

>> MAY IT PLEASE THE COURT.

>> ABSOLUTELY.

>> GOOD MORNING.

MY NAME IS LAUREL NILES AND I REPRESENT THE PETITIONER, GREGORY PRESLEY.

I WOULD LIKE TO RESERVE SEVEN MINUTES OF MY TIME FOR REBUTTAL.

THIS CASE IS ABOUT WHETHER THE POLICE CAN REQUIRE A PASSENGER FROM A LAWFULLY-STOPPED VEHICLE TO REMAIN AT THE TRAFFIC STOP.

>> LET ME STOP YOU THERE FOR A SECOND.

>> YES, SIR.

>> LET ME JUST, ALL OF US HAVE READ THE 1999 DISTRICT COURT OF APPEAL CAUSE WHICH OBVIOUSLY AGREES WITH YOU.

AND WE HAVE READ THE FIRST DCA AND THE FIFTH DCA OPINIONS ON THAT.

IN 2009 THE UNITED STATES SUPREME COURT ISSUED AN OPINION AND IT IS CALLED ARIZONA VERSUS JOHNSON AND IT INVOLVED A TRAFFIC STOP INVOLVING A PASSENGER DURING A TRAFFIC CITATION PERIOD.

SO IN THAT OPINION THE UNITED STATES SUPREME COURT, WHICH WAS UNANIMOUS OPINION WRITTEN BY JUSTICE GINSBURG, AND SUPREME COURT SAID, A LAWFUL ROADSIDE STOP BEGINS WHEN A VEHICLE IS PULLED OVER FOR INVESTIGATION OF A TRAFFIC VIOLATION.

TEMPORARY SEIZURE OF DRIVER AND PASSENGERS ORDINARILY CONTINUES AND REMAINS REASONABLE FOR THE DURATION OF THE STOP.

NORMALLY THE STOP ENDS WHEN THE POLICE HAVE NO FURTHER NEED TO CONTROL THE SCENE AND INFORM THE DRIVER AND THE PASSENGER THEY'RE FREE TO LEAVE.

A REASONABLE PASSENGER WOULD UNDERSTAND THAT DURING THE TIME A CAR IS LAWFULLY STOPPED HE OR SHE IS NOT FREE TO TERMINATE THE

AN COUNTER WITH THE POLICE AND
MOVE ABOUT AT WILL.

SO I TAKE IT FROM THAT IS, THAT
THE POLICE OFFICER CAN BASICALLY
DETAIN ANYONE IN THE CAR UNTIL
THE TICKET IS WRITTEN AND HANDED
OVER TO THE DRIVER AND THE
DRIVER IS TOLD HE CAN GO.

HOW DO YOU GET AROUND THAT?

>> I GET AROUND THAT BECAUSE THE
HOLDING IN JOHNSON IS NOT THAT
THE POLICE CAN REQUIRE THE
PASSENGERS TO STAY.

THE HOLDING IN JOHNSON IS THAT
AN OFFICER HE MAY PERFORM A
TERRY PAT-DOWN OF A DRIVER AND A
PASSENGER FROM STOPPED VEHICLE,
UPON REASONABLE SUSPICION THAT
THAT PERSON MAY BE ARMED AND
DANGEROUS.

WE CAN BACK UP A LITTLE BIT TO
MARYLAND VERSUS WILSON.

THAT IS THE SUPREME COURT CASE
THAT TALKS ABOUT OFFICER SAFETY
AROUND ALLOWS POLICE TO GET THE
PASSENGER OUT OF THE VEHICLE.

IN THAT CASE MARYLAND VERSUS
WILSON SPECIFICALLY LEFT OPEN
THE QUESTION IN THIS CASE HERE
BEFORE THE COURT, WHETHER THE
POLICE CAN REQUIRE THE PASSENGER
FROM A STOPPED VEHICLE TO REMAIN
AT THE SCENE.

>> BUT ISN'T THE, ISN'T THE
UNDERLYING CONCERN IN THESE
CASES AND KIND OF THE RATIONALE
DRIVING THE DECISIONS IN THIS
WHOLE LINE OF CASES FROM THE
U.S. SUPREME COURT THAT THE LAW
ENFORCEMENT AUTHORITIES NEED TO
BE ABLE TO MAINTAIN CONTROL OF
THE SCENE WHEN THEY STOP A CAR?
ISN'T THAT RIGHT.

>> THAT IS THE UNDERLYING---

>> SEEMS LIKE TO ME THAT
UNDERLYING LOGIC IS PRETTY
DEVASTATING TO YOUR POSITION.
TELL ME WHY I'M WRONG.

>> THOSE CASES, IF YOU BACK UP
TO MARYLAND VERSUS WILSON,

PENNSYLVANIA--

>> YOU ADMITTED THAT THAT UNDERLYING LOGIC IS THERE, RIGHT?

>> ABSOLUTELY.

THE SUPREME COURT OF UNITED STATES IS CONCERNED ABOUT OFFICER SAFETY.

>> SO WHY ISN'T THAT A PROBLEM? YOU CAN TALK ABOUT ALL THE INDIVIDUAL CASES BUT I'M TALKING ABOUT THIS CORE REASONING THAT IS IN THESE CASES.

WHY ISN'T THAT A PROBLEM?

>> YES, YOUR HONOR.

BECAUSE THE SUPREME COURT IN THOSE CASES IS STILL BALANCING A PERSON'S INDIVIDUAL RIGHT TO BE FREE FROM ARBITRARY INTERPHONES WITH THE PUBLIC INTERESTS OF OFFICER SAFETY AND ALLOWING DIMINIMUS INTRUSIONS.

REQUIRING A PASSENGER TO STAY AT A STOP, A TRAFFIC STOP FOR DURATION IS NOT A DIMINIMUS INTRUSION.

THE UNITED STATES SUPREME COURT RECOGNIZED CERTAIN THINGS ARE DIMINIMUS INTRUSION.

>> DOESN'T BEEN LIN VERSUS CALIFORNIA SAY, I AM SYMPATHETIC.

I THOUGHT THE LAW WAS WHAT WILSON WAS.

YOU HAVE A STOP LIKE THE CASE FROM THE FIFTH DISTRICT WHERE YOU HAVE THE DRIVER DOESN'T WEAR A SEATBELT AND THERE IS A TAILLIGHT OUT, IT SEEMS THAT IF THERE IS IN I REASON TO KEEP THE PASSENGERS THERE BUT IT, DIDN'T BRESLIN SAY THEY COULD NOT WALK AWAY WITHOUT ADVANCE PERMISSION?

>> BRESLIN IS A CASE ABOUT STANDING.

>> BUT WE'RE OBLIGATED TO FOLLOW THE U.S. SUPREME COURT ON FOURTH AMENDMENT.

>> YES.

>> ARE YOU SAYING THAT THAT

STATEMENT IN BRESLIN IS DICTA?

>> I AM BECAUSE THAT CASE IS ABOUT STANDING.

>> BUT YOU WOULD AGREE IF IT'S, IT'S A STATEMENT AND DOESN'T IT, ARE WE FREE TO IGNORE THAT STATEMENT, THAT HE COULD NOT, THAT HE DID NOT, PASSENGER CAN WALK AWAY WITHOUT ADVANCED PERMISSION?

>> I DON'T THINK THIS COURT WOULD BE IGNORING THAT STATEMENT.

I THINK YOU CAN APPLY BRENLIN AND REACH THE RESULT FOURTH DCA MADE AND LET ME EXPLAIN WHY.

IT ADDRESSED ISSUE WHETHER A PASSENGER WHO STAYS IS ACTUALLY SEIZED, NOT WHETHER THE POLICE CAN REQUIRE HIM TO STAY.

IN THAT CASE THE PASSENGER WANTED TO CHALLENGE THE REASON FOR THE STOP.

THERE WAS A CONCESSION BY THE STATE THAT THE STOP WAS UNLAWFUL BUT AS THIS COURT KNOWS FOURTH AMENDMENT RIGHTS ARE PERSONAL RIGHTS AND CAN ONLY BE ENFORCED BY THE ONE WHOSE RIGHTS ARE INFRINGED.

SUPREME COURT OF CALIFORNIA SAYS THE PASSENGER DOES NOT HAVE FOURTH AMENDMENT RIGHTS IN A STOP.

THE SUPREME COURT REVERSED ON NARROW ISSUE THAT A PASSENGER IS ENTITLED TO CHALLENGE THE STOP AND THE REASON BECAUSE THE PASSENGER WOULD ASSUME HE IS NOT FREE TO LEAVE.

BECAUSE HE WOULD ASSUME THAT, HE SHOULD BE CONFERRED STANDING TO CHALLENGE THE STOP.

THAT IS NOT A HOLDING THAT THE POLICE CAN REQUIRE HIM TO STAY.

