

ALL RISE.  
HEAR YE, HEAR YE, HEAR YE.  
THE SUPREME COURT OF FLORIDA  
IS NOW IN SESSION.  
ALL WHO HAVE CAUSE TO PLEA,  
DRAW NEAR, GIVE ATTENTION,  
AND YOU SHALL BE HEARD.  
GOD SAVE THESE UNITED STATES,  
THE GREAT STATE OF FLORIDA  
AND THIS HONORABLE COURT.  
LADIES AND GENTLEMEN,  
THE SUPREME COURT OF FLORIDA.  
>> WELCOME TO THE FLORIDA  
SUPREME COURT.  
I WOULD LIKE TO ESPECIALLY  
WELCOME TODAY A GROUP OF  
TEACHERS HERE WITH US TODAY FROM  
AROUND THE STATE FROM THE  
TEACHING INSTITUTE AND WE THANK  
YOU FOR BEING HERE.  
OUR FIRST AND ONLY CASE FOR  
TODAY IS MACKEY VERSUS THE STATE  
OF FLORIDA.  
YOU MAY PROCEED.  
>> CHIEF JUSTICE AND MAY IT  
PLEASE THE COURT, MICHAEL DAVIS  
HERE ON BEHALF OF ANTHONY  
MACKEY.  
1 MILLION FLORIDIANS CARRY  
CONCEALED FIREARMS BECAUSE THE  
LEGISLATURE HAS MADE IT LEGAL TO  
DO SO.  
>> MR. DAVIS WE UNDERSTAND THE  
STATUTE THAT ARE APPLICABLE BUT  
COULD YOU EXPLAIN AND HELP US  
UNDERSTAND HOW WE CAN HAVE TERRY  
STOPS WHICH I KNOW YOU ARE  
FAMILIAR WITH, WATCHING SOMEONE  
WALK UP AND DOWN THE SIDEWALK  
AND LOOK INTO A WINDOW THAT IS  
NOT A VIOLATION OF THE LAW, YET  
CANNOT OR COULD NOT ENGAGE A  
CITIZEN WHEN THAT OFFICER SEES A  
WEAPON WHICH WE HAVE TO ACCEPT  
THAT THEY SAW A WEAPON FIREARM  
CONCEALED IN THIS CASE WHICH IS  
A VIOLATION OF THE LAW.  
>> IN THE FACTS IN TERRY WHAT  
YOU HAVE IS OFFICERS OBSERVING  
LOOKING IN THE WINDOW, THEY GO

BACK TO THE WINDOW AND CONFER  
AND THE OFFICER TESTIFIES THAT  
BASED ON HIS EXPERIENCE HE HAD  
REASON TO BELIEVE THAT CRIMINAL  
INTENT WAS EVIDENT.

>> I COULD LOOK IN THAT WINDOW  
100 TIMES.

IT'S NOT A CRIMINAL VIOLATION IS  
IT?

>> NO YOUR HONOR.

>> IS THE CONCEALED WEAPON A  
VIOLATION ON ITS FACE?

>> NO YOUR HONOR.

>> THE STATUTE DOESN'T SAY THAT?

>> THE STATUTE LISTS LICENSURE  
AS AN AFFIRMATIVE DEFENSE BUT  
THE AFFIRMATIVE DEFENSE ASPECT  
OF THE LICENSE REQUIREMENT GOES  
WITH THE TRIAL BURDEN OF PROOF  
AND THE MASSACHUSETTS SUPREME  
COURT EXPLAINS IN MASSACHUSETTS  
V. CONTOUR THAT HAS NOTHING TO  
DO WITH WHAT THE POLICE ARE  
REQUIRED TO DO ON THE STREET.  
IF YOU LOOK AT THE STATUTE ADDS.  
906, SECTION ONE EVERY PERSON  
THAT OBTAINS A LICENSE TO CARRY  
A FIREARM HAS TO KEEP THAT  
LICENSE ON THEIR PERSON AND MUST  
PRESENT IT ON DEMAND.

>> SO IN THE SITUATION THAT  
OFFICER SEES A BULGE AND HE SEES  
SOMETHING STICKING OUT AND NO  
OTHER SUSPICIOUS BEHAVIOR.  
HE GOES OVER TO HIM AT THAT  
POINT UNDER POPPELL, A  
CONSENSUAL ENCOUNTER, CORRECT?

>> YES YOUR HONOR.

>> AND HE ASKS HIM, DOES HE ASK  
HIM DO YOU HAVE A GUN?

>> DO YOU HAVE ANYTHING IN YOUR  
POCKET?

>> THE GUY SAYS NO.

NOW IF HE HAD SAID YES, AND THEN  
IF THE OFFICER THEN ASKED, DO  
YOU HAVE A PERMIT AND IF HE SAID  
NO, AT THAT POINT THERE IS A  
CRIME AND HE CAN ARREST HIM,  
CORRECT?

>> YES YOUR HONOR.

>> I'M TRYING TO FIGURE OUT HOW THE POLICE, SEEING HERE, APPARENTLY THIS POLICEMAN, THE OFFICER, WAS NOT CONCERNED FOR HIS OWN SAFETY AND I WANT TO ASK WHY THE PAT-DOWN WAS OCCURRING. WAS IT A PAT-DOWN TO AN ARREST OR A PAT-DOWN FOR HIS OWN SAFETY?

BUT IF WE WOULD AGREE WITH YOU WHAT WOULD BE THE PERMISSIBLE THING THAT A POLICE OFFICER COULD OR SHOULD DO?

>> THE QUESTION IS ANSWERED FOR US.

UNDER THAT STATUTE JUSTICE ALL A CITIZEN CARRYING A FIREARM NEEDS TO DO IS TO PRODUCE A PERMIT.

>> AND IF HE OR SHE LIKE, IF YOU LEFT IT AT HOME LIKE YOUR LICENSE OR SOMETHING YOU COULD BE ARRESTED AND CHARGED AT THAT POINT?

>> YOU COULD BE BUT WE ALSO KNOW THAT UNDER SUBSECTION ONE THERE IS A CIVIL PENALTY FOR HAVING A LICENSE BUT NOT CARRYING THE LICENSE ON YOUR PERSON. TO PRODUCE UPON DEMAND THE STATUTE SAYS IF YOU DON'T PRODUCE IT AND YOU DO HAVE A LICENSE AND YOUR SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN \$25.

>> SO ARE YOU SAYING THAT THE POLICE WERE ACTING CONTRARY TO THE LEGISLATURES SCHEME IN THIS CASE?

>> EXACTLY YOUR HONOR. THE LEGISLATURE HAS ALREADY ESTABLISHED HOW THE POLICE ENCOUNTER SHOULD OCCUR. THE LEGISLATURE IS AWARE OF THE CONCERNS AND NEEDING TO VERIFY THAT A PERSON HAD A LICENSE.

