>> ALL RISE.
HEAR YE, HEAR YE, THE SUPREME COURT OF FLORIDA IS NOW IN SESSION.
ALL WHO HAVE CAUSE TO PLEAD, DRAW NEAR, GIVE ATTENTION 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.
PLEASE BE SEATED.
>> GOOD MORNING.
WELCOME TO THE FLORIDA SUPREME COURT.
I'M HONORED TODAY TO WELCOME 25 EXTRAORDINARY MIDDLE AND HIGH SCHOOL TEACHERS FROM 17 SCHOOL DISTRICTS THROUGHOUT FLORIDA.
AND THEY'RE HERE VISITING OUR COURT THIS WEEK AS PART OF OUR ANNUAL INSTITUTE FOR TEACHERS.
THE JUSTICE TEACHING INSTITUTE IS AN EXPERIENTIAL PROFESSIONAL DEVELOPMENT MODEL, USING ALL SEVEN JUSTICES AS FACULTY.
WE ARE GRATEFUL TO FLORIDA EDUCATORS FOR THE WORK YOU DO ON A DAILY BASIS IN THE CLASSROOM AND HOPE THAT THIS PROGRAM WILL HELP YOU BETTER UNDERSTAND THE ROLE OF THE COURTS IN OUR CONSTITUTIONAL STRUCTURE.
THANK YOU TO THE FLORIDA BAR FOUNDATION FOR YOUR ASSISTANCE IN SPONSORING THE INSTITUTE, AND THE FLORIDA LAW-RELATED EDUCATION ASSOCIATION FOR YOUR LEADERSHIP AND FACULTY ASSISTANCE.
WOULD ALL THE TEACHERS PLEASE STAND.
THANK YOU.
OKAY.
NOW, THE CASE OF CARPENTER VERSUS STATE.
WHENEVER YOU'RE READY, COUNSELOR.
>> GOOD MORNING.

MAY IT PLEASE THE COURT.
MY NAME IS ROSS KEENE I'M HERE
ON BEHALF OF THE PETITIONER
CHRISTOPHER CARPENTER AND I
RESERVE FIVE MINUTES FOR
REBUTTAL.
WE HAVE THIS MATTER BEFORE THE
COURT ON DISCRETIONARY REVIEW
WITH RESPECT TO POTENTIAL
CONFLICT FROM CARPENTER'S FROM
SECOND DC AND THE CASE OF
WILLIS.
THIS CASE INVOLVES A SEARCH THAT
WAS CONDUCTED OF A CELL PHONE.
IT WAS A WARRANTLESS SEARCH
CONDUCTED IN JUNE OF 2012.
AT THE TIME THE BINDING CASE LAW
IN THE CASE, OR STRIKE THAT IN
THE FIRST DISTRICT COURT OF
APPEAL WAS A CASE I WILL REFER
TO SMALLWOOD v. STATE OR
SMALLWOOD.
THERE AFTER MR. CARPENTER WAS
CHARGED.
THERE WAS CONTRABAND FOUND ON
THE PHONE.
THERE WAS MOTION TO SUPPRESS
FILED ONE YEAR LATER.
I THINK THAT IS A CRUCIAL FACT,
I DIRECT MYSELF TO IN A FEW
MINUTES BUT THE SUPPRESSION
MOTION IN THIS CASE WAS NOT
FILED UNTIL ONE YEAR AFTER
MR. CARPENTER ACTUALLY WAS
CHARGED IN THE CASE.
DURING THE INTERIM, AND I DON'T
KNOW IF THIS IS WHAT TRIGGERED
IT, SMALLWOOD II ENTERED BY THIS
COURT WHICH REVERSED ONE DCA AND
ESTABLISHED THE PRINCIPLE THAT
CELL PHONE SEARCHES DO REQUIRE
WARRANTS.
>> LET ME SEE IF I UNDERSTAND
WHAT YOU SAID.
THE CASE HAD NOT GONE TO TRIAL
WHEN SMALLWOOD II CAME OUT?
>> THAT'S CORRECT.
SO, I DON'T KNOW, ANY KIND OF
MOTION TO RECONSIDER OR THE
SUPPRESSION, MOTION TO SUPPRESS?

>> WELL THE MOTION TO SUPPRESS, AND I DON'T KNOW, I WAS NOT TRIAL COUNSEL BUT I WOULD ANTICIPATE THAT THE EMERGENCE, IF YOU WILL, OF SMALLWOOD II DURING THE PENDENCY OF MR. CARPETTER'S TRIAL COURT PROCEEDINGS LIKELY PROMPTED DEFENSE COUNSEL SCHEDULE TO FILE THE MOTION, NOTWITHSTANDING THE FACT, THE FACT I CAN SEE TODAY, BINDING APPELLATE PRECEDENT IN ONE DCA WAS CLEARLY SMALLWOOD 1:00.
WE DO NOT DISPUTE THE FACT AND WE'RE NOT HERE BEFORE THE COURT TODAY.
>> THAT DOESN'T NECESSARILY ANSWER THE LEGAL QUESTION, DOES ISN'T.
>> WHAT QUESTION IS THAT, JUSTICE.
>> THAT QUESTION THAT WOULD BE CONTROLLING.
WE'RE HEAR TODAY BECAUSE WE HAVE THE SEARCH OF A CELL PHONE THAT AT THE TIME THE SEARCH OCCURRED THERE WAS A DCA OPINION, SMALLWOODI, THAT ALLOWED, ALLOWED THAT TO OCCUR IN SMALLWOOD.
HOWEVER THE OPINION ITSELF EXPRESSED THE DEEP CONCERN ABOUT THE NOVELTY OF THE AREA AND THAT CASE ITSELF CERTIFIED THE QUESTION TO THIS COURT.
SO I MEAN, ISN'T, ISN'T IT REALLY THEN THE ISSUE AS TO WHETHER THAT SET OF FACTS COME UNDER THE DAVIS, UNITED STATES SUPREME COURT QUESTION OF WELL-ESTABLISHED AUTHORITY, NOT JUST CONTROLLING PRECEDENT, BUT WELL-ESTABLISHED AUTHORITY TO ALLOW THE SEARCH OF SOMETHING BASED UPON THAT ONE DECISION GIVEN ALL THE TOTALITY OF THE CIRCUMSTANCES?
BECAUSE THIS IS NOT SIMPLY A RETROACTIVE APPLICATION OF LAW

OR SOMETHING LIKE THAT.
THIS IS, WE MUST DETERMINE
WHETHER AT THE TIME POSSESSION
OF THE CELL PHONE WAS TAKEN
WHETHER THE GOOD FAITH EXCEPTION
TO THE FOURTH AMENDMENT
REQUIRING A WARRANT HAS
APPLICATION HERE, GIVEN THAT
STATUS OF THAT FIRST DISTRICT
CASE.
>> THANK YOU, JUSTICE LEWIS FOR
FRAMING THAT.
AROUND I COULD NOT AGREE MORE
AND I WAS GOING TO GET INTO
DAVIS.
I WAS HOPING ON MY OWN BEFORE
ONE OF THE JUSTICES DID.
DAVIS IS CRITICAL HERE--
>> WHY WAS YOU BROUGHT UP THE
FIRST THING THEY WAITED A YEAR
TO FILE THE MOTION TO SUPPRESS?
WHAT IS THE LEGAL SIGNIFICANCE
OF THAT?
I'M NOT SURE I GET WHAT THAT HAS
TO DO WITH THE ISSUE WE'RE HERE
ON TODAY?
>> THE SIGNIFICANCE OF THAT,
JUSTICE PARIENTE, IN MY OPINION
IS THAT THE LAW ENFORCEMENT HAD
THE ABSOLUTE RIGHT TO SEARCH HIS
CELL PHONE WHEN THE SEARCH AND
THE STOP OCCURRED ON THAT.
BECAUSE--
>> YOU'RE CONCEDING THAT?
>> AT THAT TIME--
>> YOU'RE GOING TO CONCEDE THAT
FOR THE PURPOSES OF THIS CASE?
I MEAN WHY DON'T WE JUST GO HOME
THEN?
>> WELL, BECAUSE I THINK, YOUR
HONOR, I WANT TO GET INTO WHAT I
THINK IS THE ISSUE HERE, AND
THAT IS RETROACTIVE APPLICATION?
>> I THINK YOU'RE GOING TO BE
VERY MISDIRECTED IF THAT IS WHAT
YOU'RE GOING TO ARGUE.
>> YOUR HONOR, I BELIEVE DAVIS
IS EXCEPTION.
I DON'T BELIEVE DAVIS LIKE WHAT
THE STATE ARGUED AND ONE DCA