>> ISN'T, LET ME ASK IT THIS WAY.

DOES THIS CASE HAVE ANYTHING TO DO WITH THE STANDARD PURSUANT TO WHICH LAW ENFORCEMENT CAN HOLD A

PASSENGER AND THE TIME INVOLVED AS OPPOSED TO THE INITIAL QUESTION, SEEMS TO ME IS IT IS PRETTY CLEAR THAT THEY CAN BUT THIS CASE, AND YOU'RE ARGUING THAT, THE ARGUMENT THAT YOU'RE PRESENTING IS FLYING IN THE FACE OF THOSE WHERE THIS CASE INVOLVES A DIFFERENT ISSUE WHICH IS THE LENGTH OF THAT-- I MEAN WHEN YOU PHRASE AN ISSUE CAN A PASSENGER BE REQUIRED TO STAY FOR THE DURATION OF THE STOP, WELL, I THINK THAT, ALL THESE CASES IMPLY A REASONABLE DURATION.

GOING TO KEEP HIM THERE ALL NIGHT?

SO I MEAN THAT QUESTION IN THE ABSTRACT IS NOT THE QUESTION.

>> RIGHT.

>> IT SEEMS TO ME, WAS THERE SOME ARBITRARY POSITION TO PAT DOWN THIS PASSENGER OR CONTINUE TO HOLD THIS PASSENGER?

WHAT SEEMS TO ME, NOT IN THE FACE OF IT, I DON'T READ, EVEN RESPECTFULLY THE ARIZONA CASE SAYING YOU CAN HOLD THEM FOREVER.

AND SO THAT IS WHY THIS CASE IT SEEMS TO ME IS ABOUT THE PA RAM IT IS, THE REASONABLENESS OR IS IT?

IF IT IS NOT, IF YOU'RE ONLY ARGUMENT IS WHETHER YOU CAN MAKE THEM STAY, I THINK YOU LOSE.

>> OKAY.

OBVIOUSLY THE LENGTH OF THE DETENTION DEPENDS ON THE REASON FOR THE STOP BUT THE ISSUE IN THIS CASE IS NOT WHETHER THEY KEPT HIM THERE TOO LONG.

THE ISSUE IN THIS CASE IS IF HE IS PART OF THE STOP, WHEN HE ASKS TO LEAVE.

WHEN THIS IS PASSENGER WHO ASKED TO LEAVE, WHO IS NOT SUBMITTING LIKE THE PASSENGER IN BRENLIN AND ASKING TO LEAVE THE SCENE

AND AT THE TIME HE ASKS THERE IS NO ARTICULABLE BASIS JUST TO BE SURE--

>> TO ANSWER JUSTICE LEWIS ACE QUESTION, AND I UNDERSTOOD THE FIRST DISTRICT OPINION SAID THAT THE, THAT THEY DO NOT ARGUE THAT YOU DO NOT ARGUE THAT THE LENGTH OF THE STOP OR EVEN THE REQUEST FOR I.D. WAS THE PROBLEM.

IS THAT STILL THE CASE?

>> THAT IS THE CASE.

>> SO HERE'S WHAT I DON'T UNDERSTAND ON THE FACTS OF THIS CASE.

THIS BLANKET RULE THING WOULD GET US INTO TROUBLE, IN MY VIEW. IF THE LENGTH OF THE STAY, I MEAN, I'M SORRY, ONCE THEY REQUESTED HIS I.D. AND THEY RAN IT, AND IT CAME UP HE WAS ON PROBATION AND HE HAD ALREADY ADMITTED VOLUNTARY HE HAD BEEN DRINKING ALCOHOL, AT THAT POINT, DON'T WE HAVE A DIFFERENT SITUATION?

>> WE WOULD EXCEPT FOR THE FACT THAT MR. PRESLEY WAS DETAINED BEFORE THEY ASKED FOR HIS I.D. SO IT IS NOT AN ASK. HE IS REQUIRED AT THAT POINT TO, TO PRESENT HIS I.D. AND DETENTIONS MUST BE BASED ON THE TOTALITY OF CIRCUMSTANCES THAT EXIST AT THE TIME OF THE DETENTION.

AT THE TIME THE OFFICER MEETS HIM, AT 12:11 A.M., HE SAYS YOU CAN'T LEAVE.

>> I DON'T UNDERSTAND, THIS LANGUAGE FROM ARIZONA VERSUS JOHNSON HE IT SAYS CLEARLY TO ME, FOR THE DURATION OF A TRAFFIC STOP WE RECENTLY CONFIRMED A POLICE OFFICER EFFECTIVELY SEIZES EVERYONE IN THE VEHICLE, THE DRIVER, AND ALL PASSENGERS.

ACCORDINGLY WE HOLD THAT IN A TRAFFIC STOP SETTING THE FIRST

TERRY CONDITION OF LAWFUL
INVESTIGATORY STOP IS MET
WHENEVER IT IS LAWFUL FOR POLICE
TO DETAIN A VEHICLE AND
OCCUPANTS PENDING INQUIRY.
POLICE NEED NOT HAVE IN
ADDITION, CAUSE TO BELIEVE ANY
OCCUPANT OF THE VEHICLE IS
INVOLVED IN CRIMINAL ACTIVITY.

>> I HAVE TWO RESPONSES TO THAT.

>> PLEASE.

I WOULD LOVE TO HEAR IT.

>> YES, MA'AM.

THE FIRST IS THAT THE JOHNSON
OPINION IS TAKEN IN THE CONTEXT
OF A TERRY FRISK.

IN JOHNSON AN OFFICER HAD A
PASSENGER IN VEHICLE WHOM SHE
SUSPECTED WAS ARMED AN
DANGEROUS.

THE PROBLEM -- SHE HAD
ARTICULABLE FACTS TO BELIEVE
THAT.

HE HAD A BANDANNA AND SOME KIND
OF GANG INSIGNIA.

SHE SUSPECTED HE WAS A DANGER TO
HER SAFETY.

THE SUPREME COURT GAVE HER, THAT
OFFICER, THIS COURT, PRONG ONE
OF TERRY BECAUSE IT IS
UNREASONABLE FOR THAT OFFICER
WHO SUSPECTS SOMEBODY IS ARMED,
TO HAVE TO NOT BE ABLE TO PAT
HIM DOWN.

SO, JOHNSON IS TAKEN IN THE
CONTEXT OF A FRISK BECAUSE WHAT
THE LOWER COURT DID--

>> BUT THEY GO BACK IN JOHNSON,
THAT FIRST SENTENCE, ABOUT
SEIZING THE VEHICLE AND THE
PASSENGERS COMES FROM BRENLIN
THE VERY CASE YOU TOLD JUSTICE
PARIENTE WAS DICTA.

NOW THEY SEEM TO BE CONFIRMING
THAT LANGUAGE HERE IN JOHNSON.

>> AND AGAIN I THINK YOU CAN
READ THESE CASES TOGETHER AND
STILL ARRIVE AT THE RULE BECAUSE
THE RULE OFFICERS CAN NOT
REQUIRE A PASSENGER WHO WISHES

TO--

>> LET ME ASK YOU THIS.
SO WE'RE TALKING ABOUT
REASONABLENESS, CORRECT?
UNDER THE FOURTH AMENDMENT, LAW
ENFORCEMENT CAN NOT UNREASONABLY
DETAIN A PERSON.

>> THAT'S CORRECT.

>> SO IF IT'S A REASONABLE
DETENTION IT IS CONSTITUTIONAL,
CORRECT?

>> THAT'S CORRECT.

>> THE UNANIMOUS U.S. SUPREME
COURT IN BRENLIN SAID ANY
REASONABLE PERSON WOULD
OBVIOUSLY, WORD THEY USED,
UNDERSTAND WHEN A TRAFFIC STOP
OCCURRED ON A VEHICLE THEY WERE
IN, THEY WERE BEING DETAINED FOR
THE DURATION OF THE TRAFFIC
STOP.

OKAY.

SO IF A REASONABLE PERSON WOULD
UNDERSTAND THAT POLICE ARE
OBVIOUSLY GOING TO DETAIN THEM
FOR THE DURATION OF THE STOP,
HOW COULD YOU AFTER THAT
POSSIBLY CONCLUDE THAT THE
OFFICER AS ACTION IS
UNREASONABLE?

>> ALL RIGHT.

SO IN BRENLINN THE COURT IS
DEALING WITH SOMEBODY WHO
ADMITTED--

>> IF THE OFFICER'S ACTS
UNREASONABLY, THEN A
REASONABLE PERSON, SO YOU THINK
THE SUPREME COURT IS UNANIMOUSLY
SAYING THAT ANY REASONABLE
PERSON IS OBVIOUSLY GOING TO
EXPECT ALL POLICE OFFICERS AND
ALL INSTANCES TO ACT
UNREASONABLY?

