

>>> THE LAST CASE FOR THE DAY IS  
STATE OF FLORIDA VERSUS VAN  
TEAMER.

>> MAY PROCEED.

>> MAY IT PLEASE THE COURT,  
JAY KUBICA FOR THE STATE.  
SORRY.

>> PLEASE SPEAK UP A LITTLE  
BIT.

>> MAY IT PLEASE THE COURT,  
JAY KUBICA FOR THE STATE.  
THE 4TH AMENDMENT ALLOWS  
OFFICERS TO TEMPORARILY DETAIN  
INDIVIDUALS TO INVESTIGATE  
AMBIGUOUS CIRCUMSTANCES  
SURROUNDING THEIR BEHAVIOR SO  
LONG AS THERE IS REASONABLE  
SUSPICION OF CRIMINAL  
ACTIVITY.

>> LET ME ASK YOU A QUESTION,  
AND REALLY RIGHT ON TO THIS.  
TWO WEEKS IN A ROW I RENTED A  
CAR FROM AVIS.

ONE DESCRIBED IT IN THE  
RECORDS AS BEING RED.

I WENT TO THE PARKING LOT TO  
FIND IT.

IT WAS NOT RED, BUT IT WAS,  
ACCORDING TO THEIR  
DESCRIPTION, IT WAS LIKE A  
MIDNIGHT MAROON, CLASSIFIED AS  
RED.

AND THEN TWO WEEKS LATER IN  
MIAMI I RENTED ANOTHER  
VEHICLE.

THEY DESCRIBED IT AS BEING  
GOLD.

I MAY BE COLOR BLIND, BUT IT  
WAS THE GREENEST VEHICLE I'VE  
EVER SEEN.

NOW, I'VE HAD AN OFFICER  
CHECKED ON BOTH OF THOSE, THEY  
WOULD HAVE FOUND, WELL, THIS  
IS SUPPOSED TO BE A RED CAR OR  
A GREEN CAR AND WOULD A STOP  
HAVE BEEN PROPER UNDER THOSE  
CIRCUMSTANCES?

>> A STOP WOULD HAVE BEEN.

>> WOULD HAVE BEEN.

AND WHY?

>> THE TEST THAT WE APPLY TO DETERMINE WHETHER THERE IS REASONABLE SUSPICION TO DO A TEMPORARY INVESTIGATIVE DETENTION IS WHETHER THERE ARE PARTICULAR OBJECTIVE FACTS THAT WE CAN LOOK AT IN LIGHT OF THE OFFICER'S TRAINING AND EXPERIENCE AND DRAW A RATIONAL INFERENCE OF POSSIBLE CRIMINAL ACTIVITY.

AND IN THE INSTANCE YOU MENTIONED, THERE IS CERTAINLY A CHANCE THAT INNOCENT INDIVIDUALS WHO ARE DOING NOTHING MORE THAN GOING ABOUT THEIR BUSINESS ARE GOING TO RUN THE RISK OF BEING DETAINED.

THAT IS A RISK THAT 4TH AMENDMENT JURISPRUDENCE HAS

>> BUT WHERE'S THE I'M NOT IT'S NOT ILLEGAL LIKE IF I WENT OUT TODAY AND PAINTED MY VEHICLE, I DON'T HAVE TO TELL THE DEPARTMENT OF MOTOR VEHICLES THAT I PAINTED MY VEHICLE BRIGHT YELLOW.

>> CORRECT.

>> DO I?

SO THERE'S NO WHERE'S THE CRIME?

WHERE'S THERE ANY EVIDENCE OF SUSPICION?

THERE WASN'T THIS OFFICER DIDN'T SAY THAT HE RAN A TAG, HE SAID HE WAS ON REGULAR PATROL.

WE DON'T KNOW IF THERE WERE OTHER REASONS HE WAS TARGETING TO PARTICULAR DEFENDANT.

HE HASN'T TESTIFIED TO THAT. BUT IT SORT OF STARTLED ME TO THINK THAT POLICE OFFICERS ARE JUST CHECKING REGISTRATION AND THEN IF THE COLOR ISN'T THE SAME, THAT THEY CAN STOP THE VEHICLE.

WAS THERE ANY OTHER

CIRCUMSTANCES OF THE WAY THE VEHICLE WAS DRIVING, OF ANYTHING ELSE THAT GAVE THIS EXPERIENCED POLICE OFFICER GROUNDS TO STOP THE VEHICLE?

>> IN TERMS OF THE FACTS WITHIN THE RECORD

>> THAT'S WHAT WE WANT TO STICK WITH, DON'T WE?

>> RIGHT.

THE OFFICER DID NOT ARTICULATE VERY FULLY WHAT HAD HAPPENED PRIOR TO HIS SECOND ENCOUNTER WITH MR.†TEAMER'S VEHICLE.

THE OFFICER IN THE RECORD APPEARS ALMOST AS A BROKEN SENTENCE WHERE HE'S INTERRUPTED.

BUT THE OFFICER DOES START TO GET INTO HOW HE HAD NOTICED THE VEHICLE A LITTLE BIT EARLIER, AND THEN WHEN HE TURNED HIS VEHICLE AROUND TO GO THE OTHER WAY, HE HAD NOTICED THAT WHILE MR.†VAN TEAMER'S VEHICLE HAD PULLED OFF THE ROAD INTO A PARKING LOT WHEN HE FIRST APPROACHED, MR.†VAN TEAMER'S VEHICLE WAS NOW VERY SHORTLY THEREAFTER BACK ON THE ROAD.

AND HE GETS TO THE POINT IN THE TESTIMONY WHERE HE SAYS, WELL, SOMETIMES PEOPLE TRY TO AVOID US.

BUT THAT BEING SAID, UPON CROSSEXAMINATION THE OFFICER WAS VERY, VERY CLEAR THAT HE DID NOT OBSERVE ANYTHING SUSPICIOUS ABOUT THE DRIVING PATTERN.

BUT IT IS CLEAR THAT WHAT DREW HIS ATTENTION TO MR.†VAN TEAMER'S VEHICLE IS THAT HE SAW IT A SECOND TIME AND THAT DREW HIS INTEREST.