SAID IN CARPENTER, YOU I DON'T
BELIEVE THE APPLICATION OF DAVIS
IS FATAL TO THIS CASE IS BECAUSE
LAW ENFORCEMENT SEARCHED AT TIME
UNDER WHAT CLEARLY WAS, YES, I
CONCEDE SMALLWOODI WAS BINDING
LAW AT TIME THEY SEARCHED.
IT WOULD NOTING REMEMBER
EXCLUSIONARY RULE OR GOOD FAITH
EXCEPTION--
>> THAT CASE WASN'T EVEN OVER,
WAS IT?
>> NO, IT WAS NOT.
>> SOUNDS LIKE, YOU KNOW WHAT,
MY FRIEND, SOUND LIKE YOU OUGHT
TO BE SWITCHING PLACES WITH THE
STATE AND ARGUING THE STATE'S
CASE?
>> YOUR HONOR I CAN'T SIT YOU
WHAT I WANTED THE LAW TO BE AT
THE TIME OF THE SEARCH IN
CARPENTER.
I KNOW WHAT THE LAW WAS.
>> BUT THE LEGAL ISSUE IS NOT
RETROACTIVE APPLICATION OF A
DECISION?
>> I BELIEVE THAT WILLIS
PROPERLY FOUND, I WANT TO GET
INTO THAT WITH RESPECT TO THE
CONFLICT.
I BELIEVE WILLIS PROPERLY FOUND
THE GOOD FAITH EXCEPTION DID NOT
APPLY BECAUSE THE EXCLUSIONARY
RULE DID NOT APPLY.
I WOULD ARGUE IN THE CASE OF
CARPENTER IT ALSO DID NOT APPLY.
THEREFORE WE'RE NOT LIMITED BY
THE RESTRICTIONS IN DAVIS, I DO,
BELIEVE, YOUR HONOR, RESPECT
FULLY I BELIEVE WE CAN GET INTO
GRIFFITH VERSUS KENTUCKY
SCENARIO, FLEMING, OTHER CASES,
SMITH, HURST VERSUS FLORIDA
CASES HERE WHERE A COURT
RECOGNIZED CHANGING AREA OF THE
LAW DOES REQUIRE AND DOES ALLOW
FOR A PIPELINE CASE IF YOU WILL.
CLEARLY CARPENTER WAS IN THE
PIPELINE AT THE TIME.
>> I'M MYSTIFIED HOW YOU CAN

RECONCILE THAT LINE OF ARGUMENT
WITH WHAT DAVIS SPECIFICALLY
SAYS ABOUT RETROACTIVITY.
NOW TWO MEMBERS OF THE COURT IN
DAVIS, I THINK WOULD AGREE WITH
YOU ON RETROACTIVITY IN A
PIPELINE CASE BUT THE MAJORITY
OF THE COURT DID NOT, AND THE
MAJORITY OPINION EXPLICITLY
REJECTS THAT BUT TELL ME WHY I'M
MISSING SOMETHING THERE?
>> WELL, THIS COURT FOUND, IN
FACT--
>> PLEASE ANSWER MY QUESTION.
I ASKED ABOUT DAVIS.
AND I'M ASKING WHY, WHY, HOW YOU
CAN RECONCILE WHAT YOU HAVE SAID
ABOUT RETROACTIVITY WITH WHAT
THE DAVIS COURT SAID ABOUT
RETROACTIVITY.
NOW IF YOU WANT TO GO ON TALK
ABOUT SOMETHING ELSE.
WE SAID LATER, THAT IS FINE.
BUT IF YOU WOULDN'T MIND
ANSWERING MY QUESTION, I WOULD
APPRECIATE IT.
>> DAVIS PROVIDED WHEN POLICE
CONDUCT OR CONDUCT A SEARCH IN
OBJECTIVELY REASONABLE RELIANCE
ON BINDING APPELLATE PRECEDENT
THAT EXCLUSIONARY RULE DOES NOT
APPLY.
IT IS FOR THAT REASON I BELIEVE
IN THE SITUATION WITH CARPENTER
BEFORE ONE DCA THE EXCLUSIONARY
RULE WOULD NOT APPLY BECAUSE
THEY WERE RELYING ON BINDING
APPELLATE PRECEDENT AT TIME.
I BELIEVE AND I DON'T MEAN TO
ARGUE WITH YOU--
>> YOU AGREE WITH WILLIS, IT WAS
UNSETTLED UNLIKE DAVIS WHERE YOU
HAD FOR DECADES THE BELTON RULE.
>> YES.
>> AND IT WAS A, THEY RECEDED
FROM UNITED STATES SUPREME COURT
PRECEDENT VERSUS THIS WHICH WAS
AN UNSETTLED AREA OF THE LAW
WHERE THERE WAS EVEN, IN THE DCA
THAT DECIDED THE CASE, GRAVE

RESERVATION.
YOU'RE SAYING THAT THIS
SMALLWOODI WAS EQUIVALENT TO
BELTON?
I MEAN THAT'S WHAT-- IT SEEMS
AGAIN, GOING BACK, YOU CAN, I
GUESS, ON BEHALF OF YOUR CLIENT
CAN ARGUE ANYWAY YOU WANT BUT
WILLIS DISAGREES WITH WHAT
YOU'RE SAYING.
>> WILLIS, WILLIS FOUND, WILLIS
DIPPED NOT FIND THAT THE
EXCLUSIONARY RULE APPLIED.
THEY BASICALLY REJECTED THAT.
>> NOT BASED ON RETROACTIVITY.
BASED ON THE ISSUE WHAT DAVIS
SAYS ABOUT GOOD FAITH RELIANCE.
>> I AGREE THEY DID NOT SAY
RETROACTIVITY APPLIED UNDER
GRIFT.
WHAT I'M ARGUING UNDER GRIFFITH
AND CASES I CITED WITH THIS
COURT I BELIEVE WITH CARPENTER
IN THIS SITUATION I BELIEVE THE
COURT CAN GO BACK AND LOOK AT
RETROACTIVITY AND APPLY IT AS
REMEDY BECAUSE DAVIS DOES NOT
GIVE YOU SPECIFIC RIGHT.
FOR THE REMEDY IT SAYS IT IS AN
OPTION.
>> ARE WE NOT UNDER OUR FOURTH
AMENDMENT, STATE CONSTITUTIONAL
RIGHT BOUND BY THE UNITED STATES
SUPREME COURT DECISIONS?
>> YES, JUSTICE.
>> SO ON GOOD FAITH, DAVIS IS
WHAT GUIDES US, CORRECT?
>> UH-HUH.
>> DAVIS SAYS, AS, WHEN IT COMES
TO EXCLUSIONARY RULE YOU DON'T
LOOK AT RETROACTIVITY.
YOU LOOK AT GOOD FAITH RELIANCE
WHICH, IN THEIR WORDS HAS TO DO
WITH WHETHER THERE IS BINDING
PRECEDENT, USUALLY IT SAYS, A
DECISION OF A FEDERAL COURT OF
APPEALS OR THE STATE SUPREME
COURT.
SO DON'T WE HAVE TO INTERPRET
DAVIS TO COME UP WITH THE

DECISION AS TO WHETHER IN THIS CASE THE POLICE HAD A GOOD-FAITH BASIS FOR SEARCHING THIS CELL PHONE, WARRANTLESS SEARCH, BASED ON THIS, WHAT I WOULD CONSIDER, AND THIS IS UNSETTLED AREA OF THE LAW?
YOU SAID JUST BECAUSE PARDO WHICH WOULD REQUIRE THE TRIAL COURT TO FOLLOW SMALLWOOD, THAT THE POLICE CAN LOOK AT THIS DECISION AND SAY, HOME-FREE, WE CAN SEARCH WITHOUT A WARRANT CELL PHONES.
>> I'M NOT SAYING THAT.
>> SORT OF SOUNDED LIKE THAT.
>> NO, I'M SAYING IN THE FACTS OF THIS CASE, JUSTICE PARIENTE, THAT THE LAW ENFORCEMENT GIVEN THE FACTS IF YOU LOOK AT THE RECORD HOW THE SEARCH WAS CONDUCTED I DON'T BELIEVE THAT, AND PERHAPS THIS IS PACK TO MY POINT AS TO WHY THERE WAS NOT A SUPPRESSION MOTION FILED UNTIL AFTER SMALLWOOD II CAME OUT, I CAN'T READ THE MIND OF DEFENSE COUNSEL AT TIME BUT I HAVE TO BELIEVE THEY SAW WITH THE OPPORTUNITY OF SMALLWOOD II, WHILE THE TRIAL JUDGE IN THIS CASE I LIKED RULING FOR MR. CARPENTER, I THINK THE TRIAL JUDGE MADE A MISTAKE AND APPLIED THE LAW THAT CAME UP AT THAT TIME RATHER THAN USING THE LAW IN EFFECT AT TIME OF THE SEARCH.
>> SO LET ME ASK YOU THIS.
IT SEEMS TO ME THAT YOU, ARE YOU CONCEDING THAT SMALLWOODI WAS BINDING PRECEDENT?
YOU'RE NOT MAKING ANY ARGUMENT THAT BECAUSE SMALLWOODI TALKS ABOUT THE NATURE OF THE CELL PHONE AND THIS WHOLE AREA BEING UNSETTLED, THAT THAT DOESN'T MAKE YOU THINK THAT THAT IS NOT, THAT IT WAS NOT BINDING PRECEDENT?
>> I'M SAY THAT SMALLWOODI WAS

