

>> WE WILL TAKE UP OUR NEXT CASE, STATE OF FLORIDA VERSUS JOSHUA LYLE CRELLER.

>> MISTER CHIEF JUSTICE, MAY IT PLEASE THE COURT.

PENNSYLVANIA VERSUS MINSK, THE US SUPREME COURT HAD A RULE THAT OFFICERS MAY ORDER A VEHICLE DURING A TRAFFIC STOP, THAT RULE DERIVED FROM THE REASONABLENESS THE CAVERNS WHETHER SEARCH OR SEIZURE WAS REASONABLE UNDER THE FIRST AMENDMENT.

ON ONE SIDE OF THAT BALANCE OFFICERS HAVE SUBSTANTIAL SAFETY RISKS.

NOT ONLY MUST THEY BE AWARE OF TRAFFIC THAT COULD BE HURTLING BY A FEW FEET AWAY BUT MUST ALSO BE ALERT TO THE POSSIBILITY THAT THE OCCUPANT OF THE VEHICLE MAY BE ARMED OR MAY USE THE VEHICLE AS A WEAPON TO HARM THE OFFICER.

ON THE OTHER SIDE OF THAT BALANCE, OCCUPANTS DETAINED DURING A STOP HAVE AN INTEREST IN LIBERTY AND PRIVACY.

NOT ONLY HAS FREEDOM OF MOVEMENT BEEN RESTRICTED BUT THE STOP OCCURS IN PUBLIC VIEW MITIGATING MANY OF THE PRIVACY CONCERNS THEY MIGHT OTHERWISE HAVE.

FROM THAT BALANCE, THE RULE APPLIES IN THIS CASE BECAUSE THE RESPONDENT WAS ORDERED OUT OF HIS VEHICLE BY A K-9 OFFICER DURING A TRAFFIC STOP WHICH TELLS US THAT IS REASONABLE UNDER THE FOURTH AMENDMENT.

THE SECOND DISTRICT RESISTED THAT CONCLUSION FOR TWO REASONS BUT NEITHER OF THOSE REASONS HOLD UP.

IT CONCLUDED THERE IS NO SPECIFIC SAFETY RISK IN THIS CASE BUT THAT DOESN'T MATTER BECAUSE MIMS WAS A CASE WHERE THERE WAS NO SPECIFIC SAFETY RISK.

THE OFFICER ORDERED INDIVIDUALS OUT OF THE CAR AS A MATTER OF COURSE, YET STILL MIMS SAID BECAUSE THERE ARE GENERALLY

SAFETY RISKS INHERENT IN A TRAFFIC STOP, BECAUSE THOSE RISKS OUTWEIGH THE OCCUPANT'S INTERESTS AND PRIVACY, THE OFFICER CAN ISSUE AN EXIT ORDER.

>> THAT GETS IT THERE.

LET'S SAY WE AGREE WITH EVERY WORD YOU SAID SO FAR, THE OCCUPANT IS OUT OF THE VEHICLE, IS IT THE STATE'S POSITION THAT THE OCCUPANT COULD STAND THERE FOR 3 HOURS AFTER THE TICKET HAS BEEN ISSUED TO FACILITATE.

>> ABSOLUTELY NOT THE SAME POSITION.

>> GOING BACK TO THE TOUCHSTONE OF REASONABLENESS WHERE YOU STARTED, HELP US, WITH RESPECT TO INCENTIVIZING AN OFFICER TO TIMELY CONCLUDE THE INTERACTION.

WHETHER IT MATTERS THE INTERACTION COMPLETES IT.

THE RULE ADOPTED BY THE SUPREME COURT IN THAT CASE INCENTIVIZES THE OFFICER WHO DRAGS HIS OR HER FEET A LITTLE FROM GENERAL LAW ENFORCEMENT STANDPOINT AND INVESTIGATIVE STANDPOINT.

TAKE AS LONG AS YOU LIKE TO PROCESS IT.

IT ALLOWS CRIMINAL INVESTIGATION TO HAPPEN.

WHAT IS THE STATE'S RESPONSE TO THE POINT MADE IN RODRIGUEZ?

>> I WILL SAY TWO THINGS TO THAT.

IT IS NOT THIS CASE, YOU HAVE A FINDING THERE WAS NO PROVOCATION THE DOESN'T APPLY.

TAKING IT HEAD ON RODRIGUEZ IS IN ITS ANALYSIS THAT A STOCK HAS TO BE CONDUCTED WITHIN A REASONABLE AMOUNT OF TIME. NO REASON THAT IS NECESSARY GIVEN THE FACT OF THE CASE THAT ARE PRETTY FAST.

>> IS AT THE STATE POSITION THAT IT IMPLICATES NO FOURTH AMENDMENT PRIVACY OR OTHER CONCERN BECAUSE DOG SNIFF IS AN OBSERVATION OF AN ENVIRONMENTAL FACTOR, A PERSON HAS NO RECOGNIZED FOURTH AMENDMENT INTEREST?

>> THAT IS EXACTLY WHAT ILLINOIS SAYS.

WE ARE TRYING TO FIGURE OUT WHETHER THIS EXIT ORDER ISSUED BY A CANINE OFFICER IS REASONABLE UNDER THE FOURTH AMENDMENT.

MIMS TELLS US IT IS REASONABLE. THE ONLY WAY THE SECOND DISTRICT SAID THAT IT WASN'T REASONABLE IS ASKING WHY DID THE CANINE OFFICER TAKE THE ACTION OR ISSUE THE EXIT ORDER FOR THE PURPOSE OF FACILITATING THE DOG SNIFF AND NOT A TRAFFIC STOP, THAT RUNS SQUARE RUN SQUARE INTO JUSTICE SCALIA, IN RENT AND, JUSTICE SCALIA IN A 9-0 OPINION IN THE COURT SAID IT DOES NOT MATTER WE ARE DETERMINING REASONABLENESS UNDER THE FOURTH AMENDMENT WHAT THE OFFICER'S MOTIVATIONS WERE.

ALL THAT MATTERS IS IN THESE GENERAL CIRCUMSTANCES THIS PARTICULAR ACTION REASONABLE UNDER THE FOURTH AMENDMENT AND MIMS TELLS US THE ANSWER IS YES. THERE'S NO PROLONGATION IN THIS CASE, RODRIGUEZ DOES NOT APPLY AND MIMS'S RULE CONTINUES TO APPLY.

IF THERE ARE NO FURTHER QUESTIONS I WILL CEDE THE BALANCE OF MY TIME FOR REBUTTAL.

>> GOOD MORNING.

MAY IT PLEASE THE COURT?
PAMELA IZAKOWITZ ON BEHALF OF THE RESPONDENT, ROGER PLATA 0 -- JOSHUA LYLE CRELLER.

SOME FACTS FROM THE INITIAL BRIEF AND THE ARGUMENT. THERE WERE FOUR OFFICERS IN THIS CASE.

FIRST OFFICER, OFFICER DIAZ, SOLVE A TRAFFIC INFRACTION, DIDN'T HAVE THE ABILITY TO STOP THE CAR OR STOP JOSHUA LYLE CRELLER BECAUSE HE HAD NO WRITING ABILITY OR SIREN OR LIGHT SO HE CALLS FOR BACKUP. SERGEANT COVAISE IN THE HGH THE TRAFFIC STOP WAS OFFICER DIAZ IS ON THE DRIVER'S SIDE.

SERGEANT COVAISE IS ON THE PASSENGER SIDE.

IT IS DECEMBER 20, 2018, 7:00 AT NIGHT WHICH OFFICER DIAZ IS ON THE DRIVER'S SIDE AND ASKS FOR JOSHUA LYLE CRELLER APP LICENSE AND REGISTRATION, HE ASKS TO SEARCH THE CAR.

JOSHUA LYLE CRELLER SAYS NO. OFFICER DIAZ PUTS IN JOSHUA LYLE CRELLER'S INFORMATION INTO HIS COMPUTER, CALLS FOR A CANINE OFFICER.

HE WALKED AROUND THE SIDE OF THE CAR AND GOES AND STANDS NEXT TO JOSHUA LYLE CRELLER BY THE DRIVER'S SIDE AND TESTIFIES IN ESSENCE HE IS JUST STANDING THERE, GUARDING JOSHUA LYLE CRELLER.

AT NO POINT DID EITHER OFFICER DIAZ OR SERGEANT -- OFFICER COVAISE ASK HIM TO GET OUT OF THE CAR.

THERE WAS NO SAFETY INTEREST AS FAR AS THE POLICE WERE CONCERNED, NO EVIDENCE THAT JOSHUA LYLE CRELLER WAS --

>> THERE'S A CATEGORICAL SAFETY INTEREST.

IT DOESN'T HAVE TO BE SPECIFICALLY ARTICULATED. ISN'T THAT CORRECT?

>> THAT IS TRUE BUT MIMS IS NOT THE END OF THE STORY HERE.

>> I DON'T DISAGREE THERE IS MORE.

>> HAD THERE BEEN AN OFFICER SAFETY ISSUE THEY COULD HAVE ASKED HIM TO GET OUT OF THE CAR AT THAT POINT AND HAD THEY DONE THAT I DON'T THINK THEY WOULD BE HERE TODAY BUT THERE WAS NO OFFICER SAFETY ISSUE.

THE OFFICER SAFETY ISSUE BECAME RELEVANT WHEN THE POLICE ASKED JOSHUA LYLE CRELLER TO EXIT THE CAR FOR THE DOG SNIFF WHICH HAS NO BASIS, NO REASON TO ASK FOR THAT.

>> LET'S ADDRESS, IN YOUR RECITATION OF THE FACTS, YOU TELL US THEY RAN THE DEFENDANT'S INFORMATION, THE WANT CHECK.

THERE WAS NO BASIS FOR DOING THAT, AND YET IF THAT DELAY IS A TRAFFIC STOP IT IS AS A MATTER OF COURSE ACCEPTED THAT THAT IS PART OF THE INQUIRY.

PART OF THE TROUBLE WITH THE POSITIONING YOUR BRIEF THAT YOU MIGHT SAY INHERENT IS THIS IDEA THAT OUR PRIMARY WORK HERE IS TO DECIDE WHETHER OR NOT OFFICER SAFETY IS BEING ADDRESSED.

THAT THE CONCERN BUT TRAFFIC STOP, LAW ENFORCEMENT DOES ALL SORTS OF STUFF THAT ISN'T RELATED TO OFFICER SAFETY.

NOT LIKE IF WE PERMIT OFFICERS THE TIME TO RUN SOMEONE'S BACKGROUND AND DETERMINE IF THERE ARE OUTSTANDING WARRANTS IT IS NOT THAT WE ARE AFRAID THIS PERSON HAS A WARRANT OUT FOR HIS OR HER ARRESTED IS GOING TO BE AT RISK ON THE ROAD THEY ARE DOING LAW ENFORCEMENT.

QUERY WHETHER THAT IS PART OF THE DEAL, LAW ENFORCEMENT WAS ACTING TO CONDUCT A TRAFFIC STOP BUT ALSO DOING LAW ENFORCEMENT, INVESTIGATION.

WHY IS THAT NOT PERMISSIBLE?

>> UNDER RODRIGUEZ, ONCE THE ISSUE OF THE TRAFFIC STOP AND IMPORTANCE OF THE TRAFFIC STOP IS ADDRESSED, ONCE YOU REALIZE THERE'S NO WARRANT, HIS LICENSE WAS CORRECT AND HE HAS INSURANCE, THAT HE WASN'T FIDGETING, DIDN'T SHOW ANY SIGNS THERE WAS ANY PROBLEM, NO SMELL OF DRUGS ON THE CAR, WEAPON IN THE CAR, ONCE THAT IS OVER, WHAT HAPPENED IN THIS CASE WAS THE POLICE DETOURED INTO SOMETHING ELSE.

>> ISN'T IT THEIR RIGHT TO DETOUR?

HOW DO YOU RESPOND TO THE STATE POSITION THAT, FOR EXAMPLE, AN INDIVIDUAL HAS NO PRIVACY RIGHT EXCLUDING A DOG SNIFF, YOU CAN'T SAY I AM SORRY, I REFUSE TO LET YOUR DOG SNIFF ME.

THE US SUPREME COURT HELD PRETTY CLEARLY THAT THAT IS NOT A

SEARCH OR SEIZURE FOR FOURTH AMENDMENT PURPOSES.

>> RODRIGUEZ SAID ONCE THE PURPOSE OF THE TRAFFIC STOP ENDS

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>> COUNSEL, THE KEYWORD IS ONCE IT ENDS, THE KEY PHRASE IS ONCE IT ENDS.

WHAT YOU HAVE HERE IS A CONCLUSION BY THE TRIAL COURT AND THE SECOND DISTRICT THAT THE OFFICER'S TESTIMONY SUPPORTED THE CONCLUSION THAT THE VEHICLE SWEEP DID NOT PROLONG THE STOP. RODRIGUEZ IS ALL ABOUT THE PROLONGATION OF A STOP.

IT IS NOT ABOUT WHAT IS GOING ON WHILE THE STOP IS TAKING PLACE, AND THE PURPOSE OF THE STOP IS BEING CARRIED OUT.

IT IS NOT ABOUT OTHER THINGS THAT MIGHT HAPPEN IN THAT TIME PERIOD.

IT IS ABOUT THINGS THAT HAPPENED THAT PROLONG THAT TIME PERIOD AND THAT CAUSES THE TROUBLE.

IT GETS PROLONGED BY OTHER THINGS BUT HERE, WE HAVE THE CONCLUSION OF THE TRIAL COURT AND THE SECOND DISTRICT THAT IT WASN'T PROLONGED.

YOU'VE KIND OF SUGGESTED THAT THAT'S NOT RIGHT, THAT IT WAS PROLONGED, BUT YOU'VE NOT PRESENTED US WITH ANYTHING EXPLAINING WHY THE SECOND DISTRICT WAS WRONG AND THERE CONCLUSION ABOUT IT.

>> THE TIMING WASN'T AN ISSUE AS FAR AS THE SECOND DISTRICT WAS CONCERNED.

>> YOU ARE SAYING TIMING IS AN ISSUE.

YOU ARGUE THE STOCK WAS PROLONGED.

>> IT IS NOT THE TIMING THAT IS THE ISSUE BUT THE FACT THAT IT DETOURED INTO SOMETHING THAT WASN'T RELATED TO THE TRAFFIC STOP.

>> THE WHOLE POINT IN THE DISCUSSION ABOUT A DETOUR WAS THAT IT WAS A DETOUR THAT RESULTED IN PROLONGATION.

>> THEY ALSO SAID DOG SNIFF IS NOT AN ORDINARY INCIDENT OF A TRAFFIC STOP, IT IS AIMED AT DISCUSSING ORDINARY CRIMINAL WRONGDOING.

DOG SNIFF IS NOT PART OF THE OFFICER'S TRAFFIC MISSION.

>> WE UNDERSTAND THAT BUT WE ALSO UNDERSTAND THAT THE DOG SNIFF CAN BE UNDERTAKEN AND ACCOMPLISHED DURING THE LENGTH OF THE STOP.

AS LONG AS IT IS NOT PROLONGED.

>> THAT IS THE CASE.

>> WE SEEM TO BE GOING IN CIRCLES.

THE MISSION HERE WAS A TRAFFIC STOP.

YOUR POSITION IS SINCE OFFICER DIAZ STOOD BY IN THIS CASE THE WHOLE PERIOD OF TIME, PERFECT SAFETY INVOLVED IN THAT KIND OF THING BECAUSE HE STOOD THERE FOR THAT LONG AND THAT WAS AN ISSUE, THE ONLY THING THAT HAPPENS IS ONCE THIS EVOLVED INTO THE SWEEP AND THE CANINE OFFICER CAME AND HE TOLD JOSHUA LYLE CRELLER I'VE DONE A BUNCH OF THESE.

WHAT I'M AFRAID OF IS WALKING AROUND THE CAR WITH MY DOG, RAM AND KILL ME, THAT BECAME AN ADDITIONAL FEAR, DID IT NOT, THE FACT THAT THE CANINE OFFICERS DO HAVE THAT ISSUE.

>> NO ONE IS DISCOUNTING THE OFFICER SAFETY ISSUE AND DOG SNIFF.

EVERYBODY ADMITS, EVERYBODY AGREES POLICING IS A DIFFICULT AND PROBLEMATIC ISSUE.

THE SECOND DCA IS NOT SAYING THAT.

THE SECOND DCA IS SAYING ONCE THE REASON FOR THE STOP HAD PASSED, ONCE THE REASON FOR THE STOP, THE OFFICER SAFETY ISSUE WAS NO LONGER AN ISSUE, IT DETOURED INTO SOMETHING ELSE AND POLICE HAD NO REASON, REASONABLE POSITION OR PROBABLE CAUSE TO ASK JOSHUA LYLE CRELLER TO GET OUT OF THE CAR FOR DOG SNIFF.

>> ONCE HE SAID NO --

>> THERE WAS NO REASON TO DO THAT.

NO EVIDENCE OF DRUGS IN THE CAR