

>> ALL RISE.

>> SUPREME COURT OF FLORIDA
IS NOW IN SESSION.
PLEASE BE SEATED.

>> OKAY.

THE NEXT CASE ON THE DOCKET, IT
IS WILLIAMS VERSUS STATE.
COUNSEL?

>> MAY NAME IS ELLEN GRIFFIN,
AND FOR PURPOSES OF ARGUMENT I
REPRESENT THE PETITIONER,
MR. LARRY CHARLES WILLIAMS.
AS WITH ALL 4TH AMENDMENT CASES,
THE FACTS ARE IMPORTANT.
THE ISSUE IN THIS CASE IS
WHETHER THE OFFICER HAD
REASONABLE AND ARTICULATE
SUSPICION BEFORE HE STOPPED
MR. WILLIAMS AND BEFORE THE
COCAINE WAS DISCOVERED AND
RETRIEVED.

DEPUTIES --

>> ISN'T THIS AN HODARI D. CASE?

>> IT IS.

THAT'S ONE OF THE ISSUES
INVOLVED.

WHETHER THERE IS REASONABLE
SUSPICION TO STOP MR. WILLIAMS
IN THE FIRST PLACE AND THEN THE
SECOND ISSUE WHICH WAS ADDRESSED
IN JUDGE TAYLOR'S CONCURRENCE IS
WHETHER HE WAS STOPPED FIRST OR
WHETHER HE DROPPED FIRST.
AND BOTH OF THOSE ARE IMPORTANT.

>> WHAT DO YOU SAY ABOUT THAT IN
YOUR BRIEFS?

>> WELL, WE BELIEVE THAT HE --

>> HAVE YOU SAID ANYTHING ABOUT
THAT IN YOUR BRIEFS, ABOUT THE
HODARI D. ISSUE?

>> I BELIEVE THAT WE ADDRESSED
IT, YES.

AS YOU KNOW, I WAS BROUGHT INTO
THE CASE FOR ARGUMENT.

BUT, YEAH, IT WAS ADDRESSED IN
THE BRIEF THAT HE -- THERE HAD
TO BE A -- THERE HAD TO BE A
JUSTIFIABLE STOP.

FIRST, MR. WILLIAMS WAS STOPPED.

THE OFFICERS TOLD HIM TO STOP,
TO COME HERE.
AND ONCE HE STOPPED, THEN HE
DROPPED IT.
>> WHAT THE CASE SAYS IS HE
TURNED AND DROPPED IT.
>> HE TURNED AND DROPPED IT.
>> BUT THE INSTRUCTION TO THE
OFFICER WAS COME BACK.
>> RIGHT.
>> AND SO THAT'S A FULL --
THAT'S A SUBMISSION?
>> A SUBMISSION TO THE
AUTHORITY.
>> TO THE ATTEMPTED SEIZURE?
>> YES.
IT SEEMS TO SAY -- OFFICER --
THE OFFICER SAYS THAT HE WAS
WALKING AWAY FROM ME.
I SAID, HEY, COME HERE, I WANT
TO TALK TO YOU.
AT THAT POINT HE STOPPED, TURNED
AND DROPPED.
>> SO IT'S NOT A HODARI D. CASE.
>> IT'S THE LAW OF HODARI, BUT
NOT THE FACTS OF HODARI.
>> AS YOU KNOW, THERE WAS A
DIVIDED PANEL TO TAKE
JURISDICTION OF THE CASE.
AND I'D LIKE YOU TO ADDRESS THE
ISSUE THAT MAYBE I WASN'T REALLY
FOCUSED ON AT THE OUTSET, WHICH
IS THAT THERE WAS AN ACTIVE
CRIMINAL INVESTIGATION GOING ON
WHEN MR. WILLIAMS APPROACHED.
NOW, MR. WILLIAMS MAY NOT HAVE
KNOWN THAT, BUT YOU GOT TO LOOK
AT THE FACTS FROM THE POINT OF
VIEW OF WHAT A REASONABLE
INVESTIGATING OFFICER WOULD
THINK.
WOULD YOU AGREE WITH THAT?
THAT IS, IT'S NOT -- WHETHER THE
OFFICER, KNOWING THERE'S AN
ACTIVE CRIMINAL INVESTIGATION
GOING ON, BECOMES CONCERNED THAT
SOMEONE IS ABOUT TO INTERFERE
WITH THAT INVESTIGATION AFTER
THEY FIND THE CRACK PIPE.
SO MY CONCERN IS IS WHETHER THIS

IS ACTUALLY -- WHETHER YOU AGREE OR DISAGREE WITH THE 4TH DISTRICT OPINION, WHETHER THIS IS IN CONFLICT WITH THE OTHER CASES BECAUSE OF THAT SITUATION, WHICH IS WHAT IF THEY HAD JUST ARRESTED THIS PERSON FOR, YOU KNOW, FIRST-DEGREE MURDER AND THEY HAVEN'T YET DONE ANYTHING ELSE AND ALL OF A SUDDEN SOMEBODY'S APPROACHING THE VEHICLE AND THEY'RE WORRIED THEY'RE GOING TO GIVE THEM THE GUN.

>> WELL, HE HADN'T BEEN ARRESTED.