>> BUT THAT'S

[ COMMENT OFF MIC ]

>> THE COURT WENT ON IT WAS

A SIMILAR TYPE OF CASE.  
THE COURT MENTIONED THAT IF  
THERE HAD BEEN OTHER FACTORS  
SUCH THAT THE OFFICER  
TESTIFIED AS TO SOME  
CORRELATION BETWEEN PAINTED  
VEHICLES AND VEHICLES THAT ARE  
KNOWN TO BE STOLEN, THAT KIND  
OF THING, SOMETHING BESIDES  
THE OFFICER JUST SAYING THE  
COLOR THAT I SAW DID NOT MATCH  
THE DESCRIPTION GIVEN TO THE  
DEPARTMENT OF MOTOR VEHICLES.  
NONE OF THAT WAS HERE.

>> CORRECT.

AND IN EVERY ONE OF THE CASES  
IT IS ALSO ABSENT.

AND I THINK THIS IS WHERE  
UNITED STATES VSAUKALO IS  
INSTRUCTIVE.

IN THAT CASE THEY DEMANDED  
EMPIRICAL EVIDENCE TO SHOW THE  
PROBABILITIES, STATISTICS OF  
CERTAIN WHAT WOULD OTHERWISE  
BE INNOCENT ACTIVITY MEETING  
AN ACTUAL DRUG COURIER.

THE UNITED STATES SUPREME  
COURT SAID THAT IS NOT WHAT WE  
LOOK FOR IN THE ANALYSIS.

IN FACT, IT MAY BE IMPOSSIBLE  
IN SOME CIRCUMSTANCES TO  
COLLECT THAT KIND OF DATA.

THE TEST IS MEANT TO BE SIMPLE  
AND RELIES ON COMMON SENSE.

IT'S MEANT TO BE APPLIED BY AN  
OFFICER ON PATROL SO THAT THEY  
CAN USE THE FACTS AVAILABLE TO  
THEM AND THEIR EXPERIENCE TO  
DRAW A RATIONAL CONCLUSION

>> BUT IN ANSWER TO JUSTICE  
LEWIS'S QUESTION, YOU'RE  
SAYING IN THIS RECORD THE SOLE  
BASIS OF CREATING REASONABLE  
SUSPICION IS A NONCRIMINAL  
ACTIVITY; THAT IS, HAVING A  
VEHICLE THAT HAS A DIFFERENT  
COLOR THAN THE REGISTRATION,  
SO THAT THAT IS THEN THE  
RULE OF LAW ISN'T THAT PLUS  
SOMETHING ELSE, BUT JUST THAT

IS ENOUGH FOR THE POLICE TO STOP A CITIZEN ON THE ROADWAYS OF THIS STATE.

I THINK YOU'RE BEING CANDID ABOUT IT.

THAT'S THE RULE OF LAW THAT YOU WANT THIS COURT TO EMBRACE.

>> YES, AND IT IS THE RULE THAT THE UNITED STATES SUPREME COURT HAS EMBRACED SINCE TERRY V OHIO.

>> WELL, THAT'S PRETTY STRONG STATEMENT.

AREN'T YOU REALLY STRETCHING A LITTLE BIT WHEN YOU SAY THAT IS THE RULE?

BECAUSE THE U.S. SUPREME COURT I MEAN, IF THE U.S. SUPREME COURT HAD DECIDED THIS ISSUE, WE WOULDN'T BE HERE THIS MORNING.

>> CORRECT.

>> THE U.S. SUPREME COURT HAS NOT DECIDED WHETHER JUST THE COLOR OF A CAR AND MAKE SURE I'M CORRECT, BECAUSE I DON'T WANT TO BE WRITING SOMETHING I'M IN CONTEMPT FOR, BUT THAT THE U.S. SUPREME COURT HAS NOT DECIDED WERE IT JUST THE COLOR OF THE CAR IS SUFFICIENT TO AUTHORIZE A TERRY STOP.

>> THEY HAVE NOT DECIDED THAT PARTICULAR FACTUAL CIRCUMSTANCE.

>> OKAY.

>> WHAT THEY HAVE DECIDED AND REPEATEDLY HELD IS THAT PURELY INNOCENT CONDUCT IS VERY LIKELY OFTEN GOING TO BE THE BASIS FOR NOT JUST PROBABLE CAUSE, BUT FOR REASONABLE SUSPICION.

WE'RE TALKING ABOUT AN INVESTIGATIVE DETENTION HERE, NOT GROUNDS FOR ARREST.

>>THE PROBLEM WITH THAT IS

JUST BECAUSE SOMEBODY DECIDED  
TO PAINT THEIR CAR, THAT  
PERSON COULD TECHNICALLY BE  
PULLED OVER ANYTIME HE OR SHE  
DRIVES ON THE STREETS.

AND YOU TALK ABOUT, WELL, YOU  
KNOW, IT'S JUST A TEMPORARY  
YOU KNOW, I'VE BEEN STOPPED  
BEFORE.

I WASN'T SPEEDING, BUT I'VE  
BEEN STOPPED BEFORE.

AND IT TAKES A LONG TIME.

IT TAKES A LONG TIME.

YOU GET PULLED OVER.

THE OFFICER IS BACK THERE  
DOING HIS COMPUTER THING,  
PUTTING HIS TAG IN.

IT MAY BE 20 MINUTES LATER  
HE'LL ASK YOU FOR YOUR LICENSE  
AND THEN HE WALKS BACK.

I MEAN, IT TAKES A LONG TIME.

IT IS A HASSLE FOR CITIZENS TO  
BE PULLED OVER.

SO IT'S NOT THIS WILLYNILLY  
THING THAT IT'S SOMETHING WE  
HAVE TO PUT UP WITH TO LIVE IN  
OUR DEMOCRACY.

IT IS A MAJOR PROBLEM.

AND JUST BECAUSE YOU HAVE A  
CAR PAINTED A CERTAIN COLOR  
DOESN'T MEAN IT SHOULDN'T  
MEAN THAT A POLICE OFFICER  
SHOULD BE ABLE TO STOP YOU  
JUST FOR THAT REASON.