THE LAW OF FIRST DCA, TESTIMONY
IN LAW ENFORCEMENT IN THIS CASE
THEY CLAIMED THEY WERE RELYING
ON WHEN THEY CONDUCTED THE
SEARCH.
I AM NOT SAYING SMALLWOODI
CONTROLS THROUGHOUT.
PERHAPS THAT IS WHERE I HAVE
BEEN, I HAVE GOTTEN OFF PATH
HERE.
EMI AM NOT SAYING THAT.
I DO AGREE--
>> WOULD YOU AGREE, PLEASE TELL
US IN YOUR VIEW, THE HOLDING OF
DAVIS?
>> DAVIS STANDS FOR THE
PROPOSITION THAT IF THERE IS, IF
POLICE CONDUCT OR CONDUCT A
SEARCH AND OBJECTIVELY,
REASONABLE BASIS USING BINDING
APPELLATE PRECEDENT --
>> IS THAT WHAT IT SAYS, BINDING
APPELLATE PRECEDENT?
>> NO IT DOESN'T.
DAVIS WOULD SAY IN THIS CASE THE
BENEFIT OF THE EXCLUSIONARY RULE
WOULD APPLY IN A SITUATION--
>> I SUGGEST YOU READ DAVIS
AGAIN.
>> YES, SIR.
>> LET ME ASK YOU SOMETHING A
LITTLE DIFFERENT.
SMALLWOODI YOU AGREE HELD THAT
THE SEARCH OF THE CELL PHONE WAS
CONSTITUTIONAL.
DID NOT VIOLATE A DEFENDANT'S
CONSTITUTIONAL RIGHT, CORRECT?
>> AT THAT TIME, YES.
>> THAT WAS BINDING UNDER PARDO
ON EVERY TRIAL JUDGE IN THE
STATE, CORRECT?
>> YES.
>> SO IT WAS BINDING PRECEDENT
IN THAT SENSE.
EVEN WITHOUT DAVIS, WHAT SENSE
DOES IT MAKE UNDER LEON TO SAY
THAT A LAW ENFORCEMENT OFFICER
CAN NOT RELY ON A DECISION
THAT'S BINDING THROUGHOUT THE
STATE ON TRIAL JUDGES?

WHY SHOULD WE HAVE LAW ENFORCEMENT RESEARCH THE LAW NATIONALLY AND TRY TO FIGURE OUT HOW ULTIMATELY THE U.S. SUPREME COURT OR THIS COURT IS GOING TO-- ISN'T THAT COMPLETELY CONTRARY TO THE LEON RULE WHICH SAYS THAT IF THERE'S SOMETHING OUT THERE-- JUST, I DON'T UNDERSTAND--
>> GOOD FAITH REASONABLE RELIANCE BY LAW ENFORCEMENT, YES.
NO, YOU CAN'T GO OUT AND EDUCATE LAW ENFORCEMENT.
I ASSUME THEY DO, THAT ISSUE WAS RAISED IN WILLIS BUT NO, I DON'T THINK THAT IS A REASONABLE OR PRACTICAL APPLICATION.
MY POINT IS THAT--
>> OKAY.
>> YES, I'M SORRY.
>> I AGREE.
OKAY.
>> WITH RESPECT TO WILLIS, LOOKING HOW WILLIS RULED ON THIS, THE FACTS BETWEEN WILLIS AND CARPENTER ARE SOMEWHAT DIFFERENT BUT I THINK THE PRINCIPLE COMING OUT OF WILLIS IS SOMETHING THIS COURT CAN EMBRACE.
I UNDERSTAND DAVIS, IN THE EYES OF THIS COURT AND CERTAINLY ONE DCA WOULD PRECLUDE CONSIDERATION OF IT, BUT I THINK IT IS PIPELINE CASE.
THE AREA OF LAW WAS CHANGING.
THERE IS LAW AND FOURTH AMENDMENT PRECEDENT BY THE UNITED STATES SUPREME COURT AND THIS COURT CONSIDERATION OF CASES IN THE PIPELINE, FOR INSTANCE, RILEY, WHICH IS A CASE THAT THIS MATTER BEFORE ONE DCA WAS UNDER A STAY FOR GREAT PERIOD OF TIME.
IN THIS SITUATION, RILEY GETS THE BENEFIT WHO WAS ALSO IN THE PIPELINE OF EXCLUSION WHEN

MR. CARPENTER, WHO WAS ALSO IN
THE PIPELINE DOES NOT.
I THINK THAT'S THE POINT--
>> ISN'T THAT COMPLETELY
INCONSISTENT WITH THE WHOLE
CONCEPT THAT WE ONLY ARE GOING
TO EXCLUDE EVIDENCE IN THE CASE
IF THE LAW ENFORCEMENT OFFICERS
WERE NOT ACTING IN GOOD FAITH?
SO I MEAN WHAT HAPPENS TO THE
DEVELOPMENT OF THE LAW LATER IS
COMPLETELY IRRELEVANT TO A LEON,
EVEN IF YOU TAKE DAVIS OUT OF
IT, ANALYSIS WHETHER THE OFFICER
WAS ACTING IN GOOD FAITH?
>> I DON'T THINK IT DOES TAKE
THEM OUT OF IT.
I THINK UNDER THE CIRCUMSTANCES,
I THINK LOOKING AT WHAT WAS
DEVELOPING ON A NATIONAL BASIS,
AND I THINK THAT--
>> YOUR VIEW LAW ENFORCEMENT
COULD HAVE BEEN RELYING IN GOOD
FAITH ON SMALLWOODI, YET
BECAUSE THIS IS PIPELINE CASE,
ONCE THIS COURT DECIDED IT, WE
SHOULD EXCLUDE THE EVIDENCE IN
THAT CASE EVEN THOUGH THERE WAS
GOOD FAITH?
>> YES.
>> OKAY.
I UNDERSTAND.
>> NOW, I'M ON.
JUSTICE SOTOMAYOR MENTIONED THAT
THE PRECEDENT NEEDED TO BE
SETTLED AND UNEQUIVOCAL.
WHAT DOES THAT MEAN TO YOU,
SETTLED AN UNEQUIVOCAL?
>> IN CURRENT CONTEXT TODAY?
>> IN THE CONTEXT OF DAVIS?
>> I THINK THAT IS SOMETHING
THAT EVERY COURT STRIVES TO DO
AND I THINK THAT THERE ARE
CERTAIN ISSUES THAT HAVE AN
ORGANIC NATURE, CERTAINLY CELL
PHONE SEARCHES GIVEN CHANGES
IN TECHNOLOGY, THE CHANGES IN
WHICH LAW ENFORCEMENT APPLY
TECHNOLOGY TO INVESTIGATIONS I
THINK THIS FALLS INTO SITUATION

WHERE IT IS NOT SETTLED YET AND
I THINK THAT IS THE POINT OF
WILLIS.
>> AT THE TIME THE WHOLE
BUSINESS OF CELL PHONE, WOULD
YOU AGREE THAT THE LAW WAS
EVOLVING AT THE TIME?
>> YES.
>> AND, I MEAN, I JUST, I'M
TRYING TO GET A GRIP ON WHAT IS
MEANT BY SETTLED.
IT IS, I DON'T SEE IT AS, AS
BINDING.
I DON'T SEE IT AS SAME THING AS
BINDING PRECEDENT.
JUST BECAUSE IT IS BINDING
DOESN'T MEAN IT IS SETTLED LAW.
>> I A AGREE.
>> THAT IS WHAT I'M TRYING TO
GRIP HERE.
AND THAT SMALLWOODI WAS ONE OF
THE FIRST CASES INVOLVING CELL
PHONES.
AM I WRONG?
>> NO, YOU ARE NOT.
>> OKAY.
SO THE CASE WAS EVOLVING.
THE WHOLE ISSUE WAS EVOLVING AT
THE TIME.
SO I'M WONDERING HOW THAT PLAYS
INTO IT, THE WHOLE BUSINESS THAT
SHE MENTIONED, SETTLED AND
UNEQUIVOCAL?
>> WELL, I THINK THAT, I DON'T
KNOW IF I CAN ANSWER THAT
BECAUSE I THINK AT THAT POINT
BECAUSE RILEY IS SO RECENT AND I
KNOW THIS COURT GOT IT RIGHT
FIRST WITH SMALLWOOD II IN
ANTICIPATION OF THE ISSUE BUT I
THINK THAT THE ISSUE IS STILL
EVOLVING.
I THINK THERE IS A TRICKLE DOWN
IN LAW ENFORCEMENT WILL TAKE
YEARS TO START IMPLEMENTING
INVESTIGATIVE PRACTICES WITH THE
CASE LAW ON IT BUT I STILL THINK
IT IS DEVELOPING.
I THINK MOST IMPORTANTLY WITH
RESPECT TO MR. CARPENTER AND