THE SURROUNDING FACTS --

>> BUT THERE'S NO ISSUE THAT THAT WAS A BOGUS -- I MEAN, THAT THEY --

>> YEAH.

>> OKAY.

SO THEY HAD REASON -- I MEAN, THE CRACK PIPE IS THERE. AND EVEN MORE OF CONCERN, BECAUSE MAYBE THERE'S OTHER THINGS IN THE VEHICLE, MORE OF A CONCERN THAT THEY DON'T WANT ANYTHING TO HAPPEN WITH THE PERSON IN THAT VEHICLE OR HAD THEY TAKEN THE CRACK PIPE OUT?

>> THE CRACK PIPE IS OUT.

THE CRACK PIPE IS IN THE OFFICER'S POSSESSION.

>> AND SHE IS WHAT?

>> SITTING IN HER CAR.

THEY JUST LET HER STAY IN HER CAR.

>> BUT THEN HOW MANY MINUTES BETWEEN WHEN THEY TAKE THE CRACK PIPE AND WHEN MR. WILLIAMS APPROACHES?

>> ACCORDING TO THE OFFICER'S TESTIMONY -- AND THERE WAS NOT -- THIS WAS NOT A FULLY FLESHED-OUT SUPPRESSION HEARING. THERE WAS NOT A LOT OF CROSS-EXAMINATION OR DIRECT EXAMINATION.

BUT THE ONE TESTIMONY, ONE

WITNESS, HE SAYS THAT IT'S IN A PARKING FIELD THAT SERVED AS THE PARKING -- A FIELD THAT SERVED AS THE PARKING LOT FOR A NIGHTCLUB.

HE WALKED UP.

THEY'RE DOING THEIR STREET UNIT INVESTIGATION, WHICH THEY SAID IS FOR DRUGS AND FOR TRAFFIC VIOLATIONS.

IT'S JUST KIND OF AN ALL-PURPOSE STREET LEVEL INVESTIGATION.

THEY WALK UP.

THEY SEE MISS KING.

SHE'S THE FIRST PERSON THEY INVESTIGATE.

THERE WAS NO TESTIMONY THAT THIS IS A HIGH-CRIME OR HIGH-DRUG AREA.

>> AGAIN, THAT'S WHERE I FIRST MAYBE WAS MORE CONCERNED, THAT THAT IS IT'S HIGH CRIME, WHATEVER, 1:00 IN THE MORNING. BUT I GUESS MY QUESTION IS THE PRESENCE OF THE CRACK PIPE, WHERE THEY HAD A LEGITIMATE REASON TO TAKE IT, THAT THERE WAS NO ILLEGAL SEARCH, STOP AND SEARCH THERE, WHY DOESN'T THAT DISTINGUISH THIS CASE FROM THE CASES YOU CITE AS CONFLICT?

>> HE TOOK -- THEY WALK UP.

THEY SEE HER.

THEY SEE THE PIPE.

AND THAT WAS ACCEPTED BY THE TRIAL COURT.

THEY TAKE HER DEAL AND WALK AWAY.

THERE'S AN OFFICER STANDING BEHIND -- THERE'S ANOTHER DEPUTY STANDING BACK BEHIND WITH THE CARS.

DEPUTY REGISTER TESTIFIED AND THE TRIAL COURT ACCEPTED, SO WE HAVE THE TRIAL COURT'S FINDINGS OF FACT, THAT MR. WILLIAMS DIDN'T KNOW THERE WAS AN INVESTIGATION ONGOING.

>> AND I APPRECIATE -- I UNDERSTAND THAT HE -- YOU KNOW

--

>> IF WE ACCEPT THAT IN THIS INSTANCE, THAT ALLOWING THAT THERE'S AN ONGOING INVESTIGATION GIVES THE OFFICERS A REASON AND ALLOWS THEM TO STOP AND GIVES REASONABLE SUSPICION TO STOP AND SEARCH SOMEONE WHO APPROACHES ANYONE WHO MIGHT BE A SUBJECT TO AN UNKNOWN ONGOING INVESTIGATION, GIVES REASONABLE DECISION TO SEARCH, OPENS UP A PANDORA'S BOX.

>> NOW YOU'RE GIVING A POLICY REASON.
WHICH CASE IS THAT IN CONFLICT WITH?

>> I'M NOT SURE THAT IT IS IN CONFLICT WITH ANY CASES.

>> WELL, ISN'T THAT THE PROBLEM, THOUGH?

>> BUT WE HAVE OTHER REASONS FOR JURISDICTION, RIGHT?

THIS IS -- IF YOU LOOK AT POPPEL AND IF YOU LOOK AT THE MISINTERPRETATION OF POPPEL, THIS IS A CITIZEN'S ENCOUNTER.

IT'S THE WAY THAT THE COURT MISAPPLIED THE LAW AND MISAPPLIED THE FACTORS.

YOU HAVE STILL JURISDICTION BASED ON THIS COURT'S POPPEL DECISION AND TERRY STOP.

SO WE HAVE JURISDICTION, NOT JUST THE WAY THAT THE LISTING OF THE DCA CASES.

SO GOING BACK TO HOW THE STOP CONTINUED.

THE OFFICER APPROACHED.