>> NO, SIR, THAT IS NOT WHAT I
THINK.

I THINK IN BRENLIN IN CONFERRING
STANDING TO PASSENGERS, THE
SUPREME COURT'S LANGUAGE THAT
REASONABLE PEOPLE WOULD ASSUME
THAT THEY ARE REQUIRED TO STAY

DOES NOT EXCLUDE A PERSON LIKE MR. PRESLEY WHO ASKS TO LEAVE, AND ALLOW THE POLICE TO REQUIRE THAT PERSON TO STAY.

I DON'T THINK THAT INVERSE OF THAT IS TRUE.

>> HERE IS MY PROBLEM WITH THAT. WHEN DID HE ASK TO LEAVE?

>> IT WAS AT--

>> DIDN'T, THE VERY SOON INTO THE CONVERSATION, THE APPELLANT ASKED, THE OFFICER ASKED THE APPELLANT, HE WAS STANDING THERE QUIETLY I GUESS BECAUSE THE OTHER PASSENGER HAD BEEN BELLIGERENT AND-- BELLIGERENT AND HANDCUFFS.

THE APPELLANT VOLUNTEERED HIS DATE OF BIRTH.

WHERE IN THE FACTS IS THERE AN INDICATION, HE GOES, LISTEN, MAN, I'VE BEEN HERE FOR HALF HOUR AND I'VE GOT TO GET TO, BACK TO MY HOUSE ARREST OR SOMETHING?

>> YES, YOUR HONOR.

>> IS THERE SOMETHING WE'RE MISSING IN THE RECORD?

>> THERE IS A VIDEO THAT IS PART OF THIS RECORD.

>> I WAS TRYING TO OPEN THAT UP.

>> AT 12:11 A.M. WHEN THE BACKUP OFFICER ARRIVES AND SEES MR. PRESLEY STANDING OUTSIDE OF THE CAR.

THAT OFFICER TELLS HIM AT 12:11 A.M.

STICK AROUND HERE UNTIL WE'RE DONE.

AT 12:12, MR. PRESLEY SUPPLIES IDENTIFYING INFORMATION.

AT 12:1, MR. PRESLEY ASKS THE OFFICER DIRECT QUESTION, IT IS A LITTLE LITTLE UNINTELLIGIBLE, REPLIES, STAY HERE.

THE OFFICER REPLIES YOU HAVE TO STAY HERE AS PART OF STOP.

THE LOGICAL IMPLICATION HE IS ASKING TO LEAVE.

>> HERE IS THE PROBLEM WITH IT.

YOU DO NOT CHALLENGE THE LENT,
THE DURATION OF THE TRAFFIC
STOP.

SEEMS TO ME, BACK TO WHAT
JUSTICE LEWIS WAS ASKING, IF
THIS WAS LIKE IT WAS IN ONE OF
THE CASES U.S. SUPREME COURT
CASES WHERE THEY GOT THE DOG IN
TO START SNIFFING AROUND--

>> RODRIGUEZ.

>> THEY'RE ACTUALLY DETAINING
EVERYONE, YOU KNOW, IT IS, THIS
WAS A RUNNING A STOPLIGHT.
IMAGINE IT IS THE SEATBELT AND,
NOT WEARING A SEATBELT, KEEPING
SOMEONE FOR 45 MINUTES AT THAT
POINT WE HAVE A DIFFERENT CASE.

>> RIGHT.

>> BASICALLY THE TIME IT TAKES
THE OFFICER TO WALK BACK TO HIS
CAR, DO THE ROUTINE CHECKUP ON
THE COMPUTER AND WRITE THE
TRAFFIC TICKET, WALK BACK, GET
HIM TO SIGN IT, MOVE ON.

THAT IS THE TILE THAT YOU CAN
DETAIN HIM.

ANYTHING ABOVE THAT, THEN HE
GOES BEYOND A TRAFFIC STOP.

>> YES, YOUR HONOR.

>> THAT IS WHAT WE'RE TALKING
ABOUT.

>> MAKE A REASONABLENESS INQUIRY
INTO THE LENGTH OF THE DETENTION
INTO WHETHER IT WAS REASONABLE
UNDER THE FACTS FOR THE OFFICERS
TO HAVE A BASIS TO DETAIN
MR. PRESLEY I THINK THAT WOULD
BE AT LEAST RIGHT INQUIRY.

>> THAT IS NOT ARGUMENT YOU
MADE.

>> NO IT IS NOT.

WHAT THE DCA DID, IT REJECTED
THAT IN FAVOR OF A BRIGHTLINE
RULE THAT SAYS POLICE DON'T EVER
NEED A SUSPICION TO DETAIN A
PASSENGER.

THEY CAN ALWAYS JUST DETAIN HIM
BECAUSE HE IS PASSENGER.

>> BUT THEY DON'T, THEY CAN'T
POSSIBLY OVERRULE WHAT THE U.S.

SUPREME COURT SAID INCLUDING IN RODRIGUEZ, THAT IT HAS TO BE REASONABLE LENGTH OF TIME. THAT IS PRETTY CLEAR THEY'RE GIVING DEFENDANTS THAT OUT, SAYING THIS WAS PRETEXT. THE STOP MAY HAVE BEEN A PRETEXT, WE CAN'T CHALLENGE IT, BUT HOW LONG YOU KEPT US WAS A PRETEXT.

>> RIGHT.

SO--

>> I'M SORRY.

YOU'RE INTO YOUR REBUTTAL TIME.

>> YES, YOUR HONOR I RESERVE THE REST OF MY TIME FOR REBUTTAL.

>> MAY IT PLEASE THE COURT.

MY NAME IS CHARLIE LEE AND I REPRESENT THE STATE OF FLORIDA. WORK FOR THE ATTORNEY GENERAL'S OFFICE.

>> LET ME BEGIN WITH THIS.

THIS IS A LAW SCHOOL HYPOTHETICAL.

I CATCH A FLIGHT.

LAND IN MIAMI.

I TAKE A CAB FROM THE AIRPORT.

CAB DRIVES ME.

ONE BLOCK, ONE BLOCK FROM MY HOTEL I'M SITTING IN THE BACK SEAT OF THE CAB I CAN SEE MY HOTEL RIGHT THERE.

MY CAB DRIVER GETS PULLED OVER BECAUSE HE RAN A RED LIGHT, SPEEDING, RAN A STOP SIGN, WHATEVER.

OFFICER COMES OVER, I CAN'T UNDER THIS SITUATION, I CAN'T GET OUT OF THE CAR AND JUST WALK OVER TO MY HOTEL, CAN I?

>> I THINK THERE IS A CASE--

>> YOU'RE TALKING ABOUT REDMAN CASE WHERE HE HAS A FOOTNOTE, DISTINGUISH COMMON CARRIER BUT THEY DON'T EXPLAIN THAT.

>> CORRECT.

>> SO WHAT IS THE DIFFERENCE IN BRENLIN.

CALIFORNIA CLAIMS THAT UNDER TODAY'S RULE, ALL TAXICAB AND

BUS PASSENGERS WOULD BE SEIZED UNDER FOURTH AMENDMENT WHEN THE CAB OR BUS DRIVER IS PULLED OVER BY THE POLICE FOR RUNNING A RED LIGHT.

BUT, THE RELATIONSHIP BETWEEN THE DRIVER AND THE PASSENGER IS NOT THE SAME A COMMON CARRIER AS IT IS IN A PRIVATE VEHICLE, AND THE EXPECTATIONS OF POLICE OFFICERS AND PASSENGERS DIFFER ACCORDINGLY.

IN THOSE CASES AS IN HERE, THE CRUCIAL QUESTION WOULD BE WHETHER A REASONABLE PERSON IN A PASSENGER'S POSITION WOULD FEEL FREE TO TAKE STEPS TO TERMINATE THE ENCOUNTER.

WHAT DOES THAT MEAN?

>> STRIKES AT HEART OF TOTALITY OF CIRCUMSTANCES.

ONE OF THE CIRCUMSTANCES YOU HAVE THERE AS COMMON CARRIER. IT IS NOT VERY COMMON TO FIND A CAB DRIVER WITH A PERSON IN THE BACK THAT IS ARMED.

IT IS POSSIBLE.

I THINK IN THESE DAYS WITH UBER WHERE THE CARS ARE NOT EVEN NECESSARILY MARKED THAT IS AN ISSUE THAT IS GOING TO COME UP. SO I CAN'T ANSWER THAT COMPLETELY BECAUSE TIMES HAVE CHANGED.

>> THE FLORIDA TAXICAB PASSENGER CASES IS--

>> I'M SORRY.