ALSO IN THE WILLIS SCENARIO THAT
LAW HAD NOT YET BEEN DEVELOPED
EVEN BY THE U.S. SUPREME COURT.
>> FROM NOW ON, SINCE SMALLWOOD
CAME OUT FROM OUR COURT, AND
RILEY, THAT ANY LAW ENFORCEMENT
OFFICER THAT WOULD SEARCH OR
HAVE A CELL PHONE SEARCH WITHOUT
A WARRANT WOULD MOST LIKELY HAVE
THE CONTENTS OF THAT CELL PHONE
SUBJECT TO SUPPRESSION?
>> YES.
>> BUT SEEMS TO ME--
>> ABSENCE EXIGENT
CIRCUMSTANCES.
THERE ARE SOME EXCEPTIONS BUT I
AGREE, JUSTICE.
>> SEEMS TO ME YOUR ARGUMENT
BOILS DOWN, IT DOESN'T MATTER
WHAT THE, WHAT THE DISTRICT
COURT HAD SAID AT THE TIME THAT
THE SEARCH ACTUALLY TOOK PLACE.
YOUR ARGUMENT IS THAT BECAUSE
THIS COURT DECIDED
SMALLWOODI-- SMALLWOOD II
PRIOR TO THE SUPPRESSION HEARING
THAT SHOULD HAVE BEEN GUIDED AT
SUPPRESSION HEARING, IS THAT
WHAT THE ESSENCE OF YOUR
ARGUMENT IS?
>> I THINK THE PROTECTION OF THE
SMALLWOOD II LAW OF CELL PHONE
SEARCHES APPLIED TO BE HIM AT
THE TIME, YES.
AND OBVIOUSLY, I'M RUNNING INTO
THAT RIGHT NOW, THERE WAS
CRITICISM FROM ONE DCA IN THE
CARPENTER OPINION AS TO HOW THE
WILLIS COURT CAME UP WITH THEIR
DECISION.
THEY SAID SOME LANGUAGE THAT IT
WAS JUST NOT JUSTIFIED.
THERE WAS NO LEGAL SUPPORT FOR
IT OR THEY ALMOST WENT ROGUE
FROM DAVIS.
AND I AGREE THERE ARE ASPECTS OF
WILLIS THAT ARE PROBLEMATIC.
BUT I THINK THE GENERAL
PRINCIPLES IN WILLIS CAN BE
EMBRACED AND CAN BE EMBRACED.

>> HOW DO YOU RECONCILE AND SAY, WE DON'T FAULT THE OFFICERS? THE OFFICERS DIDN'T DO ANYTHING WRONG, BUT YET UNDER THE REASONING OF DAVIS STILL REACHED THE CONCLUSION THAT THERE SHOULD BE SUPPRESSION?
IF YOU'RE CONCEDING AS I THINK YOU ARE, THAT THE OFFICERS HERE ENGAGED IN NO DELIBERATE OR RECKLESS OR GROSSLY NEGLIGENT DISREGARD OF THE FOURTH AMENDMENT--
>> THERE IS NO RECORD EVIDENCE TO SUPPORT THAT, YES.
>> IF YOU CONCEDE THAT, I DON'T KNOW HOW UNDER THE REASONING OF DAVIS YOU CAN REACH THE CONCLUSION THAT APPLICATION OF THE EXCLUSIONARY RULE IN THIS CONTEXT IS JUSTIFIED?
TELL ME WHAT I'M MISSING THERE.
>> I THINK THAT, AGAIN, GIVEN THE FACT THAT THE SUPPRESSION MOTION WAS NOT FILED BASED ON IMPROPER LAW ENFORCEMENT CONDUCT.
I THINK THAT IS WHAT I'M TRYING TO GET TO.
THERE WAS NO ASSERTION IN THE SUPPRESSION MOTION THAT LAW ENFORCEMENT DID ANYTHING UNTOWARD.
WHAT THE MOTION WAS FILED ON THERE WAS A CHANGE IN THE LAW.
I THINK THAT IS THE DISTINCTION I'M TRYING TO MAKE, IS THAT THE MOTION WAS FILED BASED ON A NEW CASE THAT CAME OUT FROM THIS COURT THAT CHANGED IT AND THE TRIAL JUDGE SAID THAT IS A NEW CAUSE, AND THERE IS THE LAW AND I WENT AND HE IS UP PRESSED.
WITHOUT MAKING THE CONSIDERATION THAT THE LAW IN EFFECT AT TIME WAS SMALLWOODI.
THAT IS MY POINT OF GETTING THERE THAT IN THAT CONTEXT THERE WOULD NOT HAVE BEEN ANY BASIS FOR THE EXCLUSIONARY RULE

BECAUSE LAW ENFORCEMENT UNDER SMALLWOODI IN THE FIRST DISTRICT WOULD HAVE BEEN OPERATING WHAT WAS THE LAW AT THE TIME.
THAT IS THE DISTINCTION I'M TRYING TO MAKE.
>> LET ME ASK YOU ONE QUESTION. I'M STILL STRUGGLING WITH THIS.
>> YES?
>> I THINK YOU WOULD AGREE THAT EXCLUDING EVIDENCE IN THIS CASE WHERE THE OFFICERS WERE NOT ACTING IN BAD FAITH COULD HAVE NO PROPHYLACTIC EFFECT ON FUTURE LAW ENFORCEMENT OFFICERS, CORRECT?
>> NOT WITH THE LAW ESTABLISHED AS IT IS RIGHT NOW.
>> RIGHT.
OKAY.
AND THE WHOLE BASIS OF THE U.S. SUPREME COURT'S CASE LAW REGARDING EXCLUSIONARY RULE WE ONLY EXCLUDE EVIDENCE IN A CASE IF IT CAN CHANGE BEHAVIOR IN THE FUTURE.
THAT MEANS WE ONLY DO IT WHEN THE OFFICERS ARE NOT ACTING IN GOOD FAITH.
SO HOW IS YOUR ARGUMENT EVEN CONSISTENT WITH THE BASIC FRAMEWORK OF THE EXCLUSIONARY RULE AND WHAT IT IS SUPPOSED TO BE ABOUT?
>> AGAIN I'M LOOKING AT THE CONTEXT OF GRIFFITH AND EMERGING, CHANGING NATURE OF THE LAW.
I UNDERSTAND THAT IS NOT SOMETHING THIS COURT IS EAGERLY EMBRACING FROM ME BUT IT'S A DIFFICULT AREA ON THAT.
I THINK THE FACTS OF THE CARPENTER CASE, IN THE MANNER WHICH THE SUPPRESSION MOTION WAS FILED AND WHY I THINK IT IS UNIQUE AND I THINK IT IS FOR THAT REASON I WOULD ASK THAT THE COURT REVERSE ONE DCA.

I'M IN MY REBUTTAL TIME.
YES, SIR?
>> YOU HAVE USED UP ALL YOUR TIME BUT WE ACTUALLY HELPED YOU DO, SO WHAT I WILL DO, I WILL GIVE YOU TWO MINUTES OF REBUTTAL.
>> THANK YOU.
>> THANK YOU.
>> GOOD MORNING, VIRGINIA HARRIS ON BEHALF OF THE STATE OF FLORIDA.
I HAVE TO ADMIT I'M SOMEWHAT CONFUSED ABOUT WHAT THE PETITIONER'S ARGUMENT IS IN TERMS--
>> SO AM I.
THAT IS WHAT I WOULD LIKE FOR YOU TO CLARIFY THE LAW.
NOW THE STATE HAS AN OBLIGATION IN THIS CASE BEYOND JUST THIS ONE CASE, YOU AGREE WITH THAT?
YOU HAVE AN OBLIGATION TO THE LAW?
>> THAT IS CORRECT, YOUR HONOR.
>> AS DO WE.
AND I'M SURE YOU HAVE READ DAVIS?
>> YES.
>> AND DAVIS, DOESN'T DAVIS SAY THAT WHEN AN OFFICER IN GOOD FAITH RELIES UPON WELL-ESTABLISHED PRECEDENT, WE'RE NOT GOING BACK TO SAY, OFFICER, YOU VIOLATED THE FOURTH AMENDMENT AND EXCLUDE THAT EVIDENCE?
>> YOUR HONOR, I DON'T REMEMBER THEM USING WELL-ESTABLISHED.
I DO REMEMBER THEM USING THE WORD BINDING APPELLATE PRECEDENT.
BINDING PRECEDENT OR BINDING JUDICIAL PRECEDENT.
>> OKAY.
NOW, LET ME ASK YOU THIS, THIS CIRCUMSTANCE.
THEY, THE CELL PHONE WAS ALREADY IN POLICE POSSESSION LONG BEFORE IT WAS EVER SEARCHED.