IF YOU LOOK AT THE FACTORS AND THE TOTALITY OF THE CIRCUMSTANCES, THE WAY THAT THE JUDGE LAID OUT A DECISION, THEY BASED IT ON THE CERTAIN FACTORS--

[INAUDIBLE]

AND THE COURT -- THE DISTRICT COURT SAID WHEN A -- DARKNESS AND ALL THE FACTORS THE COURT LOOKED AT, WE LOOK AT THE

TOTALITY OF THE CIRCUMSTANCES.
IT WAS IN THE PARKING LOT OF A
NIGHTCLUB.

THAT'S NOT AN UNUSUAL PLACE.
AND CASES FROM ALL COURTS HAVE
SAID YOU NEED MORE THAN THAT.
IT WASN'T PARTICULARLY DARK.
THE OFFICER TESTIFIED THAT THERE
WERE STREETLIGHTS OUTSIDE
THE CLUB.

THEY TESTIFIED THAT THERE WAS NO
HAND TO HAND.

THEY SAW HIM TALKING TO --
MR. WILLIAMS TALKING TO
MISS KING, BUT THEY DIDN'T HEAR
ANYTHING GOING ON.

THE TWO THINGS THAT THIS WAS
BASED ON ARE THE FACT THAT HE
DID APPROACH THE CAR AND THAT
ONCE THE OFFICER CALLED OUT TO
HIM, WHEN HE STOOD UP, THERE WAS
A CLENCHED FIST.

THAT'S THE ONLY THING THAT
REALLY ALERTED THE OFFICER.

>> WELL, THE OFFICER, SPEAKING
OF THE CLENCHED FIST, DIDN'T THE
OFFICER TESTIFY THAT BASED ON
HIS EXPERIENCE, THAT THERE COULD
HAVE BEEN A WEAPON IN THE FIST?

>> I THINK THAT THE DISTRICT
COURT OPINION KIND OF
CORROBORATED ON THAT.

THE ONLY THING THAT THE OFFICER
TESTIFIED -- AND, YOU KNOW, WE
HAVE HIS TESTIMONY AS TO HIS
EXPERIENCE AND TRAINING WITH
DRUGS.

THE ONLY THING THAT HE STATED AS
TO HIS EXPERIENCE WITH WEAPONS
WAS I BELIEVE IT WAS ON EITHER
PAGE 20 OR 21 OF THE
TRANSCRIPTS.

HE SAID THAT UNFORTUNATELY A
FELLOW OFFICER HAD BEEN KILLED A
FEW MONTHS EARLIER.

I THINK IT WAS TWO MONTHS
EARLIER, WITH A PENDANT THAT WAS
THE SIZE OF ONE OR TWO INCHES.

>> A WHAT?

>> A PENDANT, LIKE THAT HANGS

FROM A NECKLACE, THAT WAS ABOUT ONE INCH LONG WHEN EXTENDED. THAT WAS HIS FULL EXTENT OF HIS TRAINING AND EXPERIENCE WITH WEAPONS.

HE JUST SAYS WEAPONS DON'T HAVE TO BE A LARGE KNIFE OR A FIREARM, THAT THIS PENDANT WAS ABOUT ONE INCHES LARGE. AND THAT WAS HIS FULL EXTENT OF HIS TESTIMONY ABOUT HIS EXPERIENCE AND TRAINING WITH FIREARMS.

AND THE TRIAL COURT MADE A FINDING OF FACT THAT HE DID -- THAT THE TRIAL COURT SAID I'M DISCOUNTING THE WEAPONS.

I DON'T FIND HIS FEAR FOR HIS SAFETY FROM WEAPONS IS A VALID REASON FOR THIS STOP AND SEARCH. SO NO.

I MEAN, WHILE THE OFFICER MIGHT HAVE SAID THAT, BUT THERE WERE NOT REASONABLE FACTS.

>> SO YOUR ARGUMENT REALLY IS THAT BECAUSE YOU SAW NO CRIMINAL OR SUSPICIOUS ACTIVITY BETWEEN THE OCCUPANT OF THE CAR AND MR. WILLIAMS, AND WHEN MR. WILLIAMS TURNED AND STARTED WALKING AWAY, THAT HE SHOULD HAVE BEEN FREE TO LEAVE AT THAT POINT.

>> EXACTLY.

AND WHEN HE, YOU KNOW, SAID IF THERE WAS AN INVESTIGATION, THAT'S WHAT WE WOULD WANT HIM TO DO.

WHEN YOU THINK OF SOMEBODY INTERFERING WITH AN INVESTIGATION, IT'S, HEY, WHAT ARE YOU DOING HERE? HEY, OFFICER, THAT'S MY FRIEND. HEY, POLICE ARE HERE.

YOU KNOW, THERE'S AN ACTUAL INTERFERENCE.

IF THERE WAS AN INVESTIGATION AND THE CIVILIAN WALKED UP WHEN THE POLICE SAID, HEY, GET OUT OF HERE, THAT'S EXACTLY WHAT YOU

WOULD WANT SOMEONE TO DO.
AND WHEN HE SAW THE POLICE, HE
WALKED AWAY.

