE THE DISTRICT COURT SAID WE'RE RULING DIFFERENTLY THAN FERRER?

>> THAT'S CORRECT, YOUR HONOR. THE DISTRICT COURT, WENT THROUGH THE CIRCUIT COURT OPINION AND STATED, I'M QUOTING FROM THE, DISTRICT COURT'S OPINION HERE, WHILE THESE ARE RECITALS ARE CORRECT STATEMENTS OF LAW REGARDING THE FELLOW OFFICER RULE THE CIRCUIT COURT, AS DID THE FERRER COURT, MISAPPLIED THE RULE.

>> SO FERRER WAS WRONGLY DECIDED?

>> THAT'S CORRECT.

>> WHAT I'M ASKING DID YOU ARGUE THAT IN YOUR BRIEF?

>> YES, YOUR HONOR.

>> YOU'RE SAYING, YOU TWO REASONS YOU COULDN'T HAVE ARGUED IT IN THE CIRCUIT COURT. ONE IS BECAUSE THE CIRCUIT COURT IS BOUND BY PARDO TO APPLY FERRER BUT ALSO ARE YOU TELLING ME IF WE LOOK AT THE BRIEFS WE'LL SEE THAT THE STATE DIDN'T ARGUE FERRER TO THE CIRCUIT COURT?

>> I DON'T BELIEVE THE CIRCUIT COURT BRIEFS ARE IN THIS RECORD, YOUR HONOR.

>> THEY MUST BE SOMEPLACE?

>> I'M SURE THEY CERTAINLY ARE.

>> OKAY.

>> I CAN PROVIDE THEM IF THE COURT WOULD LIKE TO SEE THEM.

>> WELL IT IS ABOUT, SEE WHAT MY CONCERN ABOUT THE SECOND PRONG, IS LET'S ASSUME ALL THROUGHOUT FERRER HAD BEEN YOUR PRIMARY PROBLEM.

SEEMS LIKE YOU HAD ANOTHER BASIS AND YOU CONVINCED THE TRIAL JUDGE THERE WAS NO PROBABLE CAUSE BUT LET'S ASSUME YOU GOT FERRER OUT THERE AND YOU TRY AT EVERY LEVEL TO ARGUE FERRER IS WRONGLY DECIDED.

THE COUNTY COURT AND THE CIRCUIT COURT CAN'T GIVE YOU THAT RELIEF.

SO WHAT I THOUGHT, ASSUMING THAT YOU ARGUED IT THE BASIS FOR CERT WHERE YOU REALLY ARE DENIED THE ABILITY, WITHIN A DISTRICT TO ARGUE A CASE THAT IS CLEARLY WRONGLY DECIDED. THAT'S A DENIAL OF AN IMPORTANT APPELLATE RIGHT THAT I DON'T THINK WE'VE EVER REALLY CONTEMPLATED BEFORE.

SO, --

>> THAT WOULD BE CORRECT, YOUR HONOR. BUT, THAT'S NOT WHAT HAPPENED

IN THIS CASE, UNFORTUNATELY.

THE --

>> WOULD YOU ADDRESS THE ISSUE,  
THE THRESHOLD ISSUE ABOUT  
WHETHER THE SECOND DISTRICT  
NEVER HAD ANY BUSINESS TAKING  
THIS CASE AND BECAUSE OF THAT,  
WE SHOULD REVERSE THE SECOND  
DISTRICT.

>> NO, SIR, I DON'T BELIEVE  
THAT'S CORRECT.

THE SECOND DISTRICT HELD VERY  
CLEARLY AND EXPLICITLY THAT THE  
CIRCUIT COURT APPLIED THE WRONG  
RULE.

THE CIRCUIT COURT APPLIED  
FERRER.

THE CIRCUIT COURT SHOULD NOT  
HAVE APPLIED FERRER BECAUSE THE  
PRINCIPLE OF THE FELLOW  
OFFICER RULE HAS NO APPLICATION  
TO THE FACTS IN THIS CASE.

THAT PUTS THE SECOND, THAT PUTS  
THE SECOND DISTRICT TAKING  
CERTIORARI RIGHT SQUARE IN THE  
MIDDLE OF THE RULE IN HEGS AND  
IVEY.

THE RULE IN HEGS AND IVEY, I'M  
SURE WE'RE ALL AWARE, THAT  
SECOND-TIER CERTIORARI REVIEW  
CAN LOOK WHETHER OR NOT THE  
COURT BELOW APPLIED THE CORRECT  
LAW.