>> ARE YOU TALKING ABOUT
CARPENTER?
>> NO, I'M TALKING ABOUT IN THIS
CASE, YES.
>> OH, YOU'RE TALKING ABOUT
DAVIS?
>> NO, IN CARPENTER.
>> THEY SEARCHED IT INCIDENT TO
ARREST.
>> BUT IT WAS NOT AT THE CITE.
>> YOU'RE CORRECT ABOUT THAT.
>> MORE INVENTORY THAN AT THE
SITE.
THEY HAD BEEN INVESTIGATING THIS
GUY FOR A PERIOD OF TIME, HAD
THEY NOT?
>> I WOULD SAY FOR A SHORT
PERIOD OF TIME.
A NUMBER OF DAYS.
>> THIS GUY WAS TRYING TO--
>> RIGHT.
>> GET WITH UNDERAGED CHILDREN.
>> RIGHT.
>> AND DO ACTS THAT ARE CONTRARY
TO LAW.
>> THE DATE OF OFFENSE-- WELL
IT KIND OF OCCURRED OVER A
PERIOD OF DAYS.
IT STARTS ON THE 14th OF
JUNE AND HE IS ACTUALLY ARRESTED
ON THE 16th.
SO ABOUT THREE DAYS.
>> I MEAN THEY ALREADY HAD THE
COMMUNICATIONS RECORDED.
THEY ALREADY HAD, THEY ALREADY
HAD A BODY OF EVIDENCE ON THIS
DEFENDANT?
SO THEN THEY TAKE IT BACK AND
THE POLICE AUTHORITIES SAY,
WELL, WE'VE GOT CASE AUTHORITY.
IF YOU READ SMALLWOODI ON THAT
DAY, WOULD YOU HAVE ANY CONCERNS
AS TO THE VALIDITY OF THAT
PROPOSITION OF LAW OR THAT IT
WAS NOT FINISHED YET?
>> WELL, I DON'T THINK THAT THE
POLICE HAVE TO WORRY ABOUT
WHETHER IT'S FINISHED.
>> LET ME ASK YOU THIS THEN.
THEY CAN RELY ONLY WHAT IS GOOD

FOR THEM AND NOT RELY ON WHAT
MAY BE LEGITIMATELY WHAT
HAPPENED?
>> ACTUALLY, THE WAY I INTERPRET
THE FIRST DISTRICT SAYING IN
SMALLWOODI, IN FACT THEY
ACTUALLY USED THIS LANGUAGE,
THEY FELT BOUND BY THE UNITED
STATES SUPREME COURT IN ROBINSON
AND THEY ACTUALLY USED THE
LANGUAGE, BRIGHT LINE.
>> WHICH WAS A PACKAGE OF
CIGARETTES ALL CRUMPLED UP.
>> YES, THEY INTERPRETED THAT,
AS BEING A BRIGHT LINE, THAT THE
POLICE OFFICERS COULD SEARCH
EVEN A CELL PHONE.
>> THE FIRST DISTRICT IN
SMALLWOODI DIDN'T TALK ABOUT
HOW UNCERTAIN THE LAW IN THIS
AREA WAS?
>> YES.
BUT THEY CAME TO THE
DETERMINATION--
>> I UNDERSTAND.
BUT THEY ALSO CERTIFIED IT.
EXCUSE ME, THEY ALSO CERTIFIED
IT.
TO THE FLORIDA SUPREME COURT.
>> CORRECT.
>> THAT DOES NOT EXPRESS SOME
UNCERTAINTY WHAT THE LAW WAS?
>> I TERMED AS SAYING, WE
INTERPRET THE LAW TO SAY THIS
BUT WE HAVE CONCERNS ABOUT IT
BECAUSE EVEN THOUGH IT SAYS
THIS, YOU KNOW, NOW WE HAVE
THESE LITTLE MINI COMPUTERS THAT
WEREN'T AROUND AT TIME ROBINSON
WAS DECIDED.
>> EXACTLY.
BUT THEY HAD TO DECIDE THE ISSUE
BEFORE THEY COULD CERTIFY IT.
THEY THEMSELVES SAY WE'RE GOING
TO CERTIFY IT TO THE SUPREME
COURT AND YOU WOULD HAVE TO
AGREE, THAT SHOWS SOME
UNCERTAINTY WITH IT?
>> NO.
I INTERPRETED THAT AS THEM YOU

SAYING WE SHOULD RECONSIDER THIS
NOT AS THIS IS NOT THE LAW.
>> DO WE EXPECT LAW ENFORCEMENT,
IF YOU'RE GOING TO READ THE GOOD
PARTS OF WHAT THE LAW IS, TO
READ ALL OF WHAT IT IS?
>> NO, AND I DON'T THINK--
>> NO, YOU DON'T HAVE TO--
>> THE LAW ENFORCEMENT OFFICERS
ARE NOT LAWYERS.
I DON'T THINK THAT THEY SHOULD
HAVE TO LOOK AT CASES--
>> SOMEBODY TOLD THEM WHAT IT
IS.
SOMEBODY HAD TO READ IT.
>> THAT'S IS TRUE BUT--
>> YOU'RE SUGGESTING THAT YOU
SHOULDN'T READ ALL OF THE
OPINION TO SEE WHAT A COURT SAID
ABOUT THE SUBJECT?
>> BUT ASSUMING THAT POLICE
OFFICERS WERE REALLY THIS
KNOWLEDGEABLE ABOUT THE LAW,
THEY WOULD ALSO KNOW ABOUT DAVIS
THEN, THAT SAYS THAT IF THERE IS
A BINDING APPELLATE PRECEDENT
THAT POLICE OFFICERS CAN REASON
HABLY RELY ON THAT--
>> THAT HAD BEEN ESTABLISHED
BECAUSE THEY RELIED IN DAVIS, A
CASE THAT HAD BEEN IN EXISTENCE,
HOW MANY YEARS?
30 YEARS.
>> I ACTUALLY--
>> EXCUSE ME.
DID THEY RELY ON BELTON THAT HAD
BEEN IN FORCE FOR 30 YEARS?
>> YES, YOUR HONOR.
BUT ACTUALLY THE OPINION JUST
HIS ALITO SAYS JUSTICES
DISAGREED WHETHER BELTON
ESTABLISHED A BRIGHTLINE RULE.
IT WAS THE 11th'S CIRCUIT
INTERPRETATION OF BELT TON.
ALITO TALKS ABOUT IN DETAIL HOW
FOUR OF THE JUSTICES THOUGHT
BELL TON-- BELTON, WAS
CONCERNED WITH INDIVIDUALS
WITHIN REACH OF THE CAR.
>> THIS IS MAYBE A ESOTERIC AREA

OF THE LAW, BUT I THINK THE
STATE WOULD ARGUE AND DID ARGUE
IN FACT IN SMALLWOOD II, THAT BY
THE RELIANCE ON ROBINSON, THE
CRUMPLED CIGARETTE CASE, THAT
THEY WERE ACTING IN GOOD FAITH.
>> YES.
>> WHAT DID THIS COURT SAY ABOUT
THAT?
>> THIS COURT SAID NO, THAT
THERE WAS NOT A CASE THAT
EXPRESSLY AUTHORIZED SOMEONE TO
SEARCH A CELL PHONE.
>> SO WE HAVE THE ROBINSON
SITUATION WHICH YOU'RE SAYING
ESTABLISHED GOOD FAITH BUT YET
THE ISSUE OF WHAT GOOD FAITH
MEANS FOR THE EXCEPTION TO THE
EXCLUSIONARY RULE, DOES IT MEAN
THAT THE ONLY WAY THAT EVIDENCE
IS EXCLUDED IS IF THEY ACT IN
BAD FAITH?
IS THAT THE OPPOSITE?
THAT THE EXCLUSIONARY RULE ONLY
APPLIES IF THE OFFICER APPLIES
IN BAD FAITH?
>> NO.
I MEAN TO--
>> WE'RE NOT EVEN CLOSE TO THAT,
IS IT?
NOT CLOSE TO THAT.
LEE ON WAS, YOU GOT A SEARCH
WARRANT AND THEN AFTER-- IN
GOOD FAITH RELIANCE ON THE
MAGISTRATE.
>> RIGHT.
>> AFTERWARDS THERE WAS SOME
DEFECT IN THE SEARCH WARRANT YOU
CAN'T EXPECT THE POLICE OFFICER
TO HAVE KNOWN THERE IS A DEFECT.
>> CORRECT.
>> AS I READ THE GOOD FAITH LEON
EXCEPTION IT IS A VERY NARROW
EXCEPTION.
WHEN THE SUPREME COURT DECIDED
DAVIS THEY GO, WE RARELY, RARELY
RECEDE FROM FOURTH AMENDMENT
PRECEDENT.
SO WE EXPECT THIS GOOD FAITH
EXCEPTION TO BE VERY NARROWLY