>> ISN'T THERE A FLORIDA CASE WHERE THIS CAME UP WITH A TAXICAB.

>> THERE IS.

>> THE FIFTH DISTRICT WHEN IT CERTIFIED CONFLICT EXPRESSLY SAID WE'RE NOT GOING TO CERTIFY CONFLICT WITH VERCANO BECAUSE COMMON CARRIERS REPRESENT DIFFERENT FACT.

>> THAT'S CORRECT.

>> ARE YOU ASKING US, ON THESE FACTS, ADDRESS WHAT THE

CIRCUMSTANCE WOULD BE IN A
COMMON CARRIER PASSENGER
SITUATION?

>> NO, YOUR HONOR AND I THINK
THAT STRIKES AT THE HEART OF WHY
I DISAGREE WITH MR. PRESLEY'S
ARGUMENT.

HE IS ASKING FOR A BRIGHTLINE
RULE THAT ONCE OFFICERS TO
IGNORE THE TOTALITY OF THE
CIRCUMSTANCES.

ONE OF THE CIRCUMSTANCES IF YOU
HAVE A CHECKERED CAB, THE
OFFICER WOULD KNOW AT THAT POINT
AT LEAST HAVE A CLUE, MIDDLE OF
THE DAY, NEAR THE AIRPORT IT IS
TRAFFIC VIOLATION, NOTHING MORE.
AT 12:15 AT NIGHT, THREE PEOPLE
IN A CAR, ONE RUNS AWAY, THAT
TOTALITY OF CIRCUMSTANCES IS
FAR, FAR DIFFERENT.

>> THAT IS AN INTERESTING ISSUE.
BECAUSE I THOUGHT THAT THERE
WAS, THAT THE STATE WAS ARGUING
THERE IS BRIGHTLINE RULE, WHEN
THERE IS A LEGITIMATE TRAFFIC
STOP, NO MATTER WHAT IT IS FOR,
WHETHER SPEEDING 100 MILES AN
HOUR DOWN A CROWDED STREET OR
THE, TAILLIGHT WAS OUT OR THE
DRIVER DIDN'T HAVE A SEATBELT
ON, WHICH YOU KNOW, THAT YOU, AS
A PASSENGER, YOU GOT TO GET OUT
OF THE CAR AND NO MATTER IF YOUR
HOME IS TWO BLOCKS AWAY, YOU
CAN'T WAKE AWAY.

ARE YOU ARGUING FOR A
BRIGHTLINE RULE THAT IT IS,
WHEN THERE IS LEGITIMATE TRAFFIC
STOP, IT IS ALWAYS REASONABLE TO
REQUIRE PASSENGERS NOT ONLY TO
STAY DURING THE DURATION OF THE
STOP, IF IT IS REASONABLE, BUT
TO HAVE TO GIVE THEIR OWN I.D.
AND INFORMATION EVEN, BE
QUESTIONED ON ANYTHING THEY WANT
TO QUESTION THEM ABOUT?

>> I THINK, EVEN IN THE CONTEXT
OF A COMMON CARRIER FOR THE
OFFICER TO WRITE A TICKET FOR

THE CAB DRIVER, HE CAN TELL THE PASSENGER TO STAY IN THE CAB, IF THE PASSENGER STARTED TO GET OUT OF CAB AND WALK TOWARD THE OFFICER WHICH IS VERY DANGEROUS SITUATION--

>> THAT IS-- WE'RE REALLY TALKING ABOUT, I'M ASKING YOU ARE YOU LOOKING THEN FOR A BRIGHTLINE RULE DURING THE DURATION OF A TRAFFIC STOP THAT IT IS ALWAYS REASONABLE TO HAVE SEIZED THE PASSENGERS BECAUSE THAT'S WHAT'S HAPPENING, AND THEREFORE NOT ONLY CAN YOU ASK FOR THEIR INFORMATION AND IF THEY HAVE A DRIVER'S LICENSE, I.D., AND ANSWER QUESTIONS EVEN IF THOSE QUESTIONS ARE UNRELATED TO THE PURPOSE OF THIS TRAFFIC STOP.

>> JOHNSON SAYS THAT IS THE RULE.

>> SO I'M SAYING, THAT IS A RIGHT LINE RULE.

YOU ARE TALKING ABOUT TOTALITY OF THE CIRCUMSTANCES SO YOU'RE SAYING IT DOESN'T MATTER IF IT IS IN THE DAYLIGHT AND IT IS A MOM WHOSE GOT, YOU KNOW, MAYBE DID SOMETHING, THEIR KID IN THE BACK SEAT DOESN'T HAVE THE PROPER RESTRAINT, AND THE OLDER BOY HAS TO GET TO SCHOOL, THAT NO, THEY HAVE TO STAY, DOESN'T, IT DOESN'T MATTER?

EVERYONE IS SEIZED IN THE CAR?

>> THE OFFICER CAN CONTROL THE SITUATION.

I THINK THE OFFICER COULD CONTROL EVERYONE IN THE CAR, NO MATTER WHAT, DURING THE TIME IT TAKES TO WRITE THE CITATION AND HANDLE THE CITATION AND THE STOP.

>> IT IS NOT-- IT IS ALSO WHAT THEY CAN DO WITH THE PASSENGERS. NOT JUST THAT THEY'RE THERE TO WRITE THE TICKET.

IT IS WHAT THEY GET, IT IS

BEYOND OFFICER SAFETY HERE.
THIS, THERE IS NO INDICATION IN
THIS CASE, THAT AND IT WOULD NOT
BE REASONABLE SUSPICION, THAT
THEY WERE CONCERNED AND THEY
WERE RESTRAINING HIM BECAUSE OF
OFFICER SAFETY, WAS THERE.

>> THERE WAS AN OFFICER SAFETY
CONCERN.

THE OFFICER PANDAK TESTIFIED AT
MOTION TO SUPPRESS HE WAS
CONCERNED FOR SEVERAL THINGS.
ONE, MR. FOSTER RUN OUT OF CAR
AS SOON AS IT IS STOPPED.
THERE ARE COUPLE REASONS TO
MIGHT HAPPEN TO GET AWAY FROM
CONTRABAND OR HE HAD A WARRANT.
THEY BROUGHT MR. FOSTER BACK, HE
WAS BELLIGERENT.

THEY WANTED TO CONTROL HIM, TWO
OFFICERS DEALING WITH A VERY
BELLIGERENT MR. FOSTER.

OFFICER PANDAK AND HIS TRAINING
OFFICER, MOORE WERE TALKING TO
THE DRIVER AND MR. PRESLEY AT
THE BACK OF THE SCENE.

I WANT TO GET TO ONE FACT,
MR. PRESLEY NEVER ASKED TO
LEAVE.

IT IS IN THE MOTION TO SUPPRESS.
IT IS SUPPLEMENTAL RECORD ONE AT
219, PAGE 27 OF THE MOTION TO
SUPPRESS TRANSCRIPT.

THEY ASKED THE OFFICER, SO YOU
WERE HOLDING HIM AGAINST HIS
WILL?

OFFICER PANDAK REPLIED, HE DID
NEVER ASK TO LEAVE.

THOSE ARE HIS WORDS.

>> IF IT IS CLEARLY UNREASONABLE
FOR THE AMOUNT OF TIME YOU'RE
NOT ASKING FOR A RULE OF LAW
THAT SAYS, NO MATTER HOW LONG
THEY STAY AT THE SCENE, AS LONG
AS AN OFFICER SAYS THIS IS A
TRAFFIC STOP, THAT IT IS
PERMISSIBLE?

>> NO, I WOULDN'T ASK A COURT--

>> SO IF WE GO INTO A SITUATION
IT IS, YOU AND I MAY AGREE,

TOTALLY UNREASONABLE, FOUR HOURS, DOES A CITIZEN SAY I WANT TO LEAVE BEFORE THEY'RE PROTECTED BY THE FOURTH AMENDMENT UNDER THOSE CIRCUMSTANCES.

>> NO, I DON'T THINK SO.

>> THE ASKING FOR I WANT TO LEAVE IS NOT THE CRITICAL QUESTION.

THE CRITICAL QUESTION WHETHER THERE HAS BEEN A VIOLATION CONCERNING ALL OF THESE FACTORS?

>> RIGHT.

THE REASON I MENTIONED THAT IS BECAUSE WE HAVE TO WEIGH WHAT IS, WHAT THE STATE WOULD ARGUE IS DIMINIMUS RESTRAINT ON MR. PRESLEY'S FREEDOM VERSUS OFFICER SAFETY.

>> SO WHAT IF HE HAD ASKED? WOULD THE THING BE DIFFERENT? THE OFFICER WALKS UP, HE IS THE PASSENGER.

HE IS JUST STANDING THERE.