HERE, THE CIRCUIT COURT CLEARLY  
AND EXPLICITLY SAID THAT THE,  
I'M SORRY, THE DISTRICT COURT

CLEARLY AND EXPLICITLY SAID  
THAT THE CIRCUIT COURT HAD  
APPLIED THE WRONG LAW,  
SPECIFICALLY THE FELLOW OFFICER  
RULE.

>> LET ME ASK YOU THIS, HOW CAN  
THAT BE, WHEN THE LAW, THE  
FELLOW OFFICER RULE HAD NOT  
BEEN RULED ON BY THE SECOND?  
WOULD WE AGREE TO THAT?  
THAT THERE WAS NO RULING BY THE  
SECOND DISTRICT AS TO WHETHER  
OR NOT THE FELLOW OFFICER RULE  
AS APPLICABLE IN THESE, IN THIS  
KIND OF SITUATION?

>> NO, YOUR HONOR I WOULD NOT  
AGREE WITH THAT.

>> THE SECOND DISTRICT HAD  
RULED ON THAT SITUATION?

>> PREVIOUSLY? BEFORE THIS CASE?

>> YES.

>> NO, YOUR HONOR.

I DON'T BELIEVE.

>> FROM, THEY HAD NOT.

THE FOURTH DISTRICT HAD IN FACT  
RULED THAT THE FELLOW OFFICER  
RULE WAS APPLICABLE IN THIS  
SITUATION, IS THAT CORRECT?

IN THE, WHAT'S THE CASE THAT  
WE'RE TALKING ABOUT?

>> FERRER.

>> THE FERRER CASE.

>> THAT'S CORRECT.

>> SO HOW DO YOU THEN GET,  
BASED ON PARDO, HOW DO YOU THEN  
GET TO THAT THE CIRCUIT COURT

APPLIED THE INCORRECT LAW WHEN PARDO SAYS, IF YOUR DISTRICT COURT HAS NOT RULED ON THE ISSUE, THAT YOU ARE BOUND BY THE DISTRICT COURT THAT HAS? >> BECAUSE THE CIRCUIT COURT MADE TWO MISTAKES WHEN IT APPLIED THE FELLOW OFFICER RULE.

FIRST OFF, THE FACTS IN THIS CASE DO NOT SUPPORT APPLICATION OF THE FELLOW OFFICER RULE.

SECONDLY, THE CIRCUIT COURT REWEIGHED THE EVIDENCE.

THE CHALLENGED EVIDENCE CAME IN.

>> BUT ISN'T IT BASICALLY THE SAME SITUATION THAT WAS IN FERRER?

IT WAS AN OFFICER WHO DID NOT IN FACT DO THE STOP THAT WAS ALLOWED TO UNDER THE FELLOW OFFICER RULE?

>> YES. THAT IS WHAT HAPPENED IN FERRER.

>> AND THAT'S WHAT HAPPENED HERE.

>> THAT'S WHAT HAPPENED HERE.

>> OKAY. JUST KEEP GOING.

THAT'S ALL RIGHT.

>> THAT'S WHAT HAPPENED HERE.

>> SO THE FACTS ARE IDENTICAL.

>> NOT REALLY, YOUR HONOR.

>> ON THOSE FACTS?

GO AHEAD FINISHING ANSWERING HER QUESTION.

>> IN THE COUNTY COURT HERE,  
THE DEFENDANT OBJECTED TO THE  
TESTIMONY BY THE SECOND  
OFFICER, BY TRACY.

COUNTY COURT OVERRULED THE  
OBJECTION.

AT THE END OF THE HEARING THE  
COUNTY COURT FOUND THAT THE  
STATE HAD NOT MET THEIR BURDEN  
OF PROOF.

THE COUNTY COURT GRANTED THE  
MOTION TO SUPPRESS.

NOW, THE QUESTION PRESENTED TO  
THE APPELLATE COURT SHOULD NOT  
HAVE BEEN --

>> APPELLATE COURT, ARE YOU  
TALKING ABOUT THE CIRCUIT  
COURT.

>> THE CIRCUIT COURT.

>> NOT THE DISTRICT COURT?

>> THAT'S CORRECT.

>> ALL RIGHT.

>> THE QUESTION DIRECTED TO THE  
CIRCUIT COURT WAS NOT BY THE  
STATE, IN THE STATE'S APPEAL,  
WAS NOT WHETHER THE EVIDENCE  
SHOULD HAVE BEEN ADMITTED.

THE EVIDENCE WAS ADMITTED.