>> IN TERMS OF THE LENGTH OF  
THE DETENTION, IF AN OFFICER  
IS TAKING MUCH LONGER THAN IS  
NECESSARY TO EFFECT THEIR  
PURPOSE, THEN YOU MAY HAVE A  
COMPLAINT ABOUT THEM VIOLATING  
4TH AMENDMENT PRINCIPLES  
BECAUSE THEY ARE REQUIRED TO  
ONLY MAINTAIN THAT STOP

>> BUT OUR LAW DOESN'T SAY  
IT'S OKAY TO STOP ANYBODY  
ANYTIME JUST AS LONG AS YOU  
DON'T KEEP THEM A LONG TIME.

>> THAT'S CORRECT.

>> YOU HAVE TO GET OVER THE  
THRESHOLD.

NOW, YOU WERE SEEMING AND I WANT TO MAKE SURE.  
SEEMED TO ME YOU WERE TRYING TO JOIN TOGETHER THE CONCEPTS THAT AT TIMES INNOCENT CONDUCT MAY ACTUALLY BE THE CASE.  
BUT WHAT IS THE REASONABLE SUSPICION THAT MUST BE PRESENT?  
>> THE FACTS THAT ARE MAY BE INNOCENT CONDUCT.  
>> BUT THE SUSPICION MUST BE THAT YOU ARE DOING SOMETHING WRONG THAT YOU OUGHT NOT BE DOING, ISN'T IT?  
>> THE ANALYSIS PROCEEDS FROM FACTS  
>> OF WHAT?  
>> OF WHAT THE OFFICER OBSERVED.  
>> AND THAT CONSTITUTE WHAT?  
>> THAT WHEN VIEWED IN LIGHT OF THE OFFICER'S TRAINING AND EXPERIENCE WOULD EQUAL REASONABLE SUSPICION.  
>> OF WHAT?  
>> CRIMINAL ACTIVITY.  
>> WELL, AGAIN, IF YOU LEAVE OUT CRIMINAL ACTIVITY FROM THE DISCUSSION, THEN OF COURSE YOU WIN EVERY TIME.  
BECAUSE YOU CAN GIVE REASONABLE SUSPICION OF INNOCENT CONDUCT.  
SEEMS LIKE THE COURTS SAY OVER AND OVER AND OVER AGAIN THAT IT'S NOT INNOCENT CONDUCT.  
BUT IT'S LESS THAN PROBABLE CAUSE FOR A TERRY STOP.  
BUT IT MUST BE AT LEAST SOMETHING YOU OUGHT NOT BE DOING THAT YOU CAN ARTICULATE THE REASONABLE SUSPICION ABOUT.  
ISN'T IT?  
>> IT IS NOT IT IS NOT NECESSARILY SOMETHING THAT PEOPLE OUGHT NOT BE DOING.  
FOR EXAMPLE, AND THIS IS WHERE TERRY IS VERY IMPORTANT

TO REMEMBER.

TWO INDIVIDUALS ARE WALKING  
BACK IN FRONT OF A STORE AND  
THEY'RE LOOKING IN THE WINDOW  
AND THEY'RE TALKING TO EACH  
OTHER.

TO ALL THE WORLD, THIS LOOKS  
LIKE TWO PEOPLE  
WINDOWSHOPPING.

>> BUT YOU HAD THAT'S A  
CLASSIC EXAMPLE, OF COURSE, OF  
THE UNITED STATES SUPREME  
COURT TAKING A TERM THAT  
WASN'T IN THE CONSTITUTION AND  
WRITING IT IN, REASONABLE  
SUSPICION.

BUT IN DOING SO, THEY  
EXPLAINED WHY THIS POLICE  
OFFICER WAS ABLE TO ARTICULATE  
THE TIME, THAT IT WAS AT  
NIGHT, IT WAS A CLOSED STORE,  
THEY WERE GOING BACK AND FORTH  
AND THEY EVEN THOUGH IT  
LOOKED COULD HAVE BEEN  
INNOCENT, IT GAVE HIM AN  
ABILITY TO ARTICULATE TO THE  
JUDGE WHY HE COULD STOP THOSE  
INDIVIDUALS.

NOW, LET'S GO AND SAY BECAUSE  
TERRY IS YOUR FOUNDATION, WHAT  
IS IT YOU SAID THAT NOTHING  
ABOUT THE WAY THE VEHICLE WAS  
THAT THE JUDGE THAT THE  
POLICE OFFICER'S ARTICULATED.  
THE REASON FOR THE STOP WAS  
THAT THE COLOR OF THE VEHICLE  
DID NOT MATCH THE COLOR IN THE  
REGISTRATION.  
END OF STORY.

>> IN TERMS OF THE OBSERVABLE  
FACTS OF WHAT THE OFFICER SAW.  
HOWEVER

>> WELL, WE CAN'T GO INTO WHAT  
ALSO MIGHT HAVE BEEN ON HIS  
MIND BECAUSE THAT'S NOT WE  
CAN'T SPECULATE ON IT.

>> WE ALWAYS IN A REASONABLE  
SUSPICION ANALYSIS TAKE INTO  
ACCOUNT THE OFFICER'S TRAINING  
AND EXPERIENCE.



FOR INSTANCE, IN TERRY THE ONLY REASON THAT AMOUNTED TO REASONABLE SUSPICION IS BECAUSE THE OFFICER HAD PRIOR EXPERIENCE THAT LED HIM TO CONCLUDE MAYBE THAT'S WINDOWSHOPPING, MAYBE

>> WAIT.

WAIT.

WAIT.

HOW MANY TIMES DID THE TWO OF THEM LOOK IN THE WINDOW?

24 TIMES, DIDN'T THEY?

>> AND YET THEY HAVE

>> YES?

>> YES.

>> THAT'S A LITTLE DIFFERENT THAN WINDOWSHOPPING, ISN'T IT, AT NIGHT?

>> WELL, THEY STILL HAVE THE ABSOLUTE RIGHT TO DO SO.

IT IS PERFECTLY INNOCENT CONDUCT.

IT IS THE INFERENCE WE DRAW BASED ON THE OFFICER'S TRAINING AND EXPERIENCE THAT MAKES IT REASONABLE SUSPICION. AND HERE WE HAVE TESTIMONY FROM THE OFFICER HE RAN TAGS HUNDREDS OF TIMES ON A WEEKLY BASIS AND HE SAID SOMETIMES YOU FIND THINGS, SOMETIMES YOU DON'T.

IN THIS CASE HE SAID I'M AWARE PEOPLE SWITCH TAGS.