>> SO UNDER THE STATUTE, LET ME SEE IF I UNDERSTAND IT CORRECTLY.

ANY TIME A POLICE OFFICER SEES A BULGE ON A CITIZEN, ANY CITIZEN,

ANYPLACE AND THEY BELIEVE THAT  
OLDS MIGHT BE A GUN, THE OFFICER  
HAS A RIGHT TO APPROACH THAT  
CITIZEN AND ASK THEM TO SEE A  
PERMIT?

>> YES YOUR HONOR AND THAT IS  
HOW EVERY CONSTITUENT --  
IF THE POLICE DON'T HAVE A  
REASONABLE QUESTION.

>> IF THEY ARE ASKING FOR THE  
PERMIT ISN'T THAT FOR A STOP?

>> NO YOUR HONOR.

THERE IS NO SHOW OF AUTHORITY SO  
THE OFFICER IS ACTUALLY JUST  
WALKING UP TO THE CITIZEN, THE  
CITIZEN ASKING DO YOU HAVE A  
LICENSE AND MAY I SEE YOUR  
LICENSE?

WHAT MAKES IT NOT AN ENCOUNTER  
IS THE OFFICER SAW THE BULGE AND  
IF THE PERSON WERE GETTING INTO  
A CAR THE OFFICER COULD GET INTO  
HIS CAR AND STOP THE CAR TO  
DETERMINE WHETHER HE HAD A  
LICENSE.

>> WASN'T THERE A HANDLE TO THE  
GUN?

IT WASN'T JUST A BULGE.

DIDN'T THE OFFICER SEE A HANDLE?

>> YES YOUR HONOR AND THE ISSUE  
ISN'T WHETHER HE HAD REASONABLE  
SUSPICION THAT HE HAD A FIREARM.  
THE ONLY QUESTION WAS WHETHER HE  
IS REASON TO BELIEVE IT WAS  
ILLEGAL.

>> LET ME, DIRECTLY TO THAT  
POINT, LET ME FOCUS ON THE  
QUESTION THAT THE OFFICER ASKED  
BECAUSE IT STARTS OFF AS A  
CONSENSUAL ENCOUNTER.

IT MAY BE HYPOTHETICAL.

WHAT IF THE OFFICER HAD SAID ARE  
YOU CARRYING A FIREARM AND THE  
DEFENDANT HAD SAID NO?

WOULDN'T THE OFFICER IN THAT  
CIRCUMSTANCE HAVE REASONABLE  
SUSPICION THAT HE HAD BEEN TOLD  
A LIE AND THAT WOULD GIVE HIM A  
REASON TO PAT HIM DOWN BECAUSE  
HE KNOWS HE IS CARRYING A GUN

AND THE INFERENCE WOULD BE QUITE REASONABLE THAT IF THE DEFENDANT LIED ABOUT THAT, THAT MEANS HE DOESN'T HAVE A PERMIT TO HAVE IT.

HE KNOWS HE DOESN'T AND DOESN'T WANT THE OFFICER TO KNOW.

>> UNDOUBTEDLY UNDER THAT SCENARIO THE OFFICER WOULD HAVE REASON TO BELIEVE --

>> WELL BUT OKAY SO THEN WE COME DOWN TO WHETHER THIS QUESTION THAT IS ASKED WHICH IS NOT DO YOU HAVE A GUN BUT ARE YOU CARRYING ANYTHING?

WHAT DOES THAT MEAN?

IS THAT CORRECT?

>> THE QUESTION WAS DO YOU HAVE ANYTHING ON YOU?

>> I'M SORRY, DO YOU HAVE ANYTHING ON YOU?

WE GET TO THE QUESTION OF WHAT DOES THAT MEAN AND YOU ARE SAYING IF I'M UNDERSTANDING CORRECTLY THAT THE DEFENDANT HEARING THAT THE OFFICER IS NOT GOING TO BELIEVE OR REASONABLY BELIEVE THAT THE DEFENDANT HEARING THAT OR THE SUSPECT HEARING THAT IS GOING TO UNDERSTAND THAT WOULD ENCOMPASS ANY DEADLY WEAPON THAT THE PERSON HAS.

>> YES YOUR HONOR.

HAD THAT ARGUMENT BEEN RAISED BY THE STATE AT TRIAL COURT AND THE TRIAL JUDGE COULD HAVE MADE THAT FACTUAL DETERMINATION OF WHETHER THIS AMBIGUOUS QUESTION WAS ENOUGH TO GIVE THE OFFICER REASONABLE SUSPICION.

IT NEVER MADE AN ARGUMENT EVEN IN THE TRIAL COURT AND THE TRIAL JUDGE USED THE EXACT SAME FACTS INCLUDED THAT THE ONLY ISSUE IN THE CASE WAS THAT MERE POSSESSION OF A CONCEALED FIREARM GAVE THE POLICEMAN SUSPICION.

THE THIRD ISSUED ITS OPINION ON

THE ISSUE CURRENTLY BEFORE THIS COURT AND THAT IS WHETHER THE MERE POSSESSION OF A CONCEALED FIREARM GIVES THE POLICE REASONABLE --

>> ACTUALLY HE KNEW THE STATE'S THEORY WOULD BE CARRYING A CONCEALED FIREARM WOULD GIVE PROBABLE CAUSE TO ARREST AND IT WOULD BE UP TO THE CITIZEN TO PRODUCE THE EVIDENCE BUT I WANT TO ASK ABOUT THIS CASE.

AND IN THE JUDGES CONSENT IN RIGOLETTO HE TALKS ABOUT THE FACT THAT THERE WERE OTHER SUSPICIOUS CIRCUMSTANCES.

THE GUY WASN'T JUST CARRYING A GUN CONCEALED.

HE WAS IN SOME WAY RECKLESSLY DISPLAYING THE FIREARM IN SUCH A WAY THAT IT GAVE THE PERSON THAT SAW THIS CONCERN.

IN FACT HE DIDN'T WANT TO GIVE HIS NAME ALTHOUGH HE IDENTIFIED THAT PERSON BECAUSE HE WAS FEARFUL.

NOW IT IN THAT SITUATION, IT'S NOT JUST THE CARRYING OF THE GUN.

AND AS THE JUDGE SAID IT'S THE TOTALITY OF THE CIRCUMSTANCES TO GIVE RISE TO THE FACT THAT THIS ISN'T JUST SOME CITIZEN LEAVING HIS OR HER OFFICE AND THEN HAS THE GUN AND GOES TO THE CAR AND A POLICE OFFICER IS STOPPING.

THERE IS SOMETHING ELSE HERE SO IN THAT CASE WHAT IS THE ARGUMENT ABOUT WHY WAS THAT SEARCH OR THE PAT-DOWN OR WHATEVER, THAT TERRY BE APPROPRIATE BECAUSE IT WAS SOMETHING MORE THAN JUST THE CARRYING OF THE GUN?