THERE WAS NO QUESTION THAT THE  
EVIDENCE CAME IN AND THE STATE  
GOT EVERYTHING THEY WANTED.

THE STATE, FOR OBVIOUS REASONS,  
DIDN'T ARGUE THAT POINT ON  
DIRECT APPEAL.

THE STATE SEEMED TO THINK THAT  
THE CIRCUIT COURT SHOULD

REWEIGH THE EVIDENCE AND COME UP WITH A DIFFERENT RESULT. WELL OF COURSE, THAT'S OUTSIDE OF THE AUTHORITY OF THE CIRCUIT COURT TO DO.

>> SO THEIR ARGUMENT, I WANT TO MAKE SURE I UNDERSTAND YOU CORRECTLY, THE STATE'S ARGUMENT BEFORE THE CIRCUIT COURT ACTING IN ITS APPELLATE CAPACITY WAS THAT THE COUNTY COURT ERRED NOT IN NOT ALLOWING THE FELLOW OFFICER RULE BECAUSE THEY DID, BUT, THAT THEY ERRED IN NOT FINDING THAT EVIDENCE SUFFICIENT?

>> THAT'S CORRECT.

>> AND YOU ARGUED THAT IN YOUR PETITION FOR CERT TO THE SECOND DISTRICT?

>> THAT IS THAT THE CIRCUIT COURT ERRONEOUSLY REWEIGHED THE EVIDENCE?

>> WE DID.

>> SO IF THE FOURTH, IF THE SECOND DISTRICT HAD SAID, WE GRANT CERT BECAUSE THEY IMPROPERLY REWEIGHED THE EVIDENCE, WE WOULDN'T BE HERE AT ALL?

>> THAT'S PROBABLY CORRECT, YOUR HONOR.

>> IF THEY HAD, SO IN ANSWER TO THE QUESTION WHETHER THE FOURTH, THE SECOND DISTRICT HAD JURISDICTION, YOU WOULD ARGUE,

FRIENDLY QUESTION, OBVIOUSLY,  
THAT THEY HAD JURISDICTION  
BECAUSE THERE WAS BASIS FOR  
CERT IN THE REWEIGHING OF THE  
EVIDENCE?

>> YES, SIR, YOUR HONOR.

>> ONCE THEY HAD JURISDICTION  
THE QUESTION WHETHER THEY THEN  
COULD HAVE ADDRESSED A VERY  
IMPORTANT ISSUE, WHICH IS  
MISAPPLICATION OF OUR PRECEDENT  
BY THE FOURTH DISTRICT ON THE  
FELLOW OFFICER RULE WOULD BE  
SOMETHING THEY COULD ADDRESS  
AND CERTIFY CONFLICT WITH?

>> WELL, OF COURSE.

ONCE THE COURT HAS JURISDICTION  
IT CAN ADDRESS ANY ISSUE IN THE  
CASE.

SO, YES.

THE, NOW, TO BE FAIR TO THE  
SECOND DISTRICT, THE SECOND  
DISTRICT EXPLICITLY DID NOT  
REACH THE ISSUE OF REWEIGHING  
THE EVIDENCE.

>> SO THEY DIDN'T DECIDE THE  
ISSUE UPON WHICH THEY HAD  
JURISDICTION.

THEY DECIDED SOME OTHER ISSUE?

>> THAT'S ESSENTIALLY CORRECT,  
YOUR HONOR.

>> THIS CASE IS MESSED UP FROM  
THE GET-GO.

SO IT WAS PRETTY CLEAR.

>> YES, YOUR HONOR, THAT'S  
TRUE.

>> AND FERRER, FERRER SEEMS TO BE IDENTICAL ON THE FACTS TO THIS CASE WHERE YOU HAVE AN OFFICER WHO DOESN'T OBSERVE, DOES NOT OBSERVE THE ALLEGED WRONGFUL ACT THAT PRODUCES THE STOP AND THEN, IT'S AN INTOXICATION ISSUE.

THEN SOMEONE ELSE COMES IN AND DOES THE TESTING AND SAYS, YEAH, YOU'RE DRUNK.

AND THEN THEY USE THE TESTIMONY FOR THE STOP THROUGH THE OFFICER WHO PERFORMS THE TEST. THESE TWO SEEM IDENTICAL. THIS CASE AND FERRER.

>> I'M SURE THAT'S WHY THE SECOND DISTRICT CERTIFIED CONFLICT.

>> I'M SAYING IT IS THE SAME FACTS SO THAT'S WHERE WE'RE GOING TO.