I'VE PERSONALLY ENCOUNTERED IT, UPWARDS OF 50, UPWARDS OF 100 TIMES, AND HE DREW THE RATIONAL CONCLUSION, A CONCLUSION WHICH THE 1ST DISTRICT AGREED WAS A LEGITIMATE CONCERN AT THE VERY LEAST, OF CRIMINAL ACTIVITY.

>> WELL, THIS WASN'T EVEN IF I'M UNDERSTANDING THIS, THE TAG AND THE REGISTRATION, IT WAS I THOUGHT IT WAS THAT HE ALL HE KNEW WAS THAT THERE WAS A DIFFERENT IT WAS THE SAME VEHICLE TYPE.

>> HE DIDN'T KNOW IT WAS THE SAME VEHICLE.

HE KNEW IT WAS THE SAME MANUFACTURER.

>> SO IT'S NOT LIKE THIS WENT THAT THERE WAS EVIDENCE THAT ACTUALLY THIS WAS A TAG PUT ON SOME OTHER TYPE OF VEHICLE.

I JUST GUESS I THOUGHT THAT HIS ARTICULATED REASON WAS THE COLOR CHANGE, THAT THAT'S WHAT CAUSED HIM TO PULL OVER THIS VEHICLE.

>> IN TERMS OF OBSERVABLE FACTS

>> YES.

>> IN TERMS OF THE CAR, THAT IS TRUE.

BUT WE ALSO TAKE INTO ACCOUNT HIS KNOWLEDGE, HIS TRAINING AND EXPERIENCE BECAUSE LAW ENFORCEMENT OFFICERS RECEIVE SPECIAL TRAINING AND THEY OBSERVE THINGS ON PATROL THAT WE DON'T NECESSARILY HAVE. AND WHAT MAY BE SIGNIFICANT TO THEM MAY NOT BE SIGNIFICANT TO US.

>> WELL, I MEAN, HE WAS AGAIN, TERRY, WHAT WAS SIGNIFICANT, 24 TIMES. NOT THAT THERE WAS A MAN WALKING THE SIDEWALK IN CLEVELAND.

AND HERE IT WOULD HAVE BEEN THE SAME.

IF THIS CAR HAD BEEN DRIVING BACK AND FORTH, THOSE ARE THE KINDS OF THINGS THAT TERRY INSTRUCTS, ISN'T IT?

IT WASN'T DESIGNED FOR I SEE A CITIZEN AND GUESS WHAT, WE HAVE A LOT OF CRIME IN THIS COUNTRY ASSOCIATION I CAN STOP THAT ONE, BECAUSE, YOU KNOW, 20% OF OUR PEOPLE ENGAGE IN CRIMINAL ACTIVITY.

THAT'S THE ARGUMENT YOU'RE MAKING.

>> WELL, I CERTAINLY DID NOT INTEND TO MAKE THAT ARGUMENT. THAT IS NOT AT ALL THE STATE'S POSITION.

CERTAINLY NO ONE WANTS OFFICERS TO MAKE STOPS BASED ON WHAT WOULD BE NOTHING MORE THAN A HUNCH.

BUT WHAT WE HAVE HERE IS A RATIONAL CONCLUSION DRAWN BY THE OFFICER, NOT JUST THAT, WELL, I KNOW A LOT OF PEOPLE COMMIT CRIMES, BUT THAT I KNOW PEOPLE SPECIFICALLY SWITCH TAGS IN RELATION TO CRIMINAL ACTIVITY.

AND I KNOW

>> I KNOW THAT PEOPLE WHO ARE OUT AFTER MIDNIGHT IN A PLACE WHERE YOU DON'T HAVE FREEFLOWING INDIVIDUALS, PEOPLE ROB PLACES AT NIGHT. IS THAT SUFFICIENT TO STOP ANYBODY WALKING DOWN THE STREET?

>> IT WOULD DEPEND ON WHAT ELSE THEY WERE DOING BECAUSE

>> WELL, AGAIN, THAT'S WHAT WE'RE SAYING HERE. DEPENDED ON WHAT ELSE THIS CAR WAS DOING.

BUT THERE'S NOTHING.

>> FOR THOSE PARTICULAR FACTS THERE ISN'T NECESSARILY AN INFERENCE.

FOR THESE FACTS, THERE WOULD BE BECAUSE THESE FACTS, THE DISCREPANCY IN COLOR BETWEEN A VEHICLE AND WHAT THE TAG SAYS, THE VEHICLE WAS REGISTERED TO, THAT TELLS THE OFFICER THAT SOMETHING IS AMISS, SOMETHING'S AMBIGUOUS. AND THE OFFICER WE REQUIRE THEM TO INVESTIGATE SUCH AMBIGUITY UNDER THE 4TH AMENDMENT.

WE EXPECT THEM TO.

WE DON'T EXPECT THEM TO SAY,

WELL, YEAH, THAT CAR DOESN'T  
MATCH THE REGISTRATION.  
I'M JUST GOING TO LET IT GO.  
WE EXPECT THEM TO LOOK INTO IT  
BECAUSE IN THAT OFFICER'S  
TRAINING AND EXPERIENCE THOSE  
FACTS MEAN THE TAG MAY HAVE  
BEEN SWAPPED, THE CAR MAY HAVE  
BEEN REPAINTED AFTER BEING  
STOLEN AND I WILL RESERVE THE  
REMAINDER OF MY TIME FOR  
REBUTTAL.  
>> THANK YOU.