>> WHAT DOES THE RECORD SHOW
ABOUT WHEN THE DEFENDANT WALKED
UP TO THE CAR, WHERE THE POLICE
OFFICERS WERE AND WHERE THEIR
VEHICLE WAS IN RELATIONSHIP TO
THE CAR THAT WAS STOPPED?

>> IT'S NOT COMPLETELY CLEAR,
JUSTICE CANADY, BUT IT APPEARS
THEY WERE PARKED ABOUT TEN FEET
BACK.

THAT'S ALL IT SAYS.

>> WHAT ABOUT WHERE THE OFFICERS
THEMSELVES WERE?

>> THEY WERE STANDING AT ONE
POINT BEHIND THE CAR AND THEN
THEY TESTIFIED THAT THEY MOVED
UP TO THE FENDER OF THE --

>> THEY'RE CERTAINLY IN CLOSE
PROXIMITY TO THIS VEHICLE.

WELL, I MEAN, IT'S A LITTLE
STRANGE FOR SOMEBODY TO COME
WALKING UP TO A CAR WHEN THE
POLICE ARE RIGHT THERE
AROUND IT.

>> IT'S AN UNMARKED VEHICLE.

>> DIDN'T THEY HAVE SHERIFF ON
THE SLEEVE?

>> HE IS COMING OUT OF THE BAR.

>> I DIDN'T ASK THAT QUESTION.
DID HE HAVE IDENTIFICATION ON
THE SHIRT?

>> IT'S A BLACK SHIRT WITH
SHERIFF DOWN THE SLEEVES.

>> OKAY.

>> BUT THE POLICE HAD NOT GONE
BACK TO -- I THOUGHT THERE WAS
SOMEPLACE IN THE RECORD THAT
SAID THAT THE POLICE HAD GONE
BACK TO THEIR CAR.

>> THEY HAD.

>> AND THAT'S WHEN THEY -- THE
DEFENDANT ACTUALLY APPROACHED
THE WINDOW AND I THOUGHT THEY
WERE IN THEIR CAR AT THAT POINT.
THAT'S NOT TRUE?

NOW YOU'RE SAYING THEY WERE
BEHIND THE CAR?

>> THEY WERE STANDING BACK AT THEIR CAR.

>> OH.

AT THEIR CAR.

>> AND THEN THEY WALKED UP TOWARD MISS KING'S CAR, WHEN HE APPROACHED.

THAT IS MY UNDERSTANDING OF THE RECORD.

THEN WHEN THEY SAID, HEY, WHAT ARE YOU DOING, HE JUMPS UP, STARTLES, STARTLES ARE THE WORDS.

AROUND THE TRIAL COURT MADE A FINDING THAT HE DID NOT KNOW THAT THE POLICE WERE THERE WHEN HE APPROACHED THE CAR.

HE STARTLED.

HE STARTS TO WALK AWAY.

THEN THE OFFICER SAYS, HEY, COME HERE.

I WANT TO TALK TO YOU.

>> I GUESS I'M STILL AT A POINT WHERE -- WHAT -- WHAT ABOUT THIS CASE IS IN CONFLICT WITH POPPEL OR I GUESS SHACKLEFORD OR ANY OF THOSE CASES?

WHAT'S THE CONFLICT?

>> THE COURTS INTERPRETED THIS AS -- THEY INCORRECTLY INTERPRETED THE MEANING -- THE -- THEY INCORRECTLY INTERPRETED -- CAN I HAVE JUST A SECOND?

>> WELL, MAYBE YOU CAN ANSWER THIS.

HOW DOES THIS CASE DIFFER FROM SHACKLEFORD?

I THOUGHT IN THAT CASE THE DISTRICT COURT WAS SAYING THAT A STOP IS NOT WARRANTED SOLELY ON AN OFFICER'S OBSERVATION OF A BLACK MALE IN A HIGH-CRIME DISTRICT LEANING INTO THE WINDOW OF A WHITE MAN'S CAR STOPPED IN THE MIDDLE OF THE STREET WHO WALKS AWAY UPON SEEING AN OFFICER APPROACH.

SO BASICALLY WE HAVE -- I DON'T KNOW WHAT THE --

>> RIGHT.
>> -- RACE OF THE VICTIM --
>> WHITE FEMALE IN THE CAR.
>> BUT WE BASICALLY HAVE A GENTLEMAN COMING TO A CAR, TALKING TO SOMEONE.
AND THEN WHEN THE POLICE APPROACH, HE STARTS WALKING AWAY.
SO TELL ME HOW THIS CASE DIFFERS FROM SHACKLEFORD?
>> WELL, IN THIS CASE, ACCORDING TO THE DISTRICT COURT AND THE STATE, THE DIFFERENCE IS THE ONGOING INVESTIGATION.
>> THAT'S THE DIFFERENCE, THAT THERE WAS AN ONGOING -- AND SO WHAT WAS GOING ON -- THERE WAS NO INVESTIGATION GOING ON IN SHACKLEFORD?
THEY WERE JUST OBSERVING PEOPLE IN A HIGH-CRIME AREA.
>> YES.
AND THIS WAS NOT A HIGH-CRIME AREA.
WELL, IT MIGHT HAVE BEEN, BUT THERE WAS NO TESTIMONY THAT IT WAS.
>> WELL, DOES THAT HELP OR HURT YOU THAT THIS WAS AN ONGOING INVESTIGATION IN A NON-HIGH-CRIME AREA?
>> WELL, THE NON-CRIME-AREA OBVIOUSLY HELPS ME.
I DON'T THINK THAT IT -- I DON'T THINK THAT IT MATTERS --
>> SO BECAUSE IT WAS A NON-HIGH-CRIME AREA, THE OFFICER'S SUSPICIONS SHOULD NOT HAVE BEEN --
>> WELL, IT'S NOT ONE OF THOSE FACTORS THAT ARE TICKED OFF ON THE TOTALITY OF THE CIRCUMSTANCES LIST.
>> HERE IT IS AGAIN, UNDER SHACKLEFORD IF THERE HAD NOT BEEN AN ONGOING INVESTIGATION AND IT WAS 1:00 A.M. AT NIGHT AND SOMEBODY APPROACHES THE VEHICLE, WAS THE DEFENDANT