APPLIED.
DON'T YOU READ IT THAT WAY?
>> RIGHT.
EXCEPT WE HAVE A CASE IN
FLORIDA, THE ONLY CASE IN
FLORIDA, THAT SPECIFICALLY
AUTHORIZED THE OFFICERS TO
SEARCH THE CELL PHONE, AND IT
HAD BEEN OUT OVER A YEAR BEFORE
THE SEARCH OCCURRED.
WE ALSO HAVE PARDO THAT SAYS
WHEN THERE IS ONLY ONE DISTRICT
COURT CASE, THAT IT CONSTITUTES
FLORIDA LAW.
>> SO AT THE TIME THE SEARCH
OCCURRED WAS SMALLWOODI HAD
CERTIFIED--
>> CORRECT.
>> THE QUESTION.
IT WAS IN BRIEFING BEFORE THE
SUPREME COURT.
SMALLWOOD HADN'T BEEN DECIDED
BUT IF AN ATTORNEY LOOKING AT
THAT, WOULD THEY GO, NO QUESTION
BUT SMALLWOODI IS GOING TO BE
AFFIRMED?
>> WELL, I DON'T THINK THAT
POLICE OFFICERS, AND I THINK IT
IS EVEN REFLECTED IN DAVIS, HAVE
TO SIT AROUND AND WONDER WHAT IS
GOING TO HAPPEN TO THE LAW.
IN FACT DAVIS SAYS, THAT
OFFICERS, IT IS RATIONAL OF THEM
TO UTILIZE INVESTIGATIVE
TECHNIQUES THEY'RE AUTHORIZED TO
USE.
>> SEE THE PROBLEM HERE THOUGH,
IS IT CORRECT THIS WAS AN
INVENTORY SEARCH?
>> I CONSIDER, WELL I CONSIDERED
WILLIS TO BE, THEY TALK ABOUT
INVENTOR BUT IT WASN'T INVENTORY
HERE.
>> IT WASN'T HERE, WASN'T.
>> NO, I DIDN'T CONSIDER
CONSIDER IT TO BE A INVENTOR
SEARCH.
>> WAS IT DONE AT SCENE?
>> THEY COULDN'T HAVE DONE A
COMPLETE FORENSIC ANALYSIS AT

SCENE.
>> THERE WAS NOTHING HERE THAT PREVENTED THEM FROM GETTING A SEARCH WARRANT?
>> THEY TOOK THE PHONE TO A POLICE FACILITY AWAY FROM THE SCENE, CORRECT?
>> YES.
>> THAT IS ALL YOU HAVE TO ANSWER HER.
>> THEY WEREN'T REQUIRED TO GET A WARRANT, WERE THEY?
THEY COULD HAVE HAD THE LAW REQUIRED THAT BASED ON THE FACTS OF THIS CASE.
IN OTHER WORDS THE GOOD FAITH TALKS ABOUT, YOU KNOW, WHEN OFFICERS ARE DELIBERATE, RECKLESS OR GROSSLY NEGLIGENT.
HOW COULD THESE OFFICERS BE ANY OF THOSE THINGS WHEN THEY'RE FOLLOWING FLORIDA LAW, THE ONLY CASE THAT SAYS YOU ARE ALLOWED.
>> YOU WANT TO EXPAND GOOD FAITH TO SAY, YOU WANT THE EXCLUSIONARY RULE ONLY TO APPLY IF THE OFFICER ACTS RECKLESSLY, IN BAD FAITH OR, IS THAT WHAT YOU'RE ASKING US TO DO?
>> WELL DAVIS SAYS THAT BUT THAT IS NOT THE LENOY CONSIDERATION.
OBVIOUSLY NOW AN OFFICER COULD SAY, WELL, I DIDN'T KNOW HAVE WAS A FLORIDA SUPREME COURT AND UNITED STATES SUPREME COURT CASE THAT SAID YOU COULDN'T SEARCH CELL PHONES SO THEREFORE I'M NOT AT FAULT.
YOU COULDN'T DO THAT.
BUT IN THIS CASE, THERE WAS ACTUALLY A CASE, THE ONLY CASE, THERE WAS NOT EVEN ANOTHER CONFLICTING CASE OUT OF THE DISTRICT COURTS.
AND ALSO, JUST BECAUSE THIS COURT TAKE AS A CASE, DOESN'T ULTIMATELY MEAN THAT THIS COURT WILL RULE ON IT.
SOMETIMES AS YOU KNOW THIS COURT TAKES CASES AND THEN CHANGES ITS

MIND AND DISPENSES WITH
JURISDICTION.
AND THEN SOMETIMES IN THIS CASE,
THE UNITED STATES SUPREME COURT
AGREED WITH YOU, BUT SOMETIMES
THE UNITED STATES SUPREME COURT
COULD DISAGREE WITH THIS COURT
AND COME TO A DIFFERENT
CONCLUSION.
SO WOULD OFFICERS THEN BE IN A
STATE OF NOT KNOWING WHAT THEY
WERE ALLOWED TO DO, WONDERING
WHAT WOULD ULTIMATELY HAPPEN
WITH A CASE?
>> SO YOU SEE DAVIS AND WHAT THE
MAJORITY SAYS AS WELL AS
SOTOMAYOR AS ONLY REQUIRING
THERE BE A CASE SOMEWHERE
THAT--
>> NO.
>> RATHER THAN THAT IT IS
ESTABLISHED PRECEDENT?
IT'S SUPREME COURT PRECEDENT?
IT'S FEDERAL APPELLATE
PRECEDENT?
YOU WOULD SAY, AND AGAIN I THINK
YOUR COLLEAGUE ACTUALLY AGREES
WITH YOU, THAT PARDO ANSWERS THE
QUESTION?
>> IT DOES AND DAVIS BECAUSE IT
SAYS BINDING APPELLATE PRECEDENT
AND IT IS TALKING ABOUT 11th
CIRCUIT CASE AND AS I WAS SAYING
BEFORE TO JUSTICE LEWIS, THE
UNITED STATES SUPREME COURT DID
NOT AGREE ON WHAT BELTON SAYS
BECAUSE FOUR OF THEM THOUGHT
BELTON ONLY MEANT YOU COULD
SEARCH A VEHICLE IF THE
DEFENDANT WAS UNSECURED AND IN
REACHING DISTANCE AND FOUR OF
THEM THOUGHT THAT YOU COULD JUST
SEARCH A VEHICLE AND IT INDICATE
IT WOULD BE 4 ONE FOUR, TO KEEP
THAT FROM HAPPENING THEY DECIDED
TO COME UP WITH A NEW RULE.
SO ACCORDING TO THEM--
>> GOING BACK TO WHAT YOU SAID
EARLIER ABOUT THE FACT THAT WE
HAD ACCEPTED JURISDICTION IN THE

CASE DOESN'T MAKE IT, MAKE A DIFFERENCE, I DON'T KNOW, IF I'M A DETECTIVE AND I'M, AND I'M INVESTIGATING A MURDER, AND THE ONLY EVIDENCE CONNECTING THE DEFENDANT TO THE MURDER IS THAT CELL PHONE, AND THERE IS SMALLWOODI BUT THE SUPREME COURT HAS SET THE JURISDICTION, I MIGHT JUST CALL THE STATE ATTORNEY'S OFFICE SAY, WHAT SHOULD I DO?
LET'S GO AHEAD AND GET A SEARCH WARRANT TO PLAY IT SAFE.
BECAUSE IT ALL GOES DOWN BACK TO, AND I UNDERSTAND WHAT YOU SAID, THAT THE, BASICALLY THEY'RE TALKING ABOUT BINDING APPELLATE PRECEDENT BUT, IN LOOKING AT THE WAY JUSTICE SOTOMAYOR ANALYZED THAT IN HER CONCURRING OPINION, SHE SAID IN ORDER FOR THE GOOD FAITH EXCEPTION TO APPLY THE OFFICERS MUST RELY ON PRECEDENT THAT IS SETTLED AND UNEQUIVOCAL.
GIVEN THE CELL PHONE, YOU KNOW, STILL EVOLVING BUT GIVEN THE CELL PHONE THING AT THE TIME, IT SEEMED TO ME THAT, IT WASN'T REALLY ALL THAT SETTLED AND UNEQUIVOCAL.
>> THERE WAS NOT EVEN ANOTHER DISTRICT COURT OF APPEAL IN THE ENTIRE TWO YEARS THIS COURT HAD THIS CASE THAT DISAGREED WITH THE FIRST DISTRICT.
SO I FOUND QUITE INTERESTING THAT WILLIS SAID CONTROVERSIAL, RAPIDLY EVOLVING, IT WAS SO CONTROVERSIAL AND RAPIDLY EVOLVING IN FLORIDA, HOW COME NONE OF THE OTHER DISTRICT COURTS DISAGREED WITH THE FIRST DISTRICT.
>> IN GOING FORWARD, WE HAVE TO AGREE THAT THE WAY TECHNOLOGY IS GOING, WE HAVE JUST REALLY PROBABLY TOUCHED THE SURFACE OF WHAT THE FUTURE IS GOING TO