>> MAY IT PLEASE THE COURT, I  
AM RICHARD SUMMA.  
I REPRESENT MR. †TEAMER, WHO'S  
THE RESPONDENT IN THIS CASE.  
ATTORNEY STEVE SELLAGER IS  
WITH ME TODAY.  
WE CAN'T CARE IF YOU CHANGE  
THE COLOR OF YOUR CAR, BUT IF  
YOU DO, WE GOT YOU.  
THAT'S THE STATE'S POSITION.  
AND WE UNDERSTAND, WE  
APPRECIATE THAT THE STATE HAS  
AN INTEREST IN POLICING THE  
UNLAWFUL TRANSFER OF A LICENSE  
PLATE FROM ONE VEHICLE TO  
ANOTHER AUTHORIZED VEHICLE  
UNAUTHORIZED VEHICLE.  
BUT IT IS APPROPRIATE  
>> BUT IS THERE NO SUSPICION,  
NONE AT ALL, THAT ARISES WHEN  
THERE'S THE DISCREPANCY  
BETWEEN WHAT THE REGISTRATION  
INFORMATION SHOWS AND WHAT THE  
CAR LOOKS LIKE?  
>> I MAY SAY THERE IS SOME  
SUSPICION, BUT I SAY  
>> YOU CAN SAY THERE IS SOME  
SUSPICION.  
WHY ISN'T THERE THE  
CIRCUMSTANCES HERE SUCH THAT  
THE OFFICER HAD A  
PARTICULARIZED AND OBJECTIVE  
BASIS FOR A SUSPICION?  
IT'S PARTICULARIZED.  
IT'S FOCUSED ON THE COLOR.  
IT'S OBJECTIVE BECAUSE HE'S

LOOKING AT THE INFORMATION THAT'S AVAILABLE WITH RESPECT TO THE REGISTRATION AND HE'S COMPARING THAT WITH WHAT THE CAR LOOKS LIKE.

THESE ARE OBJECTIVE FACTS.

NOW, AGAIN, THERE MAY BE YOU KNOW, SOME PEOPLE MAY THINK RED COVERS A WIDER SPECTRUM THAN OTHERS.

I UNDERSTAND THAT, SO THERE CAN BE VAGUENESS INVOLVED IN ALL THESE THINGS.

BUT IF THERE'S SUSPICION, I CAN'T UNDERSTAND WHY THIS IS NOT A REASONABLE SUSPICION BASED ON OBJECTIVE PARTICULARIZED FACTS.

>> WELL, I WOULD SAY CERTAINLY IS PARTICULARIZED, BECAUSE THAT DEALS WITH THE FACTS THAT THE OFFICER OBSERVES.

BUT I WOULDN'T CLASSIFY IT AS OBJECTIVE BECAUSE THAT PRONG OF THE ANALYSIS ENCOMPASSES THE DETERMINATION OF REASONABLE SUSPICION, AND I THINK THAT SUSPICION IS NOT REASONABLE IN THIS CASE.

NOW, THE REASON IT'S NOT REASONABLE SUSPICION IS BECAUSE YOU HAVE TO BALANCE THE INTERESTS OF THE STATE AGAINST THE INTERESTS OF THE MOTORIST.

IN THAT VEIN, IT IS FAIR TO ASK HOW WEIGHTY OR HOW COMPELLING THE STATE'S INTEREST IS.

AND IN THIS CASE I SUBMIT THE STATE'S INTEREST IS NOT VERY WEIGHTY OR COMPELLING, BECAUSE IF IT WERE, THE LEGISLATURE WOULD REQUIRE A MOTORIST TO UPDATE HIS REGISTRATION WHEN HE CHANGES THE COLOR OF THE VEHICLE.

AND IF THE INTERESTS WERE WEIGHTY, THE LEGISLATURE WOULD REQUIRE THE DEPARTMENT OF

HIGHWAY SAFETY TO ALSO RECORD THE MODEL NUMBER OF THE MODEL OF THE VEHICLE.

>> HAS THE U.S. SUPREME COURT SAID THAT IN ORDER FOR THERE TO BE A REASONABLE SUSPICION, THAT THERE HAS TO BE A WEIGHTY INTEREST?

>> NO, BUT

>> HAS THE U.S. SUPREME COURT SAID THAT?

>> BUT THE U.S. SUPREME COURT AND THIS COURT IN DIAZ HAS SAID THAT THE DETERMINATION OF REASONABLENESS REQUIRES A BALANCING OF THE INTERESTS OF THE STATE AGAINST THOSE OF THE MOTORIST.

AND I'M SUBMITTING TO THE COURT IT'S FAIR IN THAT CONTEXT TO ASK HOW WEIGHTY IS THAT INTEREST.

BECAUSE THE WEIGHT OF THE INTEREST AFFECTS THE BALANCE AND THE ULTIMATE DETERMINATION OF REASONABLENESS.

SO A REASONABLE OFFICER KNOWS TWO THINGS.

HE KNOWS A STATUTE HE KNOWS IT'S UNLAWFUL TO TRANSFER A PLATE FROM ONE VEHICLE TO AN UNAUTHORIZED VEHICLE, BUT HE ALSO KNOWS THERE'S NO REQUIREMENT TO UPDATE A CHANGE IN THE COLOR OF THE VEHICLE, SO AUTOMATICALLY A REASONABLE OFFICER WOULD SAY IF THE COLOR DOESN'T MATCH, THERE IS A POSSIBILITY THAT THIS PERSON PAINTED THE VEHICLE.

SO

>> IS THERE A COULD YOU DISTINGUISH BETWEEN THE COLOR CHANGE OF THE COLOR AND WHETHER THE OFFICER SUSPECTED THAT THE TAG HAD BEEN PLACED ON ANOTHER VEHICLE ENTIRELY? BECAUSE I THOUGHT IF YOU CHANGED TAGS, YOU'VE GOT TO NOTIFY THE DEPARTMENT OF MOTOR

VEHICLES THAT YOU'RE PUTTING  
YOUR TAG ON ANOTHER VEHICLE.

>> WELL, I THINK WHAT THE  
OFFICER EXPRESSED OR TRIED TO  
ARTICULATE IS THAT HE WAS  
AFRAID THAT A TAG MAY HAVE  
BEEN TAKEN FROM A VEHICLE AND  
WITHOUT THE APPROVAL OF THE  
DEPARTMENT, PLACED ON ANOTHER  
VEHICLE FOR SOME NEFARIOUS  
REASON, THOUGH IN THAT CASE, I  
MEAN, IF THE TAG WERE  
REGISTERED TO A CHEVROLET AND  
AN OFFICER WILL LATER OBSERVE  
IT ON A TOYOTA, THAT'S AN  
ENTIRELY DIFFERENT CASE.

>> WELL, BUT WHAT I'M OKAY.  
SO CHANGING A TAG FROM ONE  
VEHICLE TO THE NEXT, YOU'VE  
GOT TO NOTIFY THE DEPARTMENT  
OF MOTOR VEHICLES WITHIN A  
CERTAIN PERIOD OF TIME?