>> THE DEFENDING OPINION IN THAT CASE, THE ANALYSIS IS CORRECT. UNDER THE TOTALITY OF THE CIRCUMSTANCES THE OFFICER HAD REASONABLE GROUNDS TO BELIEVE THAT THE PERSON MIGHT NOT HAVE A

LICENSE OR MIGHT BE ENGAGED IN  
OTHER ILLEGAL BEHAVIOR WHICH IN  
THAT CASE WOULD HAVE BEEN  
IMPROPER EXHIBITION OF A FIREARM  
AND THAT WOULD HAVE BEEN ENOUGH.  
[INAUDIBLE]

IN THE MAJORITY OPINION  
BANISHING A GUN, I THOUGHT THAT  
THEY USED THAT TO ACTUALLY  
DISTINGUISH IN THE CASE BECAUSE  
WE DIDN'T HAVE THOSE FACTORS.  
IS THAT NOT CORRECT?

>> EXACTLY, THAT IS CORRECT SO  
YOU HAVE THE MAJORITY DOING THE  
FACTS ONE WAY AND CONSENTING  
OPINION VIEWING THE FACTS THE  
OTHER WAY.

WHEN YOU LOOK AT THIS CASE WE  
DON'T HAVE AN ALLEGATION THAT HE  
IMPROPERLY EXHIBITED THE  
FIREARM.

ALL WE HAVE IS THAT HE WAS IN  
POSSESSION OF THE FIREARM AND  
THEN YOU HAVE THE VAGUE QUESTION  
THAT DOESN'T ESTABLISH ANYTHING.  
HAD THE OFFICER ASKED THE  
QUESTION, HAVE THE OFFICER CAME  
OUT AND ASKED, DO YOU HAVE A  
FIREARM ON YOUR PERSON AND  
MR. MACKEY SAID NO.

THEN WE HAVE THE BASIC BEHAVIOR  
THAT WOULD ESTABLISH THAT TO  
OFFSET MR. MACKEY MIGHT NOT HAVE  
A LICENSE.

>> MAYBE YOU WERE SAYING IT  
WASN'T ARGUED THAT WHAT JUSTICE  
CANADY IS SAYING DO YOU HAVE  
ANYTHING ON YOU?

HE MIGHT'VE HAD DRUGS ON HIM  
VERSUS PACKING HEAT?

>> WHEN YOU LOOK AT THE RECORD  
YOU HAVE A NARCOTICS OFFICER  
PATROLLING A HIGH NARCOTICS AREA  
LOOKING AT HAND-TO-HAND MOTION  
LOOKING FOR FIREARMS AND IT GOES  
TO MR. MACKEY AND ASKED HIM, DO  
YOU HAVE ANYTHING ON YOU?

>> DON'T YOU THINK THAT REALLY  
AND MEANS TO YOU HAVE ANYTHING  
ON YOU YOU'RE NOT SUPPOSED TO

HAVE?

EVEN MY KIDS WHEN I ASK, DO YOU  
HAVE ANYTHING ON YOU?

THEY KNOW IF IT'S SOMETHING  
THEY'RE NOT SUPPOSED TO HAVE  
THEY KNOW THAT.

>> THAT'S THE PROBLEM YOUR  
HONOR.

MERELY POSSESSING, SIMPLY HAVING  
A FIREARM, WOULD NOT NECESSARILY  
BE ILLEGAL.

IT'S NOT LIKE DRUGS.

THERE ARE NO CIRCUMSTANCES WHERE  
A PERSON COULD HAVE LAWFULLY  
DRUGS ON A PERSON BUT A  
FIREARM --

>> THE QUESTION WAS --

THE OFFICER WALKED BY HIM AND  
ASKED HIM DO YOU HAVE A PERMIT  
FOR THAT?

THAT WOULD HAVE BEEN ACCEPTABLE.

>> YES YOUR HONOR BECAUSE UNDER  
SUBSECTION ONE EVERY LEGAL  
PERSON THAT HAS A CONCEALED  
FIREARM HAS AGREED TO DO JUST  
THAT.

>> OKAY LET'S TAKE IT ONE STEP  
FURTHER.

[INAUDIBLE]

THEN WHAT?

>> UNDER THAT CIRCUMSTANCE THE  
OFFICER HAS REASONABLE SUSPICION  
TO BELIEVE THAT HE DOES NOT HAVE  
A LICENSE AND NOW HE CAN PROCEED  
WITH A SEIZURE.

>> WHAT IF HE SAID YES TO THE  
PERMIT?

>> THE OFFICER WOULD ASK FOR IT  
OR ASK FOR IT TO BE PRODUCED IN  
THE PERSON WOULD BE REQUIRED TO  
PRODUCE THEIR LICENSE AND IF HE  
DOESN'T HAVE IT ON HIM --

>> TWO OPTIONS.

THE OFFICER COULD CHECK WITH THE  
DATABASE AND SEE IF HE ACTUALLY  
DID HAVE A LICENSE AND IF IT  
TURNS OUT HE IS LICENSE BUT IS  
NOT CARRYING IT WITH HIM --

>> SO THERE IS A FACILITY WHERE  
THE OFFICER CAN RADIO IN WHETHER



THIS PERSON HAS A LICENSE ON HIM?

>> YES YOUR HONOR.

THE OFFICER IN THIS CASE DIDN'T DO THAT.

>> IF IT TURNS OUT HE DOES NOT HAVE A LICENSE AND THE DATABASE SAYING HE DOESN'T HAVE ONE, CAN THE OFFICER ARREST HIM?

>> AT THAT POINT WHEN THE CITIZENS SAYS I DO NOT HAVE A LICENSE AT THAT POINT THE OFFICER CAN DO A PAT-DOWN TO RETRIEVE THE FIREARM AND ONCE THEY VERIFY THEY DON'T HAVE THAT THEY CAN DO A FULL ARREST.

>> WHAT YOU DO IN THE QUESTION OF WHETHER THE CARRYING OR HAVING A PERMIT AND AFFIRMATIVE DEFENSE VERSUS THE ELEMENTS, HOW DOES THAT FACTOR INTO THE ANALYSIS IN THE THIRD DISTRICT HERE?

I AM STRUGGLING WITH THAT SO COULD YOU HELP ME ON THAT?

>> THE THIRD DISTRICT NOW LOOKS AT THE AFFIRMATIVE ASPECT IN A VACUUM.

THE AFFIRMATIVE DEFENSE ASPECT BASICALLY MEANS THAT JUST AS YOU HAVE THE BURDEN TO PRODUCE YOUR LICENSE WHEN YOU FIRST MEET THE POLICE ON THE STREET YOU ALSO HAVE TO PRODUCE YOUR LICENSE AT TRIAL AND IF YOU DON'T PRODUCE YOUR LICENSE ON THE STREET AND THE OFFICER ARRESTS YOU AND YOU DON'T PRODUCE IT AT THE TRIAL HEARINGS OR AT THE TRIAL DATE MAY RIGHTFULLY ASSUME THAT THE LICENSE DOES NOT EXIST.