HOLD.
AND IT IS GOING TO BE RAPIDLY OCCURRING.
WE NEED TO HAVE A PRINCIPLE OF LAW THAT OPERATE TO PROTECT THE INTERESTS OF THE PUBLIC, LAW ENFORCEMENT OFFICERS, ENFORCING THE LAW, CATCHING THE BAD PEOPLE, AND AT THE SAME TIME A FIELD OF OPERATION FOR THE FOURTH AMENDMENT TO OPERATE.
SOMEHOW THEY HAVE GOT, THEY COEXIST.
AND, TELL ME WHY I'M WRONG TO THINK THAT IF I'M GOING TO HE RELY AS A POLICE OFFICER ON A CASE, OR BE TOLD BY MY LEGAL OFFICE OF THE LAW ENFORCEMENT, THAT THIS IS WHAT THE LAW IS, THAT I, THAT I WOULD NOT CONSIDER THE ENTIRE OPINION, AND AS JUSTICE LABARGA SAID, IF I'M GOING TO MAKE AN ERROR, I WOULD ERR ON THE SIDE OF CONSTITUTIONAL PROTECTION RATHER THAN CONSTITUTIONAL VIOLATION, AS THAT COMES DOWN THE PIKE.
UNDERSTANDING THAT I HAVE GOT SOMETHING TO RELY ON, AND AGAIN, I DON'T LIKE TO HEAR IN A COURT OF LAW PEOPLE TALKING ABOUT LAW ENFORCEMENT OFFICERS BEING INTENTIONALLY DOING THINGS WRONG TO VIOLATE OUR CITIZENS.
I'M NOT SURE THAT'S THE RULE.
I THINK THE RULE IS THEY PROBABLY TRY TO DO IT AS BEST THEY CAN UNDER DIFFICULT CIRCUMSTANCES YET WE HAVE TO GIVE SOME FIELD OF OPERATION TO THIS FOURTH AMENDMENT THING, AND GOING FORWARD, WHY WOULD THAT NOT BE, THAT IF A CASE THAT YOU'RE GOING TO RELY ON SAYS, WE HAVE CONCERNS ABOUT THIS, WE'RE NOT SURE, AND WE'RE GOING TO SEND THIS CASE TO A, OUR HIGHER AUTHORITY, INDICATING IT IS NOT OVER, CERTAINLY DURING THE REHEARING YOU'RE NOT GOING TO

LET THEM EXERCISE THAT CASE,
RIGHT?
SO THERE MUST BE AT SOME POINT
IN TIME THAT YOU HAVE TO SAY,
THE PRACTICAL APPROACH IS TO
STAND BACK.
THERE IS NO, NO DESTRUCTION OF
EVIDENCE ISSUE HERE.
NO DANGER TO THE POLICE OFFICER
HERE.
THE PHONE'S ALREADY GONE.
IT IS IN THE HANDS OF POLICE.
SO WHAT IS WRONG WITH THE
PRAGMATIC APPROACH RATHER THAN
LOSE THAT EVIDENCE?
WHAT IS WRONG WITH THAT?
>> BUT IT'S NOT, I MEAN, THAT IT
IS EXPANDING DAVIS.
IF DAVIS INDICATES THAT WHEN
THERE'S, YOU KNOW, BINDING
PRECEDENT THAT AUTHORIZES THE
POLICE TO DO SOMETHING, THAT IT
IS RATIONAL AND THEY'RE
PERMITTED TO UTILIZE THOSE
TECHNIQUES.
>> EXCEPT IF YOU READ THE REST
OF THE DAVIS, THE MAJORITY, THEY
SAID IT IS IMPORTANT TO KEEP IN
MIND THIS APPLIES TO A
EXCEEDINGLY SMALL SET OF CASES,
DECISIONS OVERRULING THE COURT'S
FOURTH AMENDMENT PRECEDENTS ARE
RARE.
INDEED IT IS MORE THAN 40 YEARS
SINCE THE COURT LAST HAND
ADDITION OF THIS TYPE.
READING THAT IN CONJUNCTION WITH
WHAT JUDGE SOTOMAYOR SAYS, AND,
INDICATING AT THE BEGINNING OF
THAT SECTION THAT IN THIS CASE,
THE PRECEDENT OUGHT TO BE
CHALLENGED, DECISION AT FEDERAL
COURT OF APPEALS OR A STATE
SUPREME COURT, I'M NOT, AGAIN WE
HAVE TO LOOK AT DAVIS, THAT THEY
ANTICIPATED IT, BUT ANY CASE A
TRIAL COURT RULED, ANY CASE OUT
THERE WOULD THEN SAY, OKAY,
WE'RE OKAY TO SEARCH?
>> WELL, NO, THEY, OKAY, THEY'RE

SAYING BINDING APPELLATE
PRECEDENT.
IF THEY MEANT THEIR PRECEDENT,
THEY WOULD HAVE SAID THEIR
PRECEDENT.
THEY'RE TALKING ABOUT THE
11th CIRCUIT'S
INTERPRETATION OF BELTON, WHERE
THE COURTS DIFFERED.
>> WHY WOULD THEY SAY STATE
SUPREME COURT?
>> SOMETIMES THIS COURT, THERE
ARE CERTAIN LAWS THAT THIS COURT
DOESN'T RULE ON--
>> I GUESS, DOESN'T IT APPEAR IF
YOU READ DAVIS AS A WHOLE THEY
WERE INTENDING THIS EXCEPTION TO
THE EXCLUSIONARY RULE TO BE
EXCEEDINGLY NARROW, NOT BROAD AS
YOU ARE ADVOCATES FOR?
>> I DON'T THINK THAT IT IS
BROAD BECAUSE IT WOULD ONLY
APPLY TO CASES IN BETWEEN WHEN
SMALLWOODI WAS ISSUED WHICH WAS
APRIL OF 2011, AND WHEN
SMALLWOODI I WAS ISSUED, WHICH
WAS TWO YEARS LATER,
APPROXIMATELY MAY OF 2013.
SO THAT WOULD NOT BE A LARGE
NUMBER OF CASES.
>> THE POLICE DEPARTMENT, WERE
THERE ANY DIRECTIVES ISSUED
AFTER SMALLWOODI?
WAS THERE ANY ONGOING
INFORMATION ABOUT WHAT WAS,
AFTER THE CASE WAS HEARD IN ORAL
ARGUMENT?
ANYTHING OF THAT NATURE IN THE
RECORD?
>> NO, THERE WAS NOTHING LIKE
THAT IN THE RECORD BUT DAVIS,
YOU TALK A LOT ABOUT SOTOMAYOR
BUT JUSTICE SOTOMAYOR IS THE
CONCURRENT.
SHE IS NOT THE MAJORITY.
AND I THINK THAT WHEN YOU LOOK
AT THE RULINGS BY THE UNITED
STATES SUPREME COURT BOTH IN
DAVIS AND IN SUBSEQUENT CASES,
THAT THEY HAVE MADE IT CLEAR