>> WELL, THERE'S NOTHING IN  
THE RECORD WHETHER IT'S LAWFUL  
OR YOU CAN GET PERMISSION TO  
DO THAT, BUT I'M WILLING TO  
ASSUME THAT.

I MEAN,

>> I MEAN, I THINK

>> WHEN YOU BUY A NEW CAR  
>> THE FACT THAT YOU CAN  
CHANGE PUT A TAG, AS LONG  
AS YOU NOTIFY I MEAN, I'M

I THINK THAT'S THE CASE.

>> WELL, I THINK WHEN YOU I  
THINK WHEN YOU BUY A NEW CAR,  
YOU CAN TAKE THE TAG FROM YOUR  
OLD VEHICLE AND PUT IT ON THE  
NEW VEHICLE.

>> THIS OFFICER WAS JUST  
FOCUSING ON HE JUST KNEW THE  
COLOR WAS DIFFERENT.

>> RIGHT.

[ COMMENT OFF MIC ]

>> WHEN YOU BUY A NEW CAR, YOU  
TRANSFER TITLE TO THE NEW CAR  
RIGHT THERE AT THE DEALERSHIP

PRETTY MUCH.

THEY DO THE PAPERWORK, THAT IS.

AND YOU GET TO KEEP THE TAG FROM YOUR OLD CAR AND YOU PUT IT ON THE NEW CAR AND YOU DRIVE IT OFF THE LOT.

NOW, UNDER THAT THEORY, UNDER THE THEORY THE STATE IS PROPOSING, A POLICE OFFICER COULD STOP ME.

>> WELL, PRESUMABLY UNDER THAT THEORY WHEN THE TAG WHEN THE TAG IS TRANSFERRED TO THE NEW CAR, I WOULD ASSUME THE DEPARTMENT HAS THAT INFORMATION AND SO

>> WELL, YOU BUY THE CAR ON A SATURDAY, OKAY?

AND THE TRANSFER IS NOT MADE THE PAPERWORK DOESN'T HIT THE DEPARTMENT UNTIL MONDAY.

>> YEAH.

>> I GET PULLED OVER, SUNDAY I GET PULLED OVER, BECAUSE THEY DON'T HAVE THE INFORMATION YET.

SO UNDER THAT THEORY THEY COULD PULL ME OVER BECAUSE I HAVE THE WRONG TAG ON THE WRONG CAR.

>> IT COULD HAPPEN, BUT I THINK THERE MAY BE CASE LAW THAT SAYS THAT ERRORS, CLERICAL ERRORS ON THE PART OF THE STATE SHOULD NOT BE HELD AGAINST THE CITIZEN OR THE MOTORIST.

I'M NOT ENTIRELY SURE ABOUT THAT.

BUT I WOULD ARGUE THAT.

>> SO IT'S YOUR POSITION THAT THE POLICE CAN NEVER STOP A CAR BASED ON A DISCREPANCY BETWEEN THE REGISTRATION INFORMATION AND WHAT THE TAG SHOWS.

IS THAT CORRECT?

>> IN THE STATE OF FLORIDA, CORRECT.



>> NEVER STOP A CAR, NOT JUST BASED ON THE COLOR, BUT ANY SORT OF IF IT IS A IF IT'S A TAG THAT IS THAT THE RECORDS SHOW GOES WITH A BMW AND IT'S ON A VOLKSWAGEN, THEN THEY CAN'T THAT STILL DOESN'T GIVE THEM REASONABLE SUSPICION.

>> NO.

I WOULD SAY THAT IS REASONABLE SUSPICION IF THE MAKE IS DIFFERENT.

>> I THOUGHT WHAT YOU WERE SAYING EARLIER WAS GOING IN A DIFFERENT DIRECTION THERE.

>> NO.

NO.

I SAID IT IS A DIFFERENT CASE IF THE CAR IS REGISTERED TO A TOYOTA AND THE OFFICER OBSERVES THAT PARTICULAR TAG ON A CHEVROLET, THAT'S AN ENTIRELY DIFFERENT CASE.

I WOULD FIND THAT REASONABLE SUSPICION TO STOP THE CAR. BUT THAT'S NOT WHAT WE HAVE HERE.

>> EVEN THOUGH EVEN THOUGH THAT CAN THAT CAN HAPPEN BECAUSE SOMEBODY JUST BOUGHT A NEW CAR.

>> THAT COULD HAPPEN.

I'LL GO WITH YOU ON THAT.

>> WELL, WHY IS THAT WHY IS THAT ANY SO THAT'S OKAY.

BUT I'LL TELL YOU.

I THINK MORE PEOPLE BUY NEW CARS AND ARE RIDING AROUND WITH A TAG THAT THEY JUST TRANSFERRED THAN PEOPLE ARE OUT THERE WHO JUST GOT THEIR CAR PAINTED.

MAYBE I'M WRONG.

>> THAT MAY BE THE CASE, BUT THAT'S NOT THIS CASE.

I WANT TO TALK ABOUT THIS CASE.

>> I'M NOT SO SURE THE LAW OF FLORIDA DOESN'T SAY THAT WHEN

YOU MOVE IT TO A DIFFERENT CAR, THAT YOU MUST REPORT THAT.

I'M NOT I THAT'S A PRETTY BIG CONCESSION BEING MADE THIS MORNING.

>> I DON'T KNOW ABOUT THAT, BUT I WANT TO TALK ABOUT THIS CASE.

AND SO FAR WE'VE BEEN TALKING ABOUT THE RAMIFICATIONS OF THE LAW THAT APPLY TO THIS CASE. AND IN FACT THAT'S ONLY HALF OF MY ARGUMENT.

THE OTHER HALF OF THE ARGUMENT IS THAT ON THE TOTALITY OF THE CIRCUMSTANCES, ANY REASONABLE PERSON, AND IN PARTICULAR A REASONABLE OFFICER, WOULD HAVE REALIZED THAT THE CAR HAD BEEN PAINTED AND THAT EXPLAINS THE DISCREPANCY AND THAT DISSIPATES ANY SUSPICION.

>> WHY?

WHY WOULD AN OFFICER I MEAN, SAY IT'S A REALLY GOOD PAINT JOB.

I MEAN

>> YEAH.