ALL YOU NEED TO DO IS BASICALLY PULL OUT YOUR CARD AND PRESENT YOUR CARD TO PROVE THAT YOU HAVE A LICENSE AND IF YOU NEVER DO THAT AND IT ANY POINT IN THE CRIMINAL PROSECUTION THAT DEFENSE SAYS BASICALLY WE CAN ASSUME YOU DON'T HAVE A LICENSE. THAT'S COMPLETELY DIFFERENT WITH

THE POLICE BEING ALLOWED TO APPROACH A CITIZEN ON THE STREETS WITH GUNS DRAWN OR STOP A CAR JUST BECAUSE THEY SEE A FIREARM.

THE POLICE UNDER TERRY, THE POLICE WOULD HAVE INDIVIDUALIZED SUSPICION OF CRIMINAL WRONGDOING IN ORDER TO STOP A PERSON.

THE FACT THAT LICENSURE IS AN APPROPRIATE DEFENSE DOES NOT RELIEVE THE POLICE OF NEEDING INDIVIDUALIZED SUSPICION.

>> IF WE LOOKED AT THIS CASE IN A HIGH CRIME AREA AND THE PERSON WITH THE GUN, IF THEY SIMPLY STARTED TO WALK AWAY, WHAT WOULD THE OFFICER'S OPTION BE AT THAT POINT?

LET'S SAY IN THE SITUATION AND OFFICER OBSERVED WHAT HE THOUGHT WAS A GUN AND STARTS WALKING AWAY WHAT CAN HAPPEN?

>> IF A PERSON WALKS AWAY BEFORE THE OFFICER ENGAGES HIM IN THE KEY QUESTION FOR THE PERMIT THAT PERSON IS FREE TO WALK AWAY.

IF THE LEGISLATURE DOES OTHERWISE THEY CAN ADOPT A STATUTE SIMILAR TO LOUISIANA. IN LOUISIANA THE CITIZENS THAT HAVE A FIREARM WHATEVER THEY ARE APPROACHED BY THE POLICE THEY HAVE AN AFFIRMATIVE DUTY TO LET THE POLICE KNOW, I HAVE A FIREARM ON MY PERSON AND THEY MUST SUBMIT TO A PAT-DOWN AND SEIZURE AND THE TEMPORARY SEIZURE OF THE FIREARM WHILE THE POLICE DETERMINED WHETHER THEY IN FACT ARE LAWFULLY IN POSSESSION.

THAT IS NOT THE LAW IN FLORIDA. THE LAW IN FLORIDA IS THAT THE 1 MILLION FLORIDIANS CARRYING A FIREARM, ALL THEY NEED TO DO IS PRODUCE IT ON DEMAND WHEN ASKED, AND UNLESS THE LEGISLATURE CHANGES THAT IN ORDER TO SEIZE THE PERSON THAT POLICE MUST HAVE

INDIVIDUALIZED SUSPICION OF  
WRONGDOING AND IF I MAY RESERVE  
THE REST OF MY TIME FOR  
REBUTTAL.

>> DO YOU HAVE A QUESTION?

>> THANK YOU.

>> GOOD MORNING, MAY IT PLEASE  
THE COURT.

SHAYNE BURNHAM ASSISTANT  
ATTORNEY GENERAL APPEARING ON  
BEHALF OF THE STATE OF FLORIDA.  
THE THIRD DISTRICT WOULD APPEAL  
PROPERLY HELD THE OFFICER HAD  
LEGAL SUSPICION BASED ON THE  
TOTALITY OF THE CIRCUMSTANCES  
AND CONDUCTING THE STOP.

>> WOULD YOU HELP US UNDERSTAND  
THAT UNDER THE CIRCUMSTANCES IN  
FLORIDA IF YOU HAVE A PERMIT  
HAVING A CONCEALED WEAPON IS NOT  
A CRIMINAL EVENT.

AND SO THE ARGUMENT PROCEEDS  
THAT ANYONE WHO HAS A CONCEALED  
WEAPON IS SUBJECT TO BEING  
STOPPED, UNLIKE THE TERRY  
CIRCUMSTANCE WHERE THERE WAS  
SUSPICIOUS BEHAVIOR.

AND THE OFFICER WAS ABLE TO  
PROVIDE A SUSPICION.

>> YES OF COURSE IT IS LEGAL TO  
CARRY A FIREARM IN FLORIDA IF  
YOU HAVE LICENSE TO DO SO AND  
THE FACT OF THIS CASE MUST BE  
LOOKED AT IN THE CONTEXT OF  
SUSPICION.

HERE THE OFFICER OBSERVED MACKEY  
IN POSSESSION OF A CONCEALED  
FIREARM ON HIS PERSON, WALKED UP  
TO MACKEY IN A CONSENSUAL  
ENCOUNTER AND ASKED HIM DO YOU  
HAVE ANYTHING ON YOU, TO WHICH  
MACKEY SAID NO.

>> IS THAT THE POINT THAT MAKES  
THE DISTINCTION YOU BELIEVE FOR  
THE LEGAL OUTCOME OF THIS CASE?

>> YES.

YOU DON'T HAVE MERE POSSESSION  
IN THIS CASE.

RIGOLETTO INVOLVES MERE  
POSSESSION ALONE AND IN THIS

CASE WE DO HAVE THE OFFICER  
OBSERVATION OF THE FIREARM.  
WE ALSO HAVE THE CONSENSUAL  
ENCOUNTER.

THE LIE LEADS THE OFFICER TO  
REASONABLY BELIEVE THE FIREARM  
WAS BEING CARRIED UNLAWFULLY.

>> DID THE STATE RAISE THAT  
ISSUE IN THE MOTION TO SUPPRESS  
BEFORE THE TRIAL COURT?

>> I DON'T BELIEVE THE STATE  
RAISED IT IN THE MOTION TO  
SUPPRESS.

THE STATE ARGUED THE LAW THAT IT  
WAS CONCEALED AND IF THE FIREARM  
WASN'T CONCEALED THAN THE  
OFFICER HAD REASONABLE SUSPICION  
THAT MACKAY WAS CARRYING OPENLY.

>> IS IT LEGAL FOR HIM TO CARRY  
A FIREARM?

AN OFFICER IN YOUR VIEW WHEN HE  
SEES A PERSON CARRYING A FIREARM  
HAS THE ABILITY TO ASK THE  
PERSON?

>> YES.

>> THAT REMINDS ME WHEN I WAS  
GROWING UP AND GOT MY DRIVER'S  
LICENSE, A POLICE OFFICER KEPT  
STOPPING ME ALL THE TIME TO SEE  
IF I HAD A DRIVER'S LICENSE.  
I DIDN'T LOOK OLD ENOUGH TO  
DRIVE AND THAT IS KIND OF THE  
SAME THING ISN'T IT?