THE QUESTION, SO YOU DO AGREE, AND CONCEDE THAT THE, IT'S NOT, IT'S NOT THE IMPROPER LAW. YOU MAY DISAGREE WITH THAT HOLDING?

>> WELL, NO, YOUR HONOR, I DON'T AGREE WITH THAT.

WHAT THE SECOND DISTRICT DID HERE WAS SAY THE CIRCUIT COURT APPLIED THE WRONG LAW.

THE FELLOW OFFICER RULE.

THE CIRCUIT COURT SHOULD NOT HAVE APPLIED THE FELLOW OFFICER RULE FOR TWO REASONS.

ONE, THE TRIAL, IT WASN'T  
RAISED IN THE TRIAL COURT.  
BUT, THE TRIAL COURT LET THE  
EVIDENCE IN.  
PROBABLY ERRONEOUSLY.  
BUT NEVERTHELESS THE TRIAL  
COURT LET THE EVIDENCE IN.  
THEREFORE THAT WAS NOT  
SOMETHING THAT WAS BROUGHT TO  
THE CIRCUIT COURT TO DECIDE.  
THE CIRCUIT COURT WAS NOT GOING  
TO REVERSE THE COUNTY COURT  
BASED ON THE STATE'S ARGUMENT  
AND SAY THE EVIDENCE SHOULD  
THEN COME IN.

SO, WHAT THE DISTRICT COURT DID  
WAS HOLD THAT THE CIRCUIT COURT  
HAD WRONGLY APPLIED THE FELLOW  
OFFICER RULE.

NOW, --

>> I RESPECTFULLY DON'T  
INTERPRET THE SECOND DECISION  
THAT WAY.

IT IS MY UNDERSTANDING THE  
SECOND DISTRICT SAID THAT THEY,  
THAT THE FOURTH DISTRICT  
MISINTERPRETED THE FELLOW  
OFFICER RULE, NOT THAT THE  
FELLOW OFFICER RULE HAD  
APPLICATION OR DID NOT HAVE  
APPLICATION IN THIS PARTICULAR  
CASE.

>> YOUR HONOR, THE SECOND  
DISTRICT CLEARLY AND EXPLICITLY  
SAID THAT WHILE THE STATEMENTS  
OF THE CIRCUIT COURT REGARDING

THE FELLOW OFFICER RULE WERE  
CORRECT, THE CIRCUIT COURT  
MISAPPLIED THE RULE.

NOW, IF THE CIRCUIT COURT  
APPLIED THE WRONG LAW, THEN --  
>> THAT IS BECAUSE THEY  
DISAGREE WITH FERRER'S  
APPLICATION OF IT, NOT THAT IT  
DOES NOT APPLY.

I MEAN, LET'S BE FAIR ON THE  
READING OF THESE THINGS.

>> I THINK THE HOLDING, YOUR  
HONORS, WAS THAT THE CIRCUIT  
COURT SHOULD NOT HAVE APPLIED  
THE FELLOW OFFICER RULE.

NOW WE CAN DISAGREE ABOUT THAT.

>> I THINK VERY CLEARLY  
DISAGREE ABOUT THAT. I THINK IT  
IS VERY CLEAR THAT THE CIRCUIT  
COURT DID APPLY FERRER AND  
THEY, AND ALL THAT THE SECOND  
DISTRICT DID, THEY DISAGREED  
WITH FERRER'S HOLDING, THAT  
FERRER'S HOLDING WAS INCORRECT,  
NOT AN ISSUE AS TO WHETHER THE  
FELLOW OFFICER RULE DID OR DID  
NOT APPLY BUT THE DISCUSSION  
THAT RULE.

>> WELL THE SECOND DISTRICT  
CERTAINLY AGREED THAT FELLOW,  
CERTAINLY HELD THAT HOLDING IN  
FERRER WAS INCORRECT.  
THAT CERTIFIED CONFLICT.

>> PLAYING SEMANTICAL GAMES,  
PLAYING WORD GAMES, IF THAT IS  
THE WAY WE'RE GOING TO PLAY

THIS, WE'RE ALWAYS GOING TO  
HAVE ANOTHER APPEAL, OH REALLY  
THEY DIDN'T DISAGREE.

THEY JUST DECIDED THE RULE  
DIDN'T APPLY SO THEY CAN GO  
SOME OTHER WAY.

WELL IF THAT'S THE CASE, IF  
FERRER DOES NOT APPLY AND  
FELLOW OFFICER DOES NOT APPLY  
THEN THIS IS ANOTHER APPEAL  
BECAUSE THERE IS NO LAW WHICH  
THEY CAN RULE CONTRARY.