WELL, IN THIS CASE, BASED UPON THE FACTS, IT'S APPARENT THAT THE OFFICER WAS STRUCK BY THE UNUSUAL COLOR OF THIS CAR. HE SAYS I WAS DRIVING DOWN THE STREET.

IN FRONT OF ME I OBSERVED A VEHICLE.

HE SAID, AND I QUOTE, I JUST TOOK NOTICE OF THE FACT THAT IT WAS A VERY BRIGHT GREEN VEHICLE.

SO MR. †TEAMER TURNED OFF, THE OFFICER WENT DOWN THE ROAD. LATER THE OFFICER CAME BACK AND AGAIN HE SAYS, WHOA, LO AND BEHOLD, I SAW THE SAME BRIGHT GREEN CAR.

AND PARENTHETICALLY I WOULD ADD IF YOU LOOK AT THE ARREST REPORT, WHAT THE OFFICER SAID

I SAW A VERY BRIGHT,  
FLUORESCENT GREEN CAR.  
THAT'S HOW HE DESCRIBED IT.  
NOW, SOME PICTURES OF THE CAR  
WERE INTRODUCED AT THE  
SUPPRESSION HEARING, AND BASED  
UPON ALL THE EVIDENCE THAT WAS  
TAKEN, DEFENSE COUNSEL ARGUED  
AND I WOULD REFER THE COURT  
TO PAGE 64 OF THE RECORD.  
BASED UPON THE TOTALITY OF THE  
CIRCUMSTANCES, IT IS, QUOTE,  
GLARINGLY OBVIOUS" THAT THE  
ONLY REASONABLE SUSPICION WAS  
THE SUSPICION THAT THE CAR HAD  
BEEN PAINTED.  
SO IN THE RECORD WE NOW HAVE  
COLOR PHOTOGRAPHS OF THE CAR.  
MR. †KUBICA, THIS WAS STATE'S  
EXHIBIT †NO. 2.  
THIS IS THE CAR THAT WAS  
STOPPED BY THE OFFICER.  
NOW, LOOKING AT THIS CAR  
AND THE OFFICER HAD TWO  
CHANCES TO OBSERVE IT THEY  
SAY A PICTURE IS WORTH 1,000  
WORDS.  
AND WHAT THIS CAR SCREAMS OUT  
LOUD AND CLEAR TO ANY OBSERVER  
IS, HEY, LOOK AT ME, I'VE BEEN  
TO THE PAINT AND BODY SHOP.  
NOW, YOU CAN SEE THAT THE  
WHEELS ARE MODIFIED  
>> OR, HEY, I'M A DRUG DEALER.  
>> HEY, POSSIBLY, TOO, BUT AT  
THAT POINT HE DIDN'T HAVE  
REASONABLE SUSPICION OF THAT,  
OKAY?  
SO ANY REASONABLE OFFICER  
BASED UPON THE APPEARANCE OF  
THIS CAR WOULD INFER  
REASONABLY, HEY, MR. †TEAMER  
PIMPED HIS RIDE.  
THE CAR ITSELF SHOUTS OUT IT'S  
BEEN PAINTED.  
>> SO, I MEAN, IS THIS A  
POSITION THAT THE DEFENDANT  
PRESENTED BELOW, IS THAT IT IS  
CLEAR FROM THE VEHICLE THAT  
IT'S NOT A FACTORY PAINT JOB?

IT'S NOT A FACTORY COLOR.  
THIS IS ONE OF THOSE UNUSUAL  
STREET CARS THAT ANYBODY WITH  
ANY INTELLIGENCE AND CERTAINLY  
A POLICE OFFICER, WHO  
SUPPOSEDLY IS EXPERIENCED,  
WOULD CERTAINLY HAVE COMMON  
SENSE TO SEE THAT.

>> YES.

THAT'S WHAT I GET FROM PAGE 64  
IN THE RECORD, THE ARGUMENT  
THAT IT'S GLARINGLY OBVIOUS  
THAT THE CAR HAS BEEN PAINTED.  
SO AND I DID, TAKING THOSE  
THINGS TOGETHER, WE ARGUE THAT  
THERE'S INSUFFICIENT  
THERE WAS NOT REASONABLE  
SUSPICION TO STOP THIS CAR.  
NOW, IF THE STATE I DID  
MAKE A SLIPPERY SLOPE  
ARGUMENT.

IF THE STATE IF THE COURT  
ADOPTS THE STATE'S ARGUMENT,  
THEN YOU'LL HAVE INSTANCES OF  
STOPPING CARS WHERE OFFICER  
SAYS THE REGISTRATION SAYS  
SILVER.

I THINK IT WAS GRAY.  
THE REGISTRATION SAYS RED.  
I THINK IT WAS MAROON.  
CAR WASN'T GREEN, IT WAS  
TURQUOISE.

THE ORIGINAL COLOR OF THE CAR  
WAS BLUE.

SO I CAN CONCLUDE IN ABOUT 30  
SECONDS.

>> THAT'S CORRECT.

>> DON'T BOTHER TO TELL US  
WHEN YOU PAINT YOUR CAR.  
WE'LL JUST TELL YOU WHEN TO  
PULL OVER.

THIS ATTITUDE ON THE PART OF  
THE STATE IS A KIND OF  
INSTITUTIONALIZED TRICKERY  
WHICH FLIES IN THE FACE OF  
REASONABLE EXPECTATIONS WHEN  
BALANCING THE INTEREST OF THE  
STATE AGAINST THE INTEREST OF  
THE MOTORIST.

FOR THOSE REASONS WE WOULD ASK YOU TO AFFIRM THE WELLREASONED DECISION OF THE DISTRICT COURT OF APPEAL THANK YOU.

>> BEFORE YOU SIT DOWN, I MUST SAY THAT YOUR OPPONENT IS VERY HONORABLE, HE'S MADE VERY DIRECT ARGUMENTS, HE'S BEEN VERY CANDID WITH THE COURT AND I KNOW THAT YOU'RE NOT BEING PERSONAL ABOUT THIS.

>> OH, NO.

IN FACT, I THINK HE DID A GREAT JOB OF FIELDING THIS DIFFICULT QUESTIONS.

>> I WOULD AGREE.

>> I ASK YOU TO AFFIRM.

THANK YOU.