DO THEY HAVE A RIGHT TO STOP AND  
ASK IF YOU HAVE A LICENSE TO  
CARRY A FIREARM?

>> I THINK WHEN YOU ARE CHECKING  
FOR A LICENSE WHEN YOU'RE  
DRIVING, THE FACT IS THAT  
SITUATION IS ANALOGOUS TO WHAT  
HAPPENED WHERE THE SUPREME COURT  
HAS HELD THAT THE RANDOM  
STOPPING OF THE VEHICLE TO CHECK  
FOR A DRIVER'S LICENSE WAS NOT  
ENOUGH FOR REASONABLE SUSPICION.

>> HOW DOES THAT DIFFER HERE IN  
RANDOM STOPPING OF PEOPLE  
CARRYING A FIREARM JUST BECAUSE  
THE OFFICER FEELS HE IS CARRYING  
A FIREARM?

>> ISN'T THAT THE SAME THING?  
>> IT'S NOT THE SAME CASE  
BECAUSE IN OUR CASE THERE IS  
SUSPICION THAT IS  
INDIVIDUALIZED.  
>> WHICH IS WHAT?  
ARTICULATE THAT FOR US.  
>> BASICALLY THE OFFICER  
OBSERVED MACKAY IN POSSESSION OF  
A FIREARM ON HIS PERSON AND YOU  
ALSO HAVE THE LIE BUT BASED ON  
THOSE FACTS THE ELEMENTS FOR THE  
CARRYING OF A CONCEALED FIREARM  
WITHOUT A LICENSE HAS BEEN MET.  
>> SO AGAIN IS IT WHAT JUSTICE  
LABARGA SAID, VERY APPROPRIATE  
HERE THAT LAW ENFORCEMENT CAN  
THEN ENGAGE IN ESSENTIALLY A  
STOP OF EVERY CITIZEN THAT MAY  
HAVE A CONCEALED WEAPON WHETHER  
THEY HAVE A PERMIT OR NOT?  
>> CORRECT.  
>> AND THAT IS APPLIED  
INDISCRIMINATELY AND WHY IS THAT  
NOT FLYING IN THE FACE OF RANDOM  
STOPS?  
>> I JUST WANT TO CLARIFY THAT  
THE POSITION IS NOT THAT MERE  
POSSESSION SHOULD BE OF BRIGHT  
LINE RULE.  
THE FOURTH AMENDMENT  
JURISPRUDENCE HAS ALWAYS HELP  
THAT THE STOP SHOULD BE BASED  
ON REASONABLE SUSPICION SHOULD  
BE BASED ON THE TOTALITY.  
>> THAT IS WHAT I'M ASKING.  
WILL YOU ARTICULATE WHAT THE  
ELEMENTS ARE IN THIS CASE?  
>> WHAT?  
>> WOULD YOU ARTICULATE WHAT THE  
ELEMENTS ARE IN THIS CASE?  
>> WE HAVE THE OFFICERS WITH A  
CONCEALED FIREARM AND THE  
INDIVIDUAL ENCOUNTER WHICH WAS A  
LIE.  
>> ISN'T THAT WHAT THE POLICE  
OFFICER SAID AND A LOT OF THIS  
IS THE TOTALITY OF THE  
CIRCUMSTANCES AND I CAN'T  
UNDERSTAND THAT IF IT'S

CONSENSUAL TO ASK, A LOT OF US HAVE CONCERNS ABOUT PEOPLE HAVING FIREARMS AND LOTS OF US DON'T HAVE CONCERNS BUT CITIZENS YOU FEAR FOR GUN VIOLENCE ON THE STREETS HAVING A CONCEALED FIREARM IS A CONCERN SO THE POLICEMAN GOES UP AND SAYS YOU ARE YOU CARRYING A GUN? THE CITIZEN ANSWERS HONESTLY, YES.

AT THAT POINT IF THEY SAY YES WOULD YOU AGREE THEY CANNOT DO A TERRY FRISK UNLESS THEY SAID THEY FEARED FOR THEIR OWN SAFETY AND HEAR THE POLICE OFFICER DIDN'T SAY THAT?

YOU WOULD JUST BE ABLE TO CONSENSUALLY SAY YES AND IF THEY SAY YES THEN THE NEXT QUESTION IS DO YOU HAVE A PERMIT?

I WANT TO SEE IT AND THAT'S PART OF THE POPPELL INITIAL ENCOUNTER, NOT THE TERRY STUFF.

>> BECAUSE THE OFFICER OBSERVED THAT THE PERSON WAS CARRYING A FIREARM YOU HAVE REASONABLE SUSPICION THAT HE MAY NOT HAVE A LICENSE TO CARRY THAT FIREARM AND YOU ALSO HAVE THE FACT --

>> NOW YOU JUST PUT SOMETHING ELSE IN, SO WHAT YOU ARE SAYING IF THAT'S TRUE WHEN AN OFFICER SEES THE GUN CONCEALED BECAUSE YOU CAN'T HAVE IT OPEN SO HE SEES A CONCEALED WHICH IS THE ONLY LAWFUL WAY TO CARRY THE GUN IN PUBLIC, RIGHT?

YOU CAN'T CARRY IT LIKE IN A HOLSTER.

THE STATE SAYS MOST PEOPLE DON'T HAVE CONCEALED WEAPONS PERMITS. THE OFFICER HAS REASONABLE SUSPICION HE OR SHE IS CARRYING A GUN WITHOUT A PERMIT?

>> THAT ARGUMENT WAS IN OUR INITIAL BRIEF WHICH WE HAD AMENDED --

>> WELL I'M ASKING YOU, WE HAVE TO ARTICULATE A RULE OF LAW.

IS IT THAT CARRYING AN OFFICER OBSERVING A CONCEALED FIREARM IN ITSELF IS ENOUGH NOT JUST FOR CONSENSUAL ENCOUNTER BUT FOR A SECOND PRONG OR UNDER YOUR VIEW A PROBABLE CAUSE THAT HE IS CARRYING IT OR SHE IS CARRYING IT WITHOUT A PERMIT?

>> AS I MENTIONED BEFORE IT'S NOT NECESSARY TO RAISE THE ISSUE OF MERE POSSESSION BUT TO ADDRESS THAT ISSUE MERE POSSESSION CAN BE ENOUGH BASED ON THE SUPREME COURT CASE ADAMS V. WILLIAMS.

THE 11th CIRCUIT CASE IN LEWIS AND ALL THE OTHER STATE AND FEDERAL CASE LAWS IN OUR BRIEF AND IT'S ALL SUPPORTED BY THE MAJORITY OF THE COURT OF APPEALS.