>> I'M NOT SURE THAT I WOULD  
AGREE WITH YOUR --

>> I'M SURE YOU DON'T.

I CAN UNDERSTAND.

>> AT ANY RATE I'M ALMOST OUT  
OF TIME.

>> YOU ACTUALLY ARE OUT OF TIME  
BUT I WILL GIVE YOU ANOTHER  
MINUTE.

>> OH, THANK YOU, YOUR HONOR.

I WOULD ASK THIS COURT TO  
ADDRESS THE LARGER ISSUE OF  
HEARSAY AT HEARINGS ON MOTIONS  
TO SUPPRESS.

ONCE AGAIN, THE HOLDING OF THIS  
COURT IN LARA WAS QUITE  
LIMITED ON THAT POINT.

ONLY OUT OF COURT STATEMENTS  
THAT WOULD SUPPORT A PROBABLE  
CAUSE DETERMINATION WERE, WERE  
RULED TO BE ADMISSIBLE IN  
LAURA.

I WOULD ASK,

WOULD ASK IN LARGER CONTEXT

WHAT LAW APPLIES, WHAT LAW SHOULD BE APPLIED AT HEARINGS ON MOTIONS TO SUPPRESS.

THE EVIDENCE CODE IS THE OBVIOUS, IS THE OBVIOUS ANSWER TO THAT SINCE WE'VE HAD THE EVIDENCE CODE.

IT'S BEEN GENERALLY APPLIED IN FLORIDA TO ALL EVIDENTIARY HEARINGS WITH SOME OBVIOUS EXCEPTIONS.

THERE CERTAINLY SOME STATUTORY EXCEPTIONS TO THE HEARSAY RULE.

THAT'S WHAT I WOULD ASK THE COURT TO, THAT IS HOW I WOULD ASK THE COURT TO RESOLVE THIS CASE.

>> THANK YOU VERY MUCH.

>> THANK YOU, YOUR HONOR.

>> COUNSEL, ONE MINUTE.

>> THANK YOU, YOUR HONOR.

OF JUST BRIEFLY TO QUICKLY ADDRESS HEARSAY AT MOTIONS TO SUPPRESS HEARINGS.

HEARSAY, ALLOWING HEARSAY AT MOTIONS TO SUPPRESS HEARINGS IS A LONG-STANDING PRINCIPLE IN FLORIDA LAW.

THIS GOES FAR BEYOND WHEN THE EVIDENCE CODE WAS ACTUALLY WRITTEN.

IN FACT, THERE'S MANY TREATISES OUT THERE THAT DISCUSS THIS AS FAR AS BACK AS THE 1920s THROUGH THE 1940s.

THERE'S CASE LAW THERE FROM THE

1970s.

>> TALK ABOUT SINCE CRAWFORD.  
DOES THE SIXTH AMENDMENT NOT  
APPLY IN SUPPRESSION HEARINGS?

>> IT DOES NOT, YOUR HONOR.  
THE SIXTH AMENDMENT IS JUST A  
TRIAL RIGHT.

IN CRAWFORD ITSELF IT  
SPECIFICALLY DISCUSSES THAT IT  
IS A TRIAL RIGHT.

>> THE JUDGE ALLOWED IT IN.  
SO THEY ALLOWED HEARSAY IN.  
JUDGE SAID IT WASN'T SUFFICIENT  
TO ESTABLISH PROBABLE CAUSE.  
YOU DISAGREED WITH THAT YOU  
APPEALED IT.

THE CIRCUIT COURT AGREED WITH  
YOU AND THEY PETITIONED ON ONE  
OF THE BASIS BEING THAT THE  
CIRCUIT COURT REWEIGHED THE  
EVIDENCE.

DO YOU AGREE THAT HAPPENED?

>> THAT IS ONE OF THE ISSUES  
THAT WAS RAISED, ABSOLUTELY.  
IT WAS NOT ADDRESSED IN, AND TO  
BE CANDID IN THE DISTRICTS  
OPINION, THEY SPECIFICALLY  
WRITE THEY CHOOSE NOT TO  
ADDRESS THAT ISSUE.

THEY CHOSE TO WRITE JUST ON THE  
FELLOW OFFICER RULE.

THEY SPECIFICALLY ADDRESS THAT  
OPINION.

WE WOULD ASK THE COURT BE  
REVERSED? THANK YOU, YOUR  
HONOR.

>> THANK YOU.