THAT THEY DO NOT WANT COURTS SUPPRESSING EVIDENCE BECAUSE THIS IS NOT A PERSONAL RIGHT. IT'S A JUDICIARY CREATED SANCTION FOR FUTURE POLICE CONDUCT.
>> I'M SURE YOU WOULD TELL US IF AFTER RILEY THERE HAS BEEN AN ATTEMPT TO APPLY THE GOOD FAITH EXCEPTION BASED ON ROBINSON.
>> WELL THAT'S DIFFERENT BECAUSE THEY, THERE WASN'T A CASE, EVEN THOUGH MANY COURTS INTERPRETED IT ROBINSON AS INDICATING AND OTHER CASES YOU COULD SEARCH CELL PHONES THERE WAS NOT SPECIFICALLY A CASE THAT POLICE COULD DO IT.
IN FLORIDA WE SPECIFICALLY HAD A CASE THAT HAD BEEN OUT FOR A YEAR WITH NO OTHER DISTRICT COURT OPINIONS SAYING ANYTHING TO THE CONTRARY, THAT THE POLICE COULD SEARCH THIS HOW WOULD THIS RISE TO THE LEVEL OF DELIBERATE, RECKLESS OR GROSSLY NEGLIGENT CONDUCT?
>> SAYING OPPOSITE OF GOOD FAITH THERE HAS TO BE DELIBERATE AND RECKLESS, AND I DON'T KNOW WHERE YOU'RE COMING UP WITH THAT?
>> NO, I'M SAYING THAT DAVIS TALKS ABOUT THE PURPOSE OF THE EXCLUSIONARY RULE, AND INDICATES THAT, THAT IS THE KIND OF CONDUCT THAT IT IS LOOKING FOR IN POLICE OFFICERS.
THAT IS ALSO WHY I SUPPLEMENTED WITH TWO OF THE OTHER UNITED STATES SUPREME COURT CASES BECAUSE THEY, THEY FURTHER DISCUSS ESPECIALLY IN STREIF, GOOD FAITH MISTAKES.
IN FACT HIGH-END TALKS ABOUT THERE IS NOT EVEN A FOURTH AMENDMENT VIOLATION WHEN THERE IS A REASONABLE MISINTERPRETATION OF THE LAW.
LOOKS TO ME LIKE THE UNITED STATES SUPREME COURT IS MOVING

AWAY FROM, CONCLUDING EVIDENCE.
IT IS DEFINITELY NOT A STRICT LIABILITY.
THEY ARE SAYING, I MEAN, FOR EXAMPLE IN STREIF, TALK ABOUT EXTENDING DOCTRINE AND MISTAKES BY POLICE OFFICER AS THEY USED THAT ANALYSIS AND OTHER FACTORS TO DETERMINE THAT THE EXCLUSIONARY RULE SHOULD NOT APPLY.
SO THE UNITED STATES SUPREME COURT IS LOOKING FOR, I DON'T WANT TO SAY EGREGIOUS POLICE MISCONDUCT.
THEY INDICATE MORE THAN SIMPLE NEGLIGENCE.
IN THIS CASE WE DON'T HAVE ANY NEGLIGENCE.
THE POLICE OFFICERS SEARCHED THIS PURSUANT TO A CASE THAT SPECIFICALLY AUTHORIZED IT AND IT DID CONSTITUTE BINDING PRECEDENT AND IT WOULD BE ADMISSIBLE EVEN UNDER THE WILLIS REASONING, OUR CASE, BECAUSE IF YOU LOOK CLOSELY AT WILLIS, WILLIS SAYS THAT THEY QUESTION WHETHER OR NOT OTHER DISTRICTS ARE BINDING IN THEIR DISTRICT.
SO IT SUGGESTS THAT THAT WOULD MEAN THAT IT, HAD THEY BEEN FIRST DISTRICT JUDGES, THAT THEY WOULD HAVE CONSIDERED THE GOOD FAITH EXCEPTION SINCE IT IS WITHIN THEIR DISTRICT.
>> SO HOW LONG, JUST ONE FINAL QUESTION.
HOW LONG HAVE THE POLICE HAD THE CELL PHONE BEFORE HE THEY ACTUALLY SEARCHED IT?
AS I LOOK AT THE RECORD, IT SAYS, WOULD ONLY TAKE FIVE HOURS TO HAVE GOTTEN A SEARCH WARRANT FOR THE CELL PHONE.
IF THE POLICE HAD THE THING IN THEIR CUSTODY, WHY NOT?
>> BECAUSE THE LAW SAID THEY DIDN'T HAVE TO.
>> HOW LONG DID THEY HAVE IT?

>> I DON'T RECALL THE RECORD
SAYING HOW LONG.
THERE IS, THERE WERE TWO MOTIONS
IN A HEARING.
ONE OF THEM WAS ENTRAPMENT.
ONE OF THEM WAS THE MOTION TO
SUPPRESS.
AND THEY STIPULATED TO A LOT OF
THE FACTS FOR THE MOTION TO
SUPPRESS.
THAT WAS MORE OF A MINOR PART
WHEN YOU LOOK AT THE HEARING,
KIND OF DONE AT THE END BUT,
THEY, I MEAN, THEY WEREN'T
REQUIRED TO DO IT.
AND THE POLICE OFFICER ACTUALLY
SPECIFICALLY TESTIFIED THAT HE
WAS WORRIED, I KNOW RILEY HAS
REJECTED THIS, BUT HE WAS
WORRIED THAT BASED ON A PRIOR
CASE THAT HE HAD, THAT SOMEONE
MIGHT REMOTELY GET RID OF THE
EVIDENCE ON THE CELL PHONE
BECAUSE HE HAD ANOTHER CASE
WHERE THAT WAS DONE.
SO HE WAS SPECIFICALLY CONCERNED
ABOUT THAT, AND THAT ACTUALLY IS
IN THE RECORD.
NOW--
>> OKAY.
YOU'VE GONE A MINUTE 56 SECONDS
OVER.
YOUR TIME IS UP.
WE'LL WRAP IT UP, PLEASE.
>> BRIEFLY, IF I MAY ADDRESS THE
COURT, DAVIS, STATES
SPECIFICALLY WITH RESPECT TO THE
RETROACTIVITY THEIR QUOTE IS
RETROACTIVITY JURISPRUDENCE IS
WHETHER A NEW RULE IS AVAILABLE
ON DIRECT REVIEW FOR A POTENTIAL
GROUND FOR RELIEF.
WILLIS CITED THAT EXACT PHRASE
AND ALSO STATED THAT CASE LAW IS
DEVELOPING IN THE TYPE OF
PRECEDENT THAT DOES QUALIFY.
I WOULD SIMPLY SEARCH OF THE
COURT THAT I THINK THAT IT IS
AVAILABLE AS A POTENTIAL REMEDY
FOR CARPENTER, FOR THE REASONS I

STATED BEFORE.
SO I WOULD ASK THE COURT--
>> LET ME ASK, THIS COURT IN JOHNSON--
>> I'M SORRY?
>> THIS COURT IN JOHNSON--
>> JOHNSON?
I'M SORRY.
>> SAID OFFICERS ARE NOT EXPECTED LAWYERS UNDERSTANDING OF FIRST AMENDMENT AND THE EXCLUSIONARY RULE IS NOT INTENDED TO PUNISH LAW ENFORCEMENT FOR A JUDGE'S ERROR.
IF WE ACCEPT YOUR ARGUMENT, AREN'T WE PUNISHING LAW ENFORCEMENT FOR RELYING ON A THREE-JUDGE PANEL THAT IS BINDING PRECEDENT AND HOLDING THEM RESPONSIBLE FOR WHAT TURNED OUT TO BE THAT PANEL'S MISTAKE AND IN INTERPRETING THE LAW?
>> I DON'T KNOW THAT YOU'RE NECESSARILY PUNISHING LAW ENFORCEMENT BUT I DO BELIEVE THAT GIVEN SOME OF THE BROADER RECOGNITIONS BY THIS COURT, AND I HAVE CITED THOSE CASES IN MY BRIEF AND ALLUDED TO THEM EARLIER I THINK THAT--
>> YOU DO BELIEVE LAW ENFORCEMENT SHOULD HAVE A LAWYER'S UNDERSTANDING OF THE NUANCES OF THE FOURTH AMENDMENT AND TRY TO PREDICT WHERE A CASE IS GOING AFTER IT HAS BEEN DECIDED AS BINDING PRECEDENT BY A DCA?
>> PERHAPS IN A PERFECT WORLD, JUSTICE LAWSON.
I DON'T KNOW THE REALITY IS THAT IT HOW IT OCCURS.
I DO THINK LAW ENFORCEMENT OFFICERS ARE HIGHLY-EDUCATED SITTING THROUGH SUPPRESSION CROSS-EXAMINATION BY DEFENSE COUNSEL.
BEYOND THAT I DON'T KNOW WHAT STANDARD COULD BE APPLIED.
I ASK THE COURT TO REVERSE ONE

DCA AND REINSTATE THE
SUPPRESSION ORDER FROM THE TRIAL
COURT.
THANK YOU.
>> THANK YOU FOR YOUR ARGUMENTS.
WE'RE GOING TO COME BACK FOR
PHOTOS.
WE'LL BE RIGHT BACK AND TAKE
PHOTOGRAPHS WITH THE-- SO.
GO THAT WAY.
THANK YOU FOR YOUR ARGUMENTS.