BLACK OR WHITE?

>> THE DEFENDANT WAS BLACK.

>> THE WOMAN IS--

>> WHITE.

>> AND THEY APPROACH THE
VEHICLE.

SHACKLEFORD WOULD SAY THERE'S
NOT REASONABLE SUSPICION.

BUT WE'VE GOT THE DISTINGUISHING
FACTOR WHICH I THINK YOU HAD
ALREADY AGREED--

>> YES.

>>-- THAT SHACKLEFORD REALLY IS
DISTINGUISHING BECAUSE THERE WAS
NO ONGOING INVESTIGATION.

>> YES.

AS FOR THE MOVING ON TO THE-- I
DO WANT TO BRIEFLY ADDRESS JUDGE
TAYLOR'S CONCURRENCE.

SHE FOUND THERE WAS NO
REASONABLE SUSPICION FOR THE
STOP.

SHE DID FIND THAT THAT DIDN'T
MATTER BECAUSE MR. WILLIAMS
DROPPED THE COCAINE BEFORE HE
WAS STOPPED.

SHE DIDN'T ELABORATE A LOT ON
THAT, BUT WE WOULD EMPHASIZE
THAT BASED ON THE OFFICER'S
COMMAND-- WE WOULD SAY COMMAND,
BUT AT LEAST STATEMENT TO
MR. WILLIAMS TO COME HERE, I
WANT TO TALK TO YOU, THAT THAT
WAS AN ORDER TO STOP, IT WAS AN
INVESTIGATIVE STOP AND THAT HE
DID ACQUIESCE TO THAT AUTHORITY
WHEN HE TURNED AS HE HAD BEEN
WALKING AWAY BETWEEN THE TWO
CARS, AND HE TURNED, AND HE
ACTUALLY WAS TURNING TOWARD THE
OFFICER OR AS HE TURNED WHEN HE
DROPPED THE COCAINE.

>> DEEP INTO YOUR REBUTTAL.

>> YES.

AND THAT'S WHY I SAID BRIEFLY.
SO I AM GOING TO ASK THE COURT
TO REVERSE, AND I WILL--

>> MORNING.

MAY IT PLEASE THE COURT,
MITCHELL EGBER, ASSISTANT

ATTORNEY GENERAL ON BEHALF OF
THE STATE OF FLORIDA.

AS TO THE JURISDICTION IN THIS
CASE, WE MAINTAIN THAT THERE IS
NO EXPRESS OR DIRECT CONFLICT
WITH ANY CASES, PARTICULARLY
CITED BY THE PETITIONER AT THE
OUTSET WHICH, APPRECIATE THE
CANDOR, COUNSEL AGREED THERE WAS
NO CONFLICT WITH THOSE CASES.
FOURTH DISTRICT COURT OF APPEAL,
WE VIEWED THIS CASE AND ANALYZED
IT UNDER TOTALITY OF THE
CIRCUMSTANCES AND THE REASONABLE
BELIEF OF A REASONABLE OFFICER'S
BELIEF AS TO WHAT WAS TAKING
PLACE.

SO THERE'S DISTINGUISHING
ASPECTS TO THIS CASE THAT THE
COURT CONSIDERED.

AGAIN, THERE IS NO EXPRESS
DIRECT CONFLICT WITH ANY OF
THESE OTHER CASES BECAUSE OF THE
DISTINGUISHING CHARACTER.

OF THIS CASE AS WELL AS THE
PROPER ANALYSIS ELUCIDATED BY
THE FOURTH DISTRICT COURT OF
APPEAL--

>> WELL, LET ME ASK YOU THIS,
BECAUSE I'M NOT SURE WHERE WAS
THE POLICE AT THE TIME THAT
MR. WILLIAMS APPROACHED THE CAR?
BECAUSE IT WAS MY UNDERSTANDING
THAT THEY WERE IN THEIR OWN CAR
AT THAT A TIME DOING WHATEVER, I
GUESS, CHECKS OR WHATEVER THEY
DO ON COMPUTERS OR SOMETHING.
SO WHERE WERE, WHERE WERE THEY
WHEN MR. WILLIAMS APPROACHED THE
CAR?

>> THEY-- DETECTIVE REGISTER
WAS AT THE-- LET ME GIVE YOU
SOME, A VERBAL DIAGRAM OF WHAT
OCCURRED HERE.