[INAUDIBLE]

DOESN'T AN OFFICER HAVE A RIGHT TO ASK IF THEY FEEL YOU HAVE A CONCEALED WEAPON ON YOU TO ASK ABOUT IT BUT THEY DON'T -- THE NEXT PERSON THAT THEY BELIEVE THEY HAVE A CONCEALED WEAPON, THEY CAN JUST LET THEM GO? SO THEY STOP THIS PERSON AND THEY DON'T STOP SOMEONE ELSE, IS THAT REALLY ALL THE OFFICER NEEDS TO THINK THAT YOU HAVE A CONCEALED WEAPON ON YOU?

>> ACCORDING TO THE STRUCTURE OF THE CASE LAW AND THE FACT THAT [INAUDIBLE]

YES MERE POSSESSION CAN BE ENOUGH BASED ON THE GREATER WEIGHT OF THE CASE LAW.

>> TO GIVE THE OFFICER REASONABLE SUSPICION, IS THAT WHAT I HEARD YOU SAID EARLIER?

>> I MISSPOKE.

NOT THAT HE DOES NOT HAVE A LICENSE BUT REASONABLE SUSPICION ENOUGH FOR HIM TO INVESTIGATE TO DETERMINE WHETHER OR NOT HE DOES OR DOES NOT HAVE A WEAPON.

>> THE WAY TO INVESTIGATE THAT

WOULD BE TO ASK IF HE HAS A  
LICENSE WOULDN'T IT?

>> THAT IS CORRECT.

>> IT'S NOT EXACTLY WHAT  
HAPPENED HERE IS IT?

>> THE OFFICER ASKED DO YOU HAVE  
ANYTHING ON YOU?

IN THE OBJECTIVE STANDARD  
ACCORDING TO THE OFFICER THAT  
NECESSARILY MEANS DO YOU HAVE  
SOMETHING ILLEGAL ON YOU OR DO  
YOU HAVE A WEAPON ON YOU?

>> YOU SAID TWO DIFFERENT  
THINGS.

ACCORDING TO THE OFFICER AND  
THEN YOU SAID SOMETHING ABOUT  
OBJECTIVE STANDARD.

ISN'T IT THE CASE THAT WHAT WE  
REALLY WOULD FOCUS ON CONNECTION  
WITH THAT QUESTION IS A  
REASONABLE OFFICER IN THOSE  
CIRCUMSTANCES WOULD UNDERSTAND  
ABOUT THE RESPONSE WHETHER A  
REASONABLE OFFICER IN THOSE  
CIRCUMSTANCES WOULD REASONABLY  
UNDERSTAND THE RESPONSE TO BE A  
LIE.

ISN'T THAT WHAT WE WOULD BE  
LOOKING AT?

>> YES OF COURSE AND IN THIS  
CASE A REASONABLE OFFICER WOULD  
CONSTRUE MACKAY'S ANSWER TO BE A  
LIE.

>> BUT THERE WAS NO QUESTION IN  
THE TRIAL COURT AND I UNDERSTAND  
WE CAN DEFER FOR DIFFERENT  
REASONS BUT THERE HAS TO BE  
SOMETHING IN THE RECORD IF THE  
POLICE OFFICER SAID WHEN THIS  
GUY SAID THAT I KNEW THAT HE WAS  
CARRYING AND HE DID NOT WANT ME  
TO KNOW.

YOU CAN SAY WELL WE SHOULD JUST  
ASSUME THAT BUT MR. DAVIS HAS  
GIVEN A REASONABLE -- AND HE'S A  
NARCOTICS OFFICER.

DO YOU HAVE ANYTHING ON YOU,  
DRUGS?

WE DON'T HAVE THIS IN THE RECORD  
TO KNOW THAT.



>> BECAUSE HE ASKED SUCH A BROAD QUESTION THAT WOULD NECESSARILY ENCOMPASS CONTRABAND OR A WEAPON, SOMETHING THAT AN OBJECT OF OFFICER APPROACHING A PERSON THAT IS OTHERWISE UNKNOWN TO HIM AT POINT-BLANK RANGE, THAT IS WHAT HE NECESSARILY MEANS WHEN HE ASKS THAT QUESTION.

>> LET ME ASK ABOUT THE BURDEN OF PROOF HERE.

THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT HE WAS CARRYING A CONCEALED WEAPON AND HE DID NOT HAVE A PERMIT ON HIM?

>> BECAUSE THE POSSESSION OF THE PERMIT IS AN AFFIRMATIVE DEFENSE.

>> SO THAT IS ON THE DEFENSE PART.

>> AND MACKEY DOES NOT CONTEST THAT IT IS.

>> LET ME GIVE YOU ANOTHER HYPOTHETICAL.

THE EXCEPTION IS FOR CARRYING WEAPONS IN THE OPEN, THINGS LIKE HUNTING AND FISHING AND CAMPING, RIGHT?

>> CORRECT.

>> SO HE HAS THAT OUT IN THE OPEN, A WEAPON OUT IN THE OPEN AND THE OFFICER ENGAGES SOMEONE WITH AN WEAPON OUT IN THE OPEN?

>> THE FACTORS DEMONSTRATE THAT IT IS FOR HUNTING OR SOME OTHER EXCEPTION.

>> THE TOTALITY OF CIRCUMSTANCES ABOUT WHERE THEY ARE AND WHAT THEY ARE DOING AND SO FORTH SO HE WALKS UP AND SAYS HEY WHAT ARE YOU DOING WITH THAT PISTOL? HE SAYS I'M CAMPING OR I'M ON MY WAY TO GO CAMPING.

WHAT HAPPENS THEN?

>> THIS CIRCUMSTANCE INDICATES HE'S ON HIS WAY TO GO CAMPING THAN THAT FACT WOULD COMPEL AN OFFICER TO HAVE REASONABLE SUSPICION.

>> SO THE STATE CAN PROSECUTE

HIM AND NOT TO SAY WHAT IS THAT THERE IS A CRIME BUT DOES THE STATE HAVE TO PROVE THAT HE IS CARRYING A WEAPON IN THE OPEN AND THAT HE WAS NOT USING IT FOR CAMPING?

>> NO.

IT WOULD BE A BURDEN OF DEFENSE OF THE BURDEN WOULD BE ON THE DEFENDANT.

>> TO PROVE THAT HE WAS CARRYING IT FOR CAMPING?

>> RIGHT.

>> I FEEL LIKE YOU SAY THE DEFENDANT NEEDED THE AFFIRMATIVE DEFENSE.

THE AMICUS DOES NOT -- AND I'M READING THE STATUTE AND IT SAYS SUBSECTION THREE, THIS SECTION DOES NOT APPLY TO A PERSON LICENSED TO CARRY A CONCEALED WEAPON.

WE DON'T NECESSARILY DETERMINE BASED ON THAT AND AGAIN A TERRY STOP THAT IT ISN'T INCUMBENT ON THE OFFICER BEFORE HE OR SHE DOES ANYTHING FURTHER AND THERE IS NO OTHER SUSPICIOUS BEHAVIOR. IT'S NOT 3:00 IN THE MORNING AND THERE IS NO --

THIS OFFICER HAD NO FEAR FOR HIS OWN SAFETY AND THIS IS WHERE WE ARE CONCERNED IN THE TERRY STOP THAT THE OFFICERS PROTECTING HIMSELF.