>> THANK.

REBUTTAL?

>> YOU CAN WALK DOWN THE STREET, HAVE AN EVENING STROLL AND LOOK IN THE STORE WINDOW. YOU CAN CHECK OUT SOMETHING THAT YOU HAVE YOUR HEART'S DESIRE SET ON. BUT IF AN OFFICER SEES YOU AND THAT TRIGGERS HIS SUSPICION, WE WILL ALLOW THAT OFFICER TO TEMPORARILY STOP YOU. YOU'RE ALLOWED TO USE CURRENCY

>> I HOPE NOT.

I HOPE THAT IS NOT WHAT TERRY SAYS, RESPECTFULLY TO YOU.

I MEAN, WE GO DOWN STREETS, PEOPLE GO DOWN STREETS AT NIGHT IN NEW+YORK CITY. THEY CAN LOOK IN WINDOWS, WINDOWSHOPPING.

BUT WHEN SOMEBODY IS STAKING OUT A STORE TO BREAK INTO, THE BEHAVIOR IS DIFFERENT THAN A STROLL DOWN THE STREET AND A LOOK IN THE WINDOW.

SO IF YOU'RE USING TERRY, WHAT HAPPENED IN TERRY, AS AN

EXAMPLE FOR THIS CASE, I JUST THINK IT'S A WEAK ANALOGY.

>> WELL, THOSE WERE THE ARTICULATED FACTS IN THE TERRY OPINION.

>> NOT WHAT JUSTICE LEWIS SAID, THAT IT WAS 24 TIMES? YOU KNOW, THAT IT WAS PRETTY WELL AN ISOLATED STREET? THOSE WEREN'T DID THEY GO BACK AND FORTH 24 TIMES?

>> IT IS PERFECTLY LEGAL FOR PEOPLE TO WALK DOWN A STREET.

>> IT'S RAISED AN ARGUABLE SUSPICION THAT THESE PEOPLE WERE ABOUT TO BREAK INTO THIS STORE.

>> CORRECT, BUT THEY MAY HAVE JUST BEEN GOING ABOUT THEIR BUSINESS, JUST AS IN SOCALO AN INDIVIDUAL

>> BUT HERE THE LIKELY THING IS NOTHING CRIMINAL NOT EVEN UNDER THE LAWS OF THE STATE OF FLORIDA WAS SOMETHING ABOUT TO HAPPEN TO DO WITH THE COLOR OF THE PAINT.

>> UNDER THE OFFICER'S TRAINING AND EXPERIENCE THERE WAS, BECAUSE THE OFFICER HAD OBSERVED PERSONALLY THAT TAGS DO GET SWAPPED AND ON THE LAW I HAVE TO OFFER THIS, IT IS A CRIME, PERIOD, TO PUT THE TAG OF ONE VEHICLE ON ANOTHER WITHOUT FIRST REGISTERING THAT TAG TO THE VEHICLE WITH THE DEPARTMENT OF MOTOR VEHICLES.

>> AND THEREFORE

>> PERIOD.

>> AND IN THIS CASE HE DIDN'T HAVE A REASON TO THINK THAT THE TAG HAD BEEN SWAPPED, BUT JUST THAT THE PAINT THAT THE VEHICLE HAD BEEN PAINTED.

HE WAS THINKING THIS WAS PERHAPS A STOLEN VEHICLE, RIGHT?

>> IT COULD BE A STOLEN

VEHICLE.

>> WELL, THAT'S WHAT I THOUGHT  
THE BEST IT WAS, IS THAT HE  
THOUGHT THAT BECAUSE THEY  
YOU CHANGE COLOR OF  
VEHICLES WHEN YOU STEAL A  
VEHICLE, I GUESS.

>> THAT IS ONE INFERENCE.  
HOWEVER, ANOTHER IS THAT A TAG  
FROM ONE CHEVY WAS SWAPPED  
WITH ANOTHER.

AND THAT CAN BE DONE FOR A  
MULTITUDE OF REASONS.

IT COULD BE SIMPLY BECAUSE AN  
INDIVIDUAL HAS ONE GOOD TAG  
FOR A VEHICLE, DOESN'T HAVE A  
GOOD TAG FOR THE OTHER.

AND THAT DOESN'T GO ANY  
FURTHER THAN A SECOND DEGREE  
MISDEMEANOR.

HOWEVER AND THIS IS WHY WE  
JUST SUPPLEMENTED WITH THE  
FOSTER CASE AS AN EXAMPLE  
IT IS OFTEN USED TO OBSCURE  
THE IDENTITY OF SOMEONE ELSE  
INVOLVED IN A LARGER CRIME.  
IT IS AN EXCELLENT WAY TO  
AVOID BEING FOUND OUT FOR A  
CRIME IF SOMEONE IS WRITING ON  
A TAG NUMBER FOR YOUR VEHICLE  
AS YOU SPEED AWAY.

THEY'RE WRITING DOWN THE WRONG  
TAG NUMBER AND SO WHAT IS  
GOING TO SHOW UP TO THE ACTUAL  
OWNER OF THAT TAG, WHO MAY NOT  
EVEN REALIZE IT'S GONE,  
BECAUSE WE AREN'T CHECKING OUR  
TAGS ALL THE TIME.

THAT PERSON IS GOING TO BE  
WOKEN UP IN THE MIDDLE OF  
NIGHT AND TAKEN INTO CUSTODY  
AND ONLY LATER WILL IT BE  
DISCOVERED THAT THAT PERSON  
HAD NOTHING TO DO WITH THE  
CRIME.

THAT IS WHY TAGS ARE SWITCHED  
OFTEN IN COMBINATION WITH  
CRIMINAL ACTIVITY.

AND IT IS THAT KNOWLEDGE AND  
EXPERIENCE OF THE OFFICER THAT

WE HAVE TO TAKE INTO ACCOUNT  
TO GIVE THESE FACTS MEANING.  
THAT IS WHY THIS COURT SHOULD  
QUASH THE OPINION OF THE 1ST  
DISTRICT AND APPROVE THE  
DECISION OF THE 4TH AND 8TH.  
THANK YOU VERY MUCH.  
>> THANK YOU FOR YOUR  
ARGUMENTS.  
COURT IS ADJOURNED.  
>> ALL RISE.