THEY CAME TO THE PARKING LOT.
THE VEHICLE, WHICH THEY HAD
APPROACHED, WAS FACING EAST, WAS
BACKED UP TOWARDS THE WEST OF
THE PARKING LOT.

THEIR VEHICLE AND AN UNMARKED

VEHICLE PULLED UP IN FRONT OF THAT VEHICLE ABOUT 10 TO 15-- ABOUT 10 FEET AWAY.

DETECTIVE REGISTER AND, I BELIEVE, DETECTIVE NORMAN APPROACHED THE VEHICLE TO WHICH CAN ON THE OCCUPANT.

IT WAS A DRUG AREA, THAT'S WHY THEY WERE THERE.

THEY WERE PART OF A SPECIAL TASK FORCE.

THEY SAW IN PLAIN VIEW A CRACK COCAINE PIPE.

THEY TOLD HER THAT SHE COULD NOT GO ANYWHERE, SHE WAS DETAINED AT THAT POINT.

DETECTIVE REGISTER WENT TO GO RUN A WARRANTS CHECK ON HER WITH HIS LAPTOP COMPUTER.

THIS WILL NOW ANSWER YOUR QUESTION, JUSTICE QUINCE.

>> SO THEY WERE-- HE WAS AT THE CAR--

>> HE WAS AT THE CAR.

>> CHECKING ON--

>> HE WAS AT THE PASSENGER, HE WAS IN FRONT OF HIS VEHICLE.

HIS LAPTOP WAS ON HIS HOOD OF THE VEHICLE.

PETITIONER BEGAN WALKING TOWARDS THE VEHICLE FROM THE BAR AREA WHICH WOULD HAVE BEEN, I BELIEVE, FROM THE NORTH, FROM THE NORTH.

HE PASSED DETECTIVE REGISTER WHO WAS STANDING AT THE FRONT OF HIS VEHICLE ABOUT 10 FEET AWAY--

>> THE COMPUTER.

>> WITH THE COMPUTER SITTING ON TOP OF THE HOOD OF THE VEHICLE.

IN SHERIFF'S VEST, SHERIFF

RUNNING DOWN BOTH ARMS, DETECTIVE NORMAN WAS AT THE BACK OF THE VEHICLE.

HE REALLY WASN'T AT THE FRONT--

>> AT THE BACK OF THE POLICE VEHICLE.

>> BACK OF THE POLICE VEHICLE.

WELL, THE UNMARKED VEHICLE.

AT THAT POINT MR. WILLIAMS WAS

AT, LEANING INTO THE WINDOW, AN OPEN WINDOW OF THE VEHICLE ON THE DRIVER'S SIDE WHERE THE WOMAN WHO WAS BEING DETAINED FOR PARAPHERNALIA AND POSSIBLE NARCOTICS LEANED IN.

DETECTIVE REGISTER LOOKED UP, SAID, HEY, MAN, WHAT ARE YOU DOING?

BEGAN TO APPROACH HIM AS HE SAID THAT.

MR. WILLIAMS THEN BACKED AWAY FROM THE WINDOW WITH A CLENCHED FIST--

>> AND STARTED WALKING AWAY.

>> WALKED TOWARDS DETECTIVE REGISTER.

YOU HAVE THE VEHICLE HERE OF THE OCCUPANT, YOU HAVE MR. WILLIAMS HERE, AND YOU HAVE THE DETECTIVE'S VEHICLE BASICALLY PERPENDICULAR WITH HIS LAPTOP ON THE HOOD.

MR. WILLIAMS THEN WALKS, BRUSHES BY DETECTIVE REGISTER.

AND JUST AS HE BRUSHES BY IS WHEN HE SAYS, HEY, MAN, WHERE ARE YOU GOING?

COME HERE.

THE ENTIRE TIME THAT HE LEFT THAT VEHICLE AFTER BENDING, LEANING OVER TO HIS WINDOW, HE NEVER UNCLENCHED HIS FISTS.

NOW, NOT ONLY WAS THERE AN ONGOING INVESTIGATION OF A WOMAN WE KNOW HAD A CRACK PIPE IN HER CAR WHICH COULD HAVE ALSO HAD CRACK IN IT-- UNLIKE THE OTHER CASES THAT PETITIONER CITED THAT ARE ALLEGED DRUG DEALERS, ALLEGED-- WE KNOW THERE'S A CRACK PIPE IN THE VEHICLE.

THE DETECTIVE KNOWS THAT.

MR. WILLIAMS HAS ESCALATED AND HEIGHTENED THE SUSPICION OF THIS REASONABLE OFFICER IN TERMS OF WHAT HE'S SEEN BY WALKING AWAY FROM THE VEHICLE WITH CLENCHED FISTS WHICH COULD CONTAIN ONE OF TWO THINGS; NARCOTICS OR A

WEAPON.

BACK TO THE NARCOTICS.

EITHER HE WAS COMING TO SELL HER NARCOTICS AND STILL HAD IT IN HIS HAND WHEN HE SAW THE DETECTIVE, HE DECIDED TO WALK AWAY, OR HE WAS TAMPERING WITH EVIDENCE BECAUSE, REMEMBER, HE WAS LEANING INTO THE WINDOW. THERE'S A CAR DOOR BENEATH THE WINDOW.