SO HOW IS THAT FOR THE PURPOSE OF THE TERRY STOP QUESTION AN AFFIRMATIVE DEFENSE?

IT JUST SAYS IT DOESN'T APPLY TO A PERSON LICENSED TO CARRY A CONCEALED WEAPON.

I COULD MAKE AN ARGUMENT THAT IT IS THEREFORE INCUMBENT ON THE STATE TO FIRST FIND OUT IF A PERSON HAS A LICENSE BEFORE THEY MAKE AN ARREST.

>> WE KNOW THAT IT'S AN AFFIRMATIVE DEFENSE BECAUSE, BECAUSE THE EXCEPTION IS CONTAINED IN A SEPARATE

SUBSECTION THAT INDICATES THAT IT'S AN AFFIRMATIVE DEFENSE AND SECONDLY WE HAVE THE STANDARD JURY INSTRUCTIONS THAT THE FIREARM IS CONCEALED AND A FIREARM CARRIED ON OR ABOUT THE PERSON.

>> WE ALWAYS SAY THOUGH, WHAT WE MIGHT REQUIRE OF HOW WE ARE GOING TO ALLOCATE THE BURDEN WE ARE NOW TALKING ABOUT CITIZENS WHO ARE OTHERWISE DOING NOTHING WRONG.

UNDER THE STATE'S THEORY REALLY BEING ABLE TO BE STOPPED, AND BEING ABLE TO BE FRISKED AND THEN PRODUCE EVIDENCE THAT THEY HAVE A LICENSE TO CARRY AND IF THEY DON'T THEY CAN BE ARRESTED. BEFORE WE TAKE THAT STEP I WANT TO MAKE SURE THAT WE ARE IF ACTUATING THE LEGISLATURE'S INTENT AS TO WHAT THE CRIME IS UNDER THE CIRCUMSTANCES.

>> THE LEGISLATURE INTENDED THAT IT IS AFFIRMATIVE DEFENSE.

>> YOU SAY THAT BUT OHIO OR AT LEAST ONE OF THEM SAYS YOU DON'T HAVE TO SAY AFFIRMATIVE DEFENSE. I DON'T KNOW THAT IT'S CLEAR. WE MAY INTERPRET IT THAT WAY BUT I DON'T SEE HOW YOU TAKE THAT LANGUAGE THAT I JUST READ AND SAY IT'S AN AFFIRMATIVE DEFENSE.

>> BASICALLY UNDER 793.06 THE LEGISLATURE HAS TO PLACE THE BURDEN ON THE GUN HOLDER FOR A PERMIT ON DEMAND AND AS I MENTIONED BEFORE, IT IS CONTAINED IN A SEPARATE SUBSECTION.

WE HAVE A JURY INSTRUCTION AND WE HAVE THE FOURTH DCA AND WATTS AND THE AUTHOR OF RIGOLETTO WHO SAYS THE CARRYING OF THE LICENSE IS AN AFFIRMATIVE DEFENSE AND WE HAVE 790.0 TO WHICH THE LEGISLATURE STATES THAT A CARRYING A THE CONCEALED FIREARM, ALL THESE FACTORS GOES

TO SHOW THAT THE LEGISLATURE INTENDED THE CARING OF A PERMIT TO BE AN AFFIRMATIVE DEFENSE.

>> WE ARE TALKING ABOUT AFFIRMATIVE DEFENSE, WHETHER IT IS OR NOT.

ASSUMING IT IS, WHAT IS THE PROCEDURE?

THE POLICE OFFICER STOPS ME CARRYING A CONCEALED FIRE ARM AND ASKED ME FOR MY LICENSE TO CARRY IT AND I TELL HIM I HAVE ONE BUT I DON'T HAVE IT WITH ME. I LEFT IT IN MY OTHER WALLET AT HOME OR WHATEVER.

WHAT IS THE PROCEDURE THEN?

WHAT HAPPENS?

>> AT THAT POINT THE OFFICER MIGHT CHECK THE CENTRALIZED DATABASE TO SEE IF HE DID IN FACT POSSESS ONE?

>> LET'S ASSUME THAT THE OFFICE DOES NOT HAVE ACCESS TO THE DATABASE.

HE HAS HIS RADIO AND HE IS OUT WALKING.

THE OFFICER ARRESTS ME AND I'M BOOKED INTO THE COUNTY JAIL.

IS IT A SECOND-DEGREE FELONY OR A THIRD-DEGREE FELONY?

>> A THIRD-DEGREE FELONY.

>> HE BOOKS ME IN THE COUNTY JAIL FOR CARRYING A CONCEALED FIREARM, THIRD-DEGREE FELONY.

>> UNDER THOSE CIRCUMSTANCES YOUR BURDEN TO PRODUCE A LICENSE --

>> SO A LAW-ABIDING CITIZEN HAS A CONCEALED FIREARM PERMIT.

I JUST HAPPENED TO HAVE LEFT IT AT HOME.

I'M GOING TO BE BOOKED INTO COUNTY JAIL AND I WILL HAVE TO BOND OUT OF JAIL AND THE STATE ATTORNEY COULD CHARGE ME.

IS IT A TRIAL IN THESE CASES OR DRIVER'S LICENSE IS FOR EXAMPLE IF YOU LEAVE YOUR DRIVER'S LICENSE AT HOME AND YOU GET CITED FOR NOT HAVING A VALID

DRIVER'S LICENSE YOU CAN GO TO THE CLERK'S OFFICE AND SHOW IT TO THEM AND THAT PARTICULAR CITATION IS DISMISSED.

IS THERE A PROCEDURE FOR DOING THAT HERE?

PAY \$25 OR WHATEVER IT IS OR HOW DOES THAT WORK?

>> I'M NOT QUITE SURE AT WHAT POINT IN THE PROCEEDINGS A PERSON CAN PRESENT THEIR PERMIT AND HAVE THE CASE DROPPED BUT GOING BACK TO THAT SITUATION I GUESS THE OFFICER COULD ALWAYS RADIO ANOTHER OFFICER.

>> THERE CAN BE SOME DIRE CONSEQUENCES BY AN OFFICER STOPPING SOMEONE EVEN IF A PERSON WHO HAS A PERMIT DOESN'T HAVE IT WITH HIM THERE COULD BE DIRE CONSEQUENCES.

WHAT HAPPENS TO THAT PERSON IF THEY HAVE A VERY BAD DAY?

I DON'T KNOW.

IS THAT THE WAY IT WORKS?

>> IF THIS COURT DOES NOT HAVE ANY FURTHER QUESTIONS I SEE MY TIME HAS ALMOST EXPIRED AND I WOULD JUST ASK THAT THIS COURT APPROVE THE DISTRICT COURT OF APPEALS.