HE IS NOT RUNNING AWAY.

HE IS NOT DOING ANYTHING.

HE SAID I LIVE RIGHT OVER THERE.

I'M GOING TO GO HOME?

>> I WOULD STILL ARGUE, I WOULD ARGUE DIMINIMUS INTRUSION AS WELL.

ARIZONA VERSUS JOHNSON SAYS YOU CAN HOLD THEM THERE FOR THE DURATION OF THE STOP.

ASK THEM QUESTIONS UNRELATED.

I THINK THAT IS BLACK LETTER LAW.

NOW THE REASON--

>> THAT CASE IS TALKING ABOUT BUILDING UP TO A PAT-DOWN, WASN'T IT?

>> IT IS BUT--

>> THAT IS WHAT THEY'RE TALKING ABOUT.

IF THERE IS SOME BASIS WE HAVE A GANG KIND OF PARAPHERNALIA ON IN THAT CASE AND OFFICER SAYS, YOU KNOW, I'M ASKING YOU A FEW QUESTIONS BECAUSE THIS LOOKS

LIKE A GANG MEMBER TO ME, THAT IS THE ARTICULABLE PROBLEM THAT THEY'RE DEALING WITH.

AND THE COURT ALLOWS FOR OFFICER SAFETY THE TERRY STOP.

BUT I DON'T SEE ANYWHERE IN THAT CASE THAT THE SUPREME COURT SAYS YOU CAN KEEP HIM FOREVER.

>> NO, YOU CAN'T KEEP HIM FOREVER, BUT THE REASON JOHNSON WAS CITED, THE MISTAKE THE ARIZONA LOWER APPELLATE COURT MADE IN ORDER TO SAY THAT THE TERRY STOP WAS UNREASONABLE, BECAUSE THE TERRY PAT-DOWN IS REASONABLE IF THEY HAVE A VALID DETENTION AND THEN THEY SUSPECT THE PERSON IS ARMED.

>> RIGHT.

>> BUT YOU CAN'T STOP A PERSON ON THE STREET THAT YOU HAVE NO SUSPICION WHATSOEVER OVER IT. IT IS NOT VALIDLY DETAINED TO PAT THEM DOWN EVEN IF YOU THINK THEY'RE ARMED.

YOU NEED TO GET TO THE ISSUE. THE SUPREME COURT SAID ANYONE STOPPED AT TRAFFIC STOP YOU HAVE VALID INTENTION.

THAT IS THE FIRST PRONG OF TERRY.

THAT SPEAKS TO THIS CASE DIRECTLY.

>> EVERY TRAFFIC STOP REALLY BECOME A POTENTIAL CRIME SCENE IT SEEMS TO ME BECAUSE, THAT IS WHAT THE OFFICER ACTUALLY SAYS. FOR ME TO FEEL COMFORTABLE A WITH THIS PERSON LEAVING, A POTENTIAL CRIME SCENE, THIS IS A TRAFFIC STOP.

AND HE IS CALLING IT A POTENTIAL CRIME SCENE, SEEMS TO ME WE'RE NOW CONVERTING EVERY TRAFFIC STOP TO POTENTIAL CRIME SCENE AND NOBODY CAN LEAVE UNTIL WE'RE SATISFIED IN WHATEVER WAY WE WANT TO DO IT, INTERROGATING ALL THE PASSENGERS, TO MAKE SURE NO CRIME HAS BEEN COMMITTED, OTHER

THAN THE TRAFFIC STOP ITSELF?

>> BUT THE SUPREME COURT SAID A LIMIT, IT IS DURATION OF THE STOP.

>> BUT YOU CAN GO, YOU CAN ASK ALL OF THIS INFORMATION AND, DETAIN ALL THESE PEOPLE AND ASK ABOUT ALL KINDS OF THINGS IN 15 MINUTES, PROBABLY.

>> THAT IS POSSIBLE BUT THAT DIDN'T HAPPEN IN THIS CASE BECAUSE OF THE CIRCUMSTANCES.

>> IN THIS INSTANCE, I JUST KNOW WHAT THE OPINION SAYS HERE, OFFICER PANDAK ACTUALLY WAS A BACKUP OFFICER.

>> THAT'S CORRECT.

>> HE RESPONDED TO THE SCENE TO PROVIDE BACKUP TO SOMEONE WHO HAD LEFT THE CAR AND THERE WAS A STRUGGLE.

SO BY THE TIME HE GOT THERE, THE, THIRD, SECOND PASSENGER WAS ALREADY IN HANDCUFFS BECAUSE APPARENTLY HE TRIED TO LEAVE, AND WOULDN'T, BECAME BELLIGERENT WAS TOLD HE COULDN'T GO BY THE INITIAL OFFICER.

AND THEN THE, MR. PRESLEY WAS STANDING THERE NEXT TO HIM WITH THE OFFICER.

THAT IS WHEN PANDAK ARRIVES.

THEY ALREADY HAD THEN A SITUATION WHERE THE ORIGINAL OFFICER WHO STOPPED THE VEHICLE TOLD THEM THEY COULDN'T LEAVE, TRIED TO LEAVE.

HE STOPPED THEM.

BY THE TIME PANDAK BOTTOM THERE THE SITUATION WAS UNDER CONTROL. THERE HAD BEEN ISSUE IN THIS PARTICULAR CASE.

AM I CORRECT ABOUT THAT.

>> THAT IS CORRECT, YOUR HONOR AND I THINK THAT SPEAKS TO, YOU HAVE TWO OFFICERS DEALING WITH ONE OFFICER.

TWO MORE OFFICERS, ONE IS A TRAINING OFFICER, NEW TO THE JOB, THEY HAVE NOW GOT TO DEAL

WITH EVERYBODY ELSE.
THERE IS FOOT TRAFFIC OUT THERE.
THE PROBLEM WITH THE DEFENDANT'S
SUGGESTED BRIGHTLINE RULE IS,
WHAT IF IT IS ONE OFFICER?
HE STOP AS CAR AND PASSENGER
GETS OUT AND PASSENGER STARTS
WALKING BACK TOWARDS HIM OR RUNS
INTO THE WOODS.

AS AGGIE I CAN'T REMEMBER IS
MUCH MORE, WILSON DOESN'T TAKE
INTO SOMEBODY RUNS OFF INTO THE
BUSHES OR INTO THE WOODS AND
OFFICER HAS DIVIDED ATTENTION.
>> NOW YOU HAVE, OKAY, BECAUSE
THOSE ARE DEALT WITH, WHEN WE
HAVE A TRAFFIC STOP, THE
QUESTION WHEN DOES A TRAFFIC
STOP TURN INTO A CRIME SCENE?
THAT IS KEEP LOOKING AT IS IT
TAILLIGHT OR SEATBELT VIOLATION.
ALL OF SUDDEN USED AS A
SUBTERFUGE FOR TAKING SOMEBODY
WHO IS NOW IN A HIGH-CRIME AREA
WHICH ORDINARILY WOULDN'T GIVE
RISE IN ITSELF TO REASONABLE
SUSPICION AND USING THIS FOR
OTHER PURPOSES.

THAT IS WHAT I THINK, AT
LEAVE I'M CONCERNED ABOUT.
OBVIOUSLY WE ALL CARE ABOUT
OFFICER SAFETY BUT THE QUESTION
IS, ARE WE NOW, ARE YOU SAYING
THAT BY THE TIME PANDAK ARRIVED
THAT THERE WAS REASONABLE
SUSPICION THAT A CRIME HAD
OCCURRED, ALL OF SUDDEN
CONVERTING THIS TRAFFIC STOP
INTO A CRIME SCENE?

IS THAT THE, IS THAT THE
ALTERNATIVE ARGUMENT?
THAT THERE WAS SUSPICION--
[INAUDIBLE], MR. PRESLEY OR IS
THIS STILL UNDER THE TRAFFIC
STOP JURISPRUDENCE?

>> STILL UNDER THE TRAFFIC STOP
BECAUSE--

>> SO THIS IDEA OF SOMEBODY,
WHEN ALL OF SUDDEN THE TRAFFIC
STOP AND A WARDLOW SITUATION

OCCURS, SOMEBODY STARTS RUNNING, IN HEADLONG FLIGHT, THEN THAT CASE LAW SAYS NOW THERE IS ALL OF A SUDDEN REASONABLE SUSPICION BECAUSE THE GUY IS RUNNING AWAY FROM THE CRIME SCENE.

THAT IS NOT THIS CASE.

>> THAT IS NOT THIS CASE.

>> OKAY.

ANOTHER SITUATION WHERE YOU TELL THE PASSENGERS TO GET OUT OF THE VEHICLE, TO EXIT, WHICH YOU CAN DO, AND YOU'RE CONCERNED BECAUSE ALL OF SUDDEN SOMEBODY IS REACHING FOR SOMETHING, AND NOW YOU HAVE AN OFFICER SAFETY SITUATION.

THAT IS NOT THIS SITUATION.

SO, I JUST ALWAYS, UNDER THE RUBRIC OF OFFICER SAFETY, WE CAN'T GO TO THE NEXT LEVEL OF LIMITING OUR CITIZENS ABILITY TO WHEN THERE IS A NORMAL TRAFFIC STOP, TO BE ABLE TO, A REASONABLE TIME LEAVE THE SCENE WHEN THERE IS NO NEED TO QUESTION THEM IN RELATIONSHIP TO THE TRAFFIC STOP.

>> THAT'S CORRECT, YOUR HONOR, BUT WE CAN'T ASK OFFICERS TO WAIT UNTIL THAT PASSENGER PRESENTS A DANGER.

IF THEY WAIT IT IS TOO LATE.

IN THE JOHNSON CASE THEY ARE-- HAVE ARTICULABLE SUSPICION THE MAN COMMITTED A CRIME.

SHE KNEW HE HAD BEEN TO PRISON.

>> NOW WE'RE SAYING EVERY PASSENGER IN THE VEHICLE CAN BE OUT AND BE PAT DOWN?

>> NO.

I'M NOT SAYING THAT.

>> OH, OKAY.

>> YOU WOULD HAVE TO HAVE A SUSPICION THAT THEY'RE ARMED. NOW THE REASON IT HAPPENED IN JOHNSON IS BECAUSE WHEN THE MAN GOT OUT OF THE CAR THE GUN WAS VISIBLE.

IF YOU ASK THEM TO GET OUT OF

THE CAR, THAT IS EXACTLY WHAT MIMS WAS, THE DRIVER GOT OUT OF THE CAR AND HE WAS APPARENTLY ARMED.

IF YOU HAVE THESE GET OUT OF CAR FOR WHATEVER REASON, IF THEY ARE DEFINITELY ARMED IT IS NOT SAFER THAN THE--

>> IT NO LONGER A TRAFFIC STOP WHEN YOU GET THOSE FACTORS. THIS IS NOT EVERY DAY STOP THE MOTHER CARRYING HER KIDS AROUND STOPPED FOR A TRAFFIC VIOLATION. THINGS WERE HAPPENING.

>> THAT'S CORRECT.

>> I THINK WE HAVE TO BE CAREFUL YOU HOW FAR WE EXTEND THIS RULE THAT JOHNSON DOES NOT EXTEND IT, FURTHER.

I MEAN IT HAS GOT CERTAIN FACTORS, AND WE HAVE TO BE CAREFUL INSTEAD AFTER BLANKET RULE FOR RULE FOR EVERY TRAFFIC STOP, NO MATTER WHAT THEY DO IT IS OKAY.

IT SEEMS IT ME IN THIS CASE, WE DO HAVE ACTIVITY WITH ONE OF THE PASSENGERS TAKING OFF, THAT MAY VERY WELL PLAY INTO WHAT PART OF THE DECISION OUGHT TO BE WITH REGARD TO WHAT LAW ENFORCEMENT CAN OR CAN NOT DO WITH A PASSENGER SEEMS TO ME.

>> I UNDERSTAND BUT THE WAY I INTERPRET THE DEFENSE RULE, THE RULING THEY'RE LOOKING FOR, GIVES AN OFFICER NO ABILITY TO CONTROL THE MOVEMENTS OF PASSENGERS--

>> I DON'T UNDERSTAND, THERE ARE TWO POINTS I NEED CLARIFICATION ON.

ONE, YOU'RE CRITICIZING MISS NILES ASKING FOR A BRIGHTLINE RULE.

AND I DON'T THINK SHE IS BUT AS I READ CONFLICT, THE CASE THAT WE HAVE BEFORE US, AND THE U.S. SUPREME COURT CASES, IN AGUIAR, IT IS RHINE FOR THE

OFFICER TO DETAIN PASSENGERS FOR THE REASONABLE DURATION OF THE STOP.

THAT IS WHAT YOU'RE SAYING THE LAW IS AND SHOULD BE CORRECT?

>> THAT'S CORRECT, YOUR HONOR.

>> THAT IS A BRIGHTLINE RULE.

>> THAT IS A BRIGHTLINE RULE.

>> AND THE SECOND POINT OF CLARIFICATION, JUSTICE LABARGA MAKES A VERY GOOD POINT, ONE THAT CONCERNS ME TOO, IN THE CASE WE HAVE BEFORE US, THEY SIMPLY SAID THEY WERE CONFLICTING WITH THE WILSON CASE FROM THE FOURTH DCA AND ITS PROGENY.

ONE OF THOSE CASES INCLUDES A COMMON CARRIER CASE, IT IS ANOTHER FOURTH DCA CASE.

I WANT TO MAKE SURE YOU'RE NOT ASKING US TO ADDRESS WHETHER THIS SAME BRIGHTLINE RULE WOULD APPLY IN A COMMON CARRIER SITUATION BECAUSE I THINK THAT DOES AS JUSTICE LABARGA'S QUESTIONS INDICATE PRESENT DIFFERENT FACT.

>> I THINK IT DOES PRESENT DIFFER FACTS.

>> YOU'RE NOT ASKING US, IF WE AGREE WITH YOU AND AFFIRM THE-- AFFIRM THE FIRST DISTRICT IN THEIR DECISION AND QUASH SOME OF THE OTHERS OR DISAPPROVE SOME OF THE OTHER CASES YOU WOULDN'T ASK US TO INCLUDE THE COMMON CARRIER CASE?

>> I WOULD NOT ASK THAT. THE REASON I, I CRITICIZED THE RELIANCE ON WILSON BECAUSE WILSON IS NOT EVEN LETTING AN OFFICER KEEP THE PASSENGER IN THE CAR.

AND I THINK THAT IS A, THAT RULE, THAT BRIGHTLINE RULE IS UNREASONABLE.

I THINK AGUIAR AND PAST DECISIONS POINT THAT OUT.

>> JUST SO I'M CLEAR, AS FAR AS

ON THE ISSUE OF OFFICER SAFETY,
WHICH IS BASICALLY THE REASON
FOR ALL THIS, OFFICER PULLS OVER
A CAR, WALKS OVER, THERE IS A
PASSENGER IN THE FRONT SEAT AND
PASSENGER IN THE BACK SEAT.
TELLS EVERYBODY TO STAY PUT.
ASKS FOR THE DRIVER'S LICENSE,
REGISTRATION, PROOF OF
INSURANCE.

WALKS BACK TO HIS CAR.
CALLS IN WHATEVER THEY USUALLY
DO BACK THERE TO MAKE SURE THERE
ARE NO WARRANTS OR ANYTHING LIKE
THAT.

THERE AREN'T ANY.
HE SITS DOWN, WRITES HIS TRAFFIC
TICKET.

HE WALKS OVER, HANDS THE
DRIVER'S LICENSE BACK AND ALL
THAT STUFF, TELLS HIM THE
TICKET, WHAT IT IS FOR, SIGN
HERE PLEASE.

THEY SIGN IT.
HE GETS BACK IN HIS CAR.
EVERYBODY LEAVES.

THAT'S IT RIGHT THERE.
SO OKAY, AND THE OFFICER NEEDS
TO BE PROTECTED DURING THAT
PERIOD OF TIME TO ACCOMPLISH
THAT GOAL, AM I CORRECT?
IS THAT WHAT YOU'RE SAYING?

>> CORRECT, YOUR HONOR.
THE CASE LAW IS CLEAR THE
OFFICER NEEDS UNQUESTIONED
CONTROL.

GOES BACK--
>> ONE OF THESE CASES WE'RE
RELYING ON, I CAN'T FIND IT
RIGHT NOW, I READ IT LAST NIGHT,
APPARENTLY A FAMILY MEMBER
LEARNED THAT THE DRIVER HAD BEEN
PULLED OVER FOR A TRAFFIC
TICKET.

SHE ACTUALLY CAME OVER, STARTED
YELLING AT THE OFFICER.
AND THE OFFICER AND HER GOT INTO
A, ALMOST A SCUFFLE AT THE
SCENE.

THAT IS THE KIND OF THING WHY,

WE WANT TO GET THE OFFICERS IN AND OUT OF THE SITUATION AS QUICKLY AS POSSIBLE.

THAT IS ALL WE'RE TALKING ABOUT?

>> YES, YOUR HONOR.

I THINK THE WILSON COURT OVER LOOKS THE AGUIAR DECISION. THE WILL CON COURT FOCUSES TOO MUCH WHAT THE PERSON CAN DO INSIDE, OUTSIDE THE CAR.

>> LET ME ASK YOU A QUESTION WHAT IS REASONABLE.

OBVIOUSLY WE ALL AGREE YOU'RE STOPPED AND YOU VIOLATED A TRAFFIC LAW THEY NEED YOUR, THE LICENSE, THE REGISTRATION, PROOF OF INSURANCE.

>> DON'T ASK ME HOW I KNOW THAT. [LAUGHTER].

>> HE HAS BEEN TOLD.

>> WHAT CAN THEY ASK THE PASSENGERS?

CAN THEY ASK THE PASSENGERS FOR PROOF OF IDENTIFICATION?

>> THEY CAN.

THE RODRIGUEZ SAYS THAT.

>> WHICH ONE DOES?

>> RODRIGUEZ.

>> SO THEY CAN CHECK ALL THE PASSENGERS, EVERYTHING ABOUT ANYTHING ELSE?

SO THE MORAL OF THE STORY IS, THAT BEFORE YOU GET INTO A VEHICLE, YOU BETTER MAKE SURE THAT THE DRIVER IS CLEAN AND, OBEYING ALL TRAFFIC LAWS OR YOU ARE GOING TO FIND YOURSELF IN A PROBLEM?

>> COULD BE, YOUR HONOR, YES, YOUR HONOR.

I ASKED THE COURT TO AFFIRM THE COURT BELOW.

>> LET ME ASK ONE MORE QUESTION TO FOLLOW UP ON THAT.

CAN THE POLICE OFFICER TAKE THE IDENTIFICATION OF A PASSENGER, AND THEN GO BACK-- [INAUDIBLE]

>> IF IT DOESN'T PROLONG THE STOP.

>> WELL IT DOES.

YOU ANSWERED A QUESTION FOR THE CHIEF, THAT THE TRAFFIC STOP IS BOOM, BOOM, BOOM, AND THAT'S FINISHED.

THE DRIVER SIGNED THE TICKET BUT THE OFFICER DECIDES I WOULD LIKE, I WANT TO KNOW WHO THAT IS IN THE BACK SEAT?

NOT ONLY FINDS OUT WHO IT IS, BUT GOES BACK TO HIS VEHICLE TO INVESTIGATE WHO HE IS.

CAN, YOU'RE SAYING THAT RULE ALLOWS HIM TO DO THAT IS IT.

>> NO, YOUR HONOR.

>> OKAY.

>> WHAT WE'RE SAYING THAT WOULD EXTEND, THAT WOULD BE A SEPARATE INVESTIGATION.

>> IF THEY TOOK ALL LICENSES AT SAME TIME, IT IS PRETTY QUICK TO RUN IT.

ISN'T THAT WHAT HAPPENED HERE? THEY RAN ADDITIONAL INFORMATION ON THIS DEFENDANT, THAT WAS BEYOND THE TRAFFIC STOP?

>> THE TRAFFIC STOP WAS STILL GOING ON.

PANDAK WAS ASKED THAT DIRECTLY. I DON'T THINK THEY GAVE THE DRIVER THE CITATION YET BECAUSE OF THE OFFICERS WERE--

>> BECAUSE THE PROBLEM OF SECOND PASSENGER.

>> WHAT IF I'M THE PASSENGER, I TELL YOU I DON'T HAVE ANY I.D., WHETHER I DO OR DON'T?

IS THAT GOING TO BE A PROBLEM?

>> I DON'T KNOW THE OFFICER HAS ANY RECOURSE IF, IF HE CAN'T SUSPECT OF YOU ANY WRONGDOING OR ANYTHING LIKE THAT.

I DON'T KNOW THAT ANYONE IS COMPELLED TO A PASSENGER INNOCENT --

>> HOW DOES THE PASSENGER KNOW THAT?

THE CASES SAY THEY'RE SEIZED FOR THE DURATION OF THE TRAFFIC STOP.

YOU CAN ASK THEM ABOUT ANYTHING.

HOW DO THEY KNOW THAT THEY'RE
FREE TO NOT ANSWER SOMETHING?
>> WELL THE PRESUMED TO KNOW IT.
THEN GOES BACK--
>> I THOUGHT IT WAS PRESUMED
THEY HAVE TO ANSWER BECAUSE
THEY'RE SEIZED?
>> WELL, I, THEY DON'T.
THEY'RE PRESUMED TO KNOW WHAT
THE LAW IS.
THAT GOES BACK TO--
>> I THOUGHT THE LAW WHAT WAS
BEING ARTICULATED THEY'RE SEIZED
AND POLICE CAN ASK THEM WHATEVER
THEY WANT DURING THE REASONABLE
DURATION-- THAT IS WHAT
CONCERNS ME, IS THAT IF WE'RE
SAYING NO, IT IS JUST THE
PASSENGERS CAN'T LEAVE FOR THE
DURATION OF THE STOP BUT NOT
OBLIGATED TO ANSWER QUESTIONS
THEN WE HAVE DIFFERENT CASE.
>> ARIZONA v. JOHNSON POLICE
CAN ASK THE PASSENGERS REGARDING
UNRELATED MATTERS.
WHETHER THEY HAVE TO RECEIVE A
ANSWER IS DIFFERENT QUESTION
HERE BUT MR. PRESLEY--
>> NOT VOLUNTARY ENCOUNTER--
VOLUNTARY ENCOUNTER AT THAT
POINT.
YOU HAVE TO ANSWER THE QUESTION.
NOBODY IN THEIR RIGHT MIND WOULD
TELL THE POLICE OFFICER OF A
THEY'RE SEIZED I'M NOT ANSWERING
THAT-- [INAUDIBLE]
WOULD THEY?
>> I THINK--
>> JUST SAID IT WAS REASONABLE,
WHAT IS JUSTICE LAWSON ASKED YOU
AWHILE BACK.
IT IS REASONABLE FOR THE
PASSENGERS TO ASSUME THEY'RE
SEIZED DURING THE DURATION OF
THE TRAFFIC STOP.
>> RIGHT.
BUT THE COURTS HAVE BEEN CLEAR
THAT THEY DON'T HAVE TO
MIRANDIZE THEM DURING A TRAFFIC
STOP BECAUSE IT IS NOT THAT TYPE

OF DETENTION IN ORDER TO INVOKE
MIRANDA YOU HAVE TO TELL THEM
THEY HAVE A RIGHT NOT TO ANSWER
QUESTIONS YOU HAVE TO HAVE
SOMETHING TANTAMOUNT TO ARREST.
>> IF I DON'T ANSWER, THAN THEY
HAVE, THEY WANT AN ANSWER, THEY
HAVE TO MIRANDIZE ME?
NO I'M SORRY?
>> IF I DON'T ANSWER, I TELL
THEM, HAVE A DRIVER'S LICENSE
THEY WANT ALL THIS
INFORMATION-- I JUST, I DON'T
UNDERSTAND WHETHER WHAT IS THE
POINT OF HAVING ALL THE
PASSENGERS THERE AND OFFICERS
TALKING TO THEM?
WHAT IS THE POINT?
>> WELL AS JOHNSON POINTS OUT,
IN THERE YOU HAVE GANG MEMBERS.
THEY SPECIFICALLY THAT
OFFICER--
>> NO, I'M TALKING ABOUT
ORDINARY CITIZENS YOU HAVE STOP
AD CAR.
YOU HAVE NO REASON TO BELIEVE
THEY ARE GANG MEMBERS OR
ANYTHING.
BUT I'M SITTING IN MY FRIEND'S
CAR AND I DON'T WANT TO GIVE MY
DRIVER'S LICENSE.
I DON'T EVEN WANT TO GIVE THEM
MY NAME.
WHAT DOES THE OFFICER DO?
>> I DON'T KNOW THE OFFICER HAS
ANY RECOURSE IN THAT TYPE OF
ENCOUNTER.
IT IS IMPORTANT FOR OFFICERS TO
BE ABLE TO ASK THE QUESTIONS
BECAUSE THEY NEED TO KNOW WHO
THEY'RE DEALING WITH AT THESE
STOPS.
I THINK THEY CAN ALWAYS ASK.
I DON'T KNOW THEY CAN ALWAYS GET
A ANSWER.
I SEE TIME'S UP.
I WOULD ASK THE COURT TO AFFIRM
THE PRESLEY DECISION BELOW.
THANK YOU.
>> I'VE THREE POINTS THAT I WANT

TO MAKE DURING REBUTTAL, I WANT TO EMPHASIZE MR. PRESLEY IS NOT ASKING FOR ANY SPECIAL OR BRIGHT LINE RULES IN THIS CASE.

MR. PRESLEY IS ASKING THAT THE NORMAL FOURTH AMENDMENT RULES BE APPLIED TO PASSENGERS FROM LAWFULLY-STOPPED VEHICLES.