HE NEVER TESTIFIED HE COULD SEE WHAT WAS THERE.

IF HE HAD SEEN WHAT WAS THERE, WE'D BE IN A DIFFERENT POSTURE IN THE CASE IF HE HAD SEEN DRUGS TAKEN.

BUT THE TWO MAJOR DISTINGUISHING FACTS IN THE CASES AND THE CASES PETITIONER'S CITED IS AN ONGOING INVESTIGATION, NOT SPECULATIVE. BECAUSE WE KNOW THERE WAS A CRACK PIPE IN THE CAR.

HE HAD RETRIEVED IT.

>> WOULD IT MAKE A DIFFERENCE IN THIS CASE IF HE HAD APPROACHED THE VEHICLE, THE POLICE OFFICER SAID, HEY, MAN, WHAT ARE YOU DOING AND THIS PERSON'S ARRESTED, AND AT THAT POINT, OH, SORRY, MAN, AND WALKED AWAY? WOULD THERE BE-- WOULD THAT BE, WOULD THAT PUT YOU IN, THE CASE IN A DIFFERENT POSTURE?

>> I BELIEVE IT WOULD.

AND THAT'S WHAT WOULD NORMALLY HAPPEN.

BACK UP, RECOGNIZE IT'S A POLICE OFFICER.

THE ONLY TWO VEHICLES IN THE PARKING LOT.

DARK NIGHT, 1:00 IN THE MORNING. THE PARKING LOT IS, THE PARKING LOT IS DARK, EXCUSE ME.

[INAUDIBLE CONVERSATIONS]

>> HOW COULD HE SEE THE CRACK PIPE?

>> WELL, THEY WERE AT THE VEHICLE, DETECTIVE NORMAN AND DETECTIVE CAN REGISTER HAD GONE

UP TO THE VEHICLE, HER WINDOW WAS OPEN, THEY LOOKED INSIDE, AND IT WAS SITTING ON THE CONSOLE.

>> WAS THERE A LIGHT ON INSIDE THE CAR?

>> I DON'T KNOW THAT, BUT I WAS REFERRING, JUSTICE PERRY, TO THE PARKING LOT ITSELF IN TERMS OF MR. WILLIAMS.

THERE WAS NO, I MEAN, THERE WAS NO QUESTION AT THE SUPPRESSION MOTION EITHER PRESENTED BY THE DEFENDANT OR THE STATE AS TO WHETHER THEY WERE ABLE TO SEE THE CRACK PIPE IN THE, ON THE CONSOLE OF THE VEHICLE.

IT WAS IN PLAIN VIEW ON THE CONSOLE.

THAT WAS NOT A QUESTION IN THE CASE.

AND EVEN AGREED WITH THAT.

BUT IF HE HAD BACKED UP, OPENED HIS HANDS AND SAID, YOU KNOW, OKAY, I UNDERSTAND, WALKED AWAY, THE CASE WOULD BE IN A DIFFERENT POSTURE.

>> WELL, IF HE'D PUT UP HIS HANDS, THEN THERE'S A SHOW OF AUTHORITY.

THERE'S ALWAYS, WE'RE ALWAYS WORRIED IN THESE CASES, WE'RE NOT AS WORRIED ABOUT THE PERSON THAT'S GOT THE GOODS, BUT WE'RE WORRIED ABOUT POLICE BEING OVERZEALOUS AND PUTTING PEOPLE THAT ARE OTHERWISE INNOCENT UNDER ARREST.

SO I THINK IF HE'D GONE LIKE THAT, WE ALREADY HAVE THE SHOW OF AUTHORITY.

BUT, AGAIN, WE DON'T HAVE THAT SITUATION--

>> RIGHT.

>>-- AND THAT'S WHY I'M, THE ONGOING INVESTIGATION AND WHAT HIS ACTIONS WERE AS DISTINGUISHING THIS FROM THE OTHER CASES, WHICH I GUESS WOULD BE FRIENDLY QUESTIONS OR

COMMENTS TO YOU.

>> YES.

AGAIN, WE DON'T SEE THAT THERE IS, THERE IS NO JURISDICTION IN THIS CASE.

AND IF THERE ARE NO FURTHER QUESTIONS, WE ASK YOU TO AFFIRM THE TRIAL COURT.

THANK YOU.

OR THE APPELLATE COURT.

>> REBUTTAL?

[INAUDIBLE]

CRACK PIPE, THERE'S NO TESTIMONY AS TO WHAT THE LIGHTING WAS IN THE CAR.

BUT NOT ONLY WAS IT ON THE CONSOLE IN THE CAR, IT WAS INSIDE OF A CIGARETTE PACK ON THE CONSOLE IN THE CAR.

BUT THE COURT MADE A FACTUAL FINDING THAT THE OFFICERS COULD SEE IT.

AS TO ALSO WE DON'T KNOW THAT THIS WAS THE ONLY CAR IN THE PARKING LOT.

THE OFFICERS JUST SAID IT WAS THE FIRST ONE THEY APPROACHED, AND THEY GOT LUCKY THERE.

THE OFFICER REGISTER TESTIFIED THAT NOT ONLY DID HE NOT KNOW WHAT MIGHT HAVE BEEN IN MR. WILLIAMS' HANDS, HE SAID HE COULDN'T TELL IF THERE WAS ANYTHING IN HIS HANDS AT ALL. HE JUST SAID THAT SEEING HIM IN THAT POSTURE MADE HIM VERY SUSPICIOUS.

IT WAS JUST AS SUSPICIOUS TO ME, IT WAS JUST MY SUSPICION.

AND THAT'S WHY HE STOPPED HIM.

BUT HE DECIDED HE WAS GOING TO STOP HIM WHEN HE FIRST SAW HIM LEAN INTO THE CAR.

HE SAID IT WAS VERY, VERY SUSPICIOUS.

>> BUT, AGAIN, THAT'S-- IT'S REASONABLE IF WE ASSUME THAT THE VIEWING OF THE CRACK PIPE WAS--

>> UH-HUH.

>>-- WAS IN PLAIN VIEW, WHICH

YOU'RE SORT OF CASTING QUESTIONS ON, BUT THAT'S--

>> BUT THAT WAS THE FINDING OF THE TRIAL COURT.

>> THEN SOMEONE LEANING INTO THE VEHICLE OF WHO MAY BE EITHER A DRUG DEALER OR A DRUG USER WOULD-- IT'S NOT JUST A SUSPICION, IT'S A WELL FOUNDED SUSPICION.

I MEAN, AGAIN, I THINK THAT'S WHERE IT'S NOT JUST BLACK ON WHITE OR IT'S NIGHTTIME OR IT'S HIGH CRIME, IT'S SOMETHING THAT THEY'VE ALREADY, ARE ABOUT TO ARREST SOMEBODY IF THEY HAVEN'T YET.

>> BUT HE DOESN'T KNOW THAT.

>> BUT THAT'S NOT, THAT'S NOT THE STANDARD, IS IT?

THE STANDARD IS WHAT THE REASONABLE POLICE OFFICER WOULD ASSUME UNDER THE CIRCUMSTANCES. I MEAN, I'M A LITTLE TAKEN BACK THAT IN TODAY'S SOCIETY THAT POLICE OFFICERS SEE DRUG PARAPHERNALIA.

AT THIS POINT THAT'S NOT EVEN A DISPUTED FACTOR.

THEY GO GET THEIR COMPUTER, AND THEY PUT IT ON THE CAR, AND THEY'RE CHECKING TO SEE IN THE OUTSTANDING WARRANTS AND THE STATUS OUTSIDE WEARING A SHIRT THAT HAS THE SHERIFF'S NAME ALL OVER IT, AND SOMEBODY COMES IN BETWEEN 'EM AND STICKS THEIR HEAD IN THE CAR THEY'RE INVESTIGATING.

I MEAN, I'M NOT A POLICE OFFICER, AND TO ME WHAT ELSE WOULD YOU EXPECT THEM TO DO? JUST LET 'EM DO WHAT THEY'RE DOING.

>> WE ARE STILL BOUND BY THE TRIAL COURT'S FINDINGS THAT--

>> WELL, THAT'S THE POINT THOUGH.

IS THAT THE VIEWS TO BE TAKEN, OR TO IS IT THAT THE VIEW OF THE

REASONABLE POLICE OFFICER, WHAT DOES OUR CASE LAW AND U.S. SUPREME COURT LAW TAKE US?

>> REASONABLE, ARTICULABLE FACTS--

>> OF WHO?

>> OF THE OFFICER.

>> WELL, THAT'S, AGAIN, YOU'RE TAKING IT I'M JUST OBLIVIOUS TO WHAT'S GOING ON, I JUST WANDER UP ON THE SHERIFF'S GUYS STANDING WITH THE COMPUTER DOING ALL THIS, I DIDN'T HAVE ANY IDEA.

YET THE POLICE OFFICER TESTIFIES TOTALLY TO THE CONTRARY.

IT'S THE STATE OF MIND OF THE POLICE OFFICER AND WITH THE TOTALITY OF THE FACTS?

>> THE OFFICER ALSO STATED THAT HE THOUGHT THAT MR. WILLIAMS-- [INAUDIBLE]

AND I AM IN, FAR OVER MY TIME. I'D, OF COURSE, BE HAPPY TO ANSWER ANY MORE OF THE COURT'S QUESTION--

>> ANSWER THE QUESTION.

>> THAT'S ALL RIGHT.

>> THE OFFICER SAID HE THOUGHT MR. WILLIAMS WAS SURPRISED TO SEE HIM THERE UNTIL HE STOOD UP. AND, I MEAN, I CAN ELABORATE MORE ON THAT.

BUT THAT WAS THE OFFICER'S TESTIMONY AS WELL AS THE COURT'S FINDING.

SO--

>> THANK YOU, COUNSEL.

>> OKAY.

WE WOULD ASK THE COURT BASED ON ALL OF THESE TO KEEP, MAINTAIN JURISDICTION AND TO REVERSE AND VACATE BOTH THE CONVICTION AND SENTENCE OF MR. WILLIAMS.

THANK YOU.

>> THANK YOU.

THANK YOU FOR YOUR ARGUMENTS.