>> THANK YOU FOR YOUR ARGUMENT. REBUTTAL?

>> IS THAT THE PROCESS AS YOU UNDERSTAND IT, THE WAY IT'S BEEN DESCRIBED?

IF YOU DON'T PRODUCE A LICENSE YOU CAN BE ARRESTED AND BOOKED INTO COUNTY JAIL AND CHARGED WITH A THIRD-DEGREE FELONY?

>> THAT'S NOT THE PROCESS BECAUSE THE OFFICER WOULDN'T HAVE ACCESS TO THE DATABASE. HE CAN GO TO THE SYSTEM AND VERIFY WHETHER YOU IN FACT HAD A LICENSE AND OF COURSE IF HE DOESN'T HAVE A LICENSE AND THE DEPARTMENT OF AGRICULTURE DOES NOT SHOW THAT HE HAS A LICENSE TO CARRY A FIREARM UNDER THAT

CIRCUMSTANCE HE WOULD BE  
ARRESTED.

[INAUDIBLE]

HE DIDN'T HAVE ACCESS --  
I WOULD THINK.

[INAUDIBLE]

>> YES YOUR HONOR MORE LIKELY  
THAN NOT.

HE CAN PRESENT TO THE COURT AND  
MORE LIKELY THAN NOT --

>> I WOULD THINK YOU WOULD TRY  
TO DO IT RIGHT THERE AT THE  
POLICE STATION BEFORE YOU GO  
THROUGH ALL THAT FINGERPRINTING  
AND ALL THOSE OTHER THINGS.

>> THIS IS A REAL PROBLEM WHERE  
THERE WILL BE CONCERN IF THERE  
WILL BE SELECTIVE ENFORCEMENT  
AND I DON'T SEE YOU ARGUING  
THAT, WHERE THIS IS MOST LIKELY  
TO BE USED VERSUS OTHER PLACES  
AND HOW DOES THAT FACTOR INTO  
OUR CONSIDERATION HERE?

>> ACTUALLY THAT IS WHY THIS  
CASE IS LIKE PROUST.

UNDER THE STATE'S ARGUMENT ALL  
1 MILLION FLORIDIANS CARRYING A  
CONCEALED FIREARM, ANYTIME THEY  
ARE CARRYING THEY CAN BE STOPPED  
SEIZED AND POSSIBLY ARRESTED AND  
THE U.S. SUPREME COURT CONCLUDED  
YOU DO NOT STOP PEOPLE TO VERIFY  
WHETHER THEY ARE FOLLOWING THE  
LAW.

YOU STOP PEOPLE BECAUSE YOU  
BELIEVE THEY ARE NOT FOLLOWING  
THE LAW.

>> I MEAN OUR U.S. SUPREME COURT  
SEEMS TO CONSIDER THE LOCATION  
AS ONE OF THE FACTORS.

I DON'T KNOW WHETHER I AGREE  
WITH IT BUT IT'S WHAT THE LAW  
IS.

SOMEONE RUNNING IN A HIGH-CRIME  
AREA OR CERTAIN CIRCUMSTANCES  
THAT THE U.S. SUPREME COURT --  
THOUGH I MAY NOT AGREE -- SAYS  
IT HAS TO BE FACTORED IN WITH  
REGARD TO WHETHER YOU CAN STOP  
AN INDIVIDUAL.

>> YES SIR.

>> I UNDERSTAND THE COURTS,  
WHETHER IT'S APPROPRIATE OR I  
AGREE WITH IT OR NOT, WE HAVE TO  
FOLLOW WHAT THE U.S. SUPREME  
COURT TELLS US, CORRECT?

IF THEY IDENTIFY THIS HAPPENS IN  
WHAT THEY SAY IN THE OPINION IS  
AN AREA OF DRUGS AND CRIME DOES  
THAT MAKE A DIFFERENCE?

WE ARE TALKING ABOUT SELECTIVE  
OR PARTS OF THE GEOGRAPHY AND  
HOW DOES THAT FIT IN?

>> IF IT'S A HIGH NARCOTICS  
AREA, IF THERE IS NO EVIDENCE IN  
THE RECORD THE SUPREME COURT  
SAID YOU HAVE GUNS --

[INAUDIBLE]

>> ISN'T THAT BEING A LITTLE  
NARCOTICS AND WEAPONS I MEAN  
PLEASE.

IT'S A PRETTY VIOLENT AREA.  
ISN'T THAT COMMONSENSE?

>> THAT COULD BE AN  
UNDERSTANDING OF THE RECORD BUT  
IF THAT WERE THE CASE THE POLICE  
COULD STOP ANYONE.

UNDER THAT SAME ARGUMENT THE  
POLICE COULD STOP SOMEONE THAT  
WAS DRIVING.

IF IT'S A HIGH-CRIME AREA PEOPLE  
TEND NOT TO HAVE A LICENSE.

>> IT'S A FACTOR IS IT NOT?  
I'M NOT SAYING THAT I AGREE WITH  
IT.

HAVE WE LOOKED AT THAT?

>> YES SIR HONOR.

EVEN WHEN YOU LOOK AT THE  
HIGH-CRIME AREA PLUS UNPROVOKED  
HEADLONG FLIGHT --

IF YOU HAVE AN AREA WHERE PEOPLE  
ARE ALWAYS COMMITTING A CRIME  
THE OFFICER HAS REASONABLE  
SUSPICION.

IN THIS CASE YOU DON'T HAVE  
THAT.

YOU JUST HAVE THE HIGH NARCOTICS  
AREA AND THE PERSON DOESN'T HAVE  
DRUGS OR IS NOT ENGAGED IN

SUSPICIOUS BEHAVIOR RELATED TO THE TYPE OF CRIMES HE IS LOOKING FOR, SO YES THE AREA WOULD BE CONSIDERED IN THIS CASE BUT ALL YOU HAVE HERE, THIS IS JUST A PROUST SITUATION AND THE U.S. SUPREME COURT --

>> YOU ARE OUT OF TIME, IF YOU COULD CLOSE.

>> YES SIR.

THIS CASE IS BASICALLY JUST LIKE THE PROUST DECISION SO WE ASK THE COURT TO REVERSE THE THIRD DISTRICT DECISION BECAUSE UNDER THE THIRD DISTRICT DECISION ALL 1 MILLION FLORIDIANS CAN BE STOPPED ANYTIME THEY ARE CARRYING A FIREARM AND THAT IS INCONSISTENT WITH THE SUFFICIENT REQUIREMENT.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS. IS THIS YOUR FIRST TIME FOR BOTH OF YOU IN THIS COURT?

I THINK YOU BOTH DID A GREAT JOB AND IT MAKES ME PROUD TO BE A LAWYER.

>> THANK YOU VERY MUCH FOR YOUR ARGUMENTS..

THE COURT IS ADJOURNED.

>> ALL RISE.