THAT POLICE BE REQUIRED TO ARTICULATE SUSPICION IN ORDER TO REQUIRE SOMEBODY TO BE DETAINED.

I WANT TO GO BACK TO WHAT JUSTICE CANADY WAS ASKING ABOUT OFFICER SAFETY.

TO PROTECT OFFICER SAFETY I THINK POLICE CAN ASSESS THE TOTALITY OF THE CIRCUMSTANCES AND TAKE PRECAUTIONS TO PROTECT THEIR SAFETY UNDER THE NORMAL FOURTH AMENDMENT RULES.

THAT THEY DON'T NEED THIS BRIGHTLINE RULE BECAUSE THEY HAVE TERRY.

IF THEY'RE CONCERNED FOR THEIR SAFETY, THEY CAN PERFORM A PAT-DOWN.

AND REASONABLE SUSPICION AS THIS COURT KNOWS IS NOT A VERY HIGH THRESHOLD.

IT IS CONSIDERED IN A LIGHT FAVORABLE TO THE POLICE, BASED ON THE TOTALITY OF THE CIRCUMSTANCES AS VIEWED BY AN EXPERIENCED OFFICER.

SO AGAIN, MR. PRESLEY SEEKS ONLY THE USUAL FOURTH AMENDMENT RULES, AND THOSE RULES ARE SUFFICIENT IN ALL OF THE CONTEXTS TO PROTECT OFFICER SAFETY.

>> THIS IS NOT ABOUT A PAT-DOWN. THIS IS NOT ABOUT THAT.

THIS IS ABOUT THE OFFICER BEING ABLE TO KIND OF GET CONTROL OF THE SITUATION WHILE HE IS CARRYING OUT THE TASK HE NEEDS TO CARRY OUT IN CONNECTION WITH THE STOP.

NOT HAVING THE SITUATION BE DYNAMIC IN A WAY THAT COULD

PRESENT THREATS TO THE SAFETY OF THE OFFICER.

WE ALL KNOW, THAT FOR ALL LAW ENFORCEMENT OFFICERS IN THIS COUNTRY, ONE OF THE MOST DANGEROUS ENCOUNTERS THEY HAVE IN DAY IS WHEN THEY STOP A VEHICLE.

I DON'T KNOW WHAT THE STATISTICS ARE BUT I BELIEVE WE WOULD FIND OUT THAT A SIGNIFICANT NUMBER OF OFFICERS FATALITIES TAKE PLACE IN CONNECTION WITH TRAFFIC STOPS.

OFFICERS ARE SHOT OR OTHERWISE ATTACKED AND INJURED OR KILLED IN CONNECTION WITH TRAFFIC STOPS.

SO THESE ARE DYNAMIC SITUATIONS POTENTIALLY, THAT CAN POSE A GREAT THREAT.

ALL THIS, WHAT THE SUPREME COURT SEEMS TO HAVE BEEN SAYING IS THAT THE OFFICERS HAVE TO HAVE THE ABILITY TO CONTROL THE SITUATION AND TO NOT HAVE PEOPLE DARTING OFF HERE OR THERE, WHILE THEY'RE TRYING TO ACCOMPLISH THE TASKS THAT THEY HAVE TO ACCOMPLISH IN CONJUNCTION WITH THE STOP.

NO WHY ISN'T THAT THE RIGHT WAY TO LOOK AT THIS.

>> THIS IS THE RIGHT WAY TO LOOK AT IT BUT ALLOWING OFFICERS TO EXERCISE CONTROL OVER THE SITUATION DOESN'T MEAN OFFICERS HAVE FREE REIN TO DO WHATEVER THEY WANT TO THE OCCUPANTS OF VEHICLES.

IN MIMS AND WILSON EVEN THOUGH THE SUPREME COURT CONSIDERED THOSE WEIGHTY CONCERNS--

>> HOW DO THEY HAVE CONTROL OF THE CIRCUMSTANCE IF THEY STOP SOMEONE AND THREE PEOPLE GET OUT AND HEAD IN DIFFERENT DIRECTIONS AND THERE IS NOTHING THEY CAN DO ABOUT IT?

THEY HAVE TO KEEP AN EYE ON THIS

PERSON, SEE IF SOMEBODY WILL
ATTACK THEM FROM HERE.
THEY CAN'T YOU WATCH THE DRIVER.
HOW DOESN'T THAT MAKE THEM LESS
SAFE?

[INAUDIBLE].

>> IN THAT SITUATION, THOSE
THREE PEOPLE ARE NOT PRESENTING
JUST LIKE MR. PRESLEY WAS NOT,
PRESENTING A THREAT TO OFFICERS
SAFETY.

THEY HAVE--

>> ISN'T IT, DON'T LAW
ENFORCEMENT OFFICERS, IF THEY'RE
GOING TO BE SAFE, HAVE TO
APPROACH EVERY STOPPED VEHICLES
IF SOMEONE COULD PULL A GUN ON
THEM AND SHOOT THEM?

>> THAT IS WHAT THE U.S. SUPREME
COURT ESSENTIALLY SAID IN THAT
LINE OF CASES, RIGHT?

>> THE UNITED STATES SUPREME
COURT IN THAT LINE OF CASES
CONSIDERED WHAT OFFICERS CAN DO
TO PROTECT THEIR SAFETY.
THEY CAN GET THEM OUT OF THE
CAR.

ONCE THEY'RE OUT OF THE CAR.
THEY CAN SEE IF THEY HAVE A
WEAPON.

THEY CAN SEE IF THOSE PEOPLE
CAN'T ACCESS A WEAPON INSIDE OF
THE VEHICLE.

THEY DIDN'T SAY THAT THEY CAN
KEEP THEM THERE INDEFINITELY.

>> BUT IF THE OFFICER IS
DISTRACTED BY A LEAVING
PASSENGER WHO COULD HAVE A
WEAPON HOW COULD THEY DO WHAT
YOU SHOULD SAY THEY SHOULD DO
MAKE SURE THE PERSON RIGHT IN
FRONT OF THEM IN THE CAR WHILE
THEY'RE WATCHING THIS PERSON
LEAVING ISN'T PULLING A WEAPON
ON THEM?

>> IN THIS CASE THE FACTS OF
THIS CASE, THERE WERE FOUR
OFFICERS--

>> NO, WE'RE TALKING ABOUT A
BRIGHTLINE RULE, THAT THE

SUPREME COURT SAYS IS NECESSARY
IN ORDER TO PROTECT OFFICERS IN
A TRAFFIC STOP SITUATION.

>> WELL, I MEAN IF FOUR PEOPLE
ARE WALKING DOWNTOWN TOWN IN
TALLAHASSEE, AN OFFICER STOPS
ONE OF THEM, HE DOESN'T GET TO
STOP THE WHOLE GROUP BECAUSE,
BECAUSE THEY'RE PEDESTRIANS.
WHY ARE WE GIVING THEM THAT RULE
WITH REGARD TO CARS WHEN WE
ALREADY ARE REMOVING THE THREAT
BY HAVING THOSE PEOPLE OUT OF
THE CAR?

>> BUT HERE, IT IS CLEAR, THIS
IS NOT A ROUTINE TRAFFIC STOP.

>> IN THIS CASE--

>> BECAUSE SOMEBODY GOT OUT AND
TRIED TO FLEE, CORRECT.

>> IT WAS NOT MR. PRESLEY, .

>> CORRECT.

I UNDERSTAND, WHAT WE HAVE TO BE
CAREFUL ABOUT IS MIXING AND
MATCHING THINGS, BRIGHT LINE
RULES THAT THERE IS NOT ONE OF
THE SUPREME COURT CASES THAT
ADDRESS A CIRCUMSTANCE WITH THE
PASSENGER GETTING OUT AND
RUNNING, THAT, CONTRARY TO THE
DESCRIPTION THAT THE CHIEF
PROVIDED FOR WHAT IS A TRAFFIC
STOP.

THIS CASE HAS ADDITIONAL
ELEMENTS TO IT.

>> IT DOES.

MY TIME IS UP.

I WOULD ASK THE COURT TO QUASH
THE DIGS FROM THE FIRST
DISTRICT.

DISAPPROVE THE DIVISION FROM THE
FIFTH DISTRICT OF AGUIAR,
APPROVE THE DIVISION TWO THE
FOURTH DISTRICT, WILSON, THAT
POLICE MAY NOT REQUIRE A
PASSENGER FROM LAWFULLY-STOPPED
STRIKE TO REMAIN AT SAN, ABSENCE
REASONABLE SUSPICION HE IS
ENGAGED IN CRIMINAL ACTIVITY OR
PRESENTS A THREAT TO OFFICER
SAFETY.

THANK YOU.
>> THANK YOU FOR YOUR ARGUMENTS.
THE COURT IS IN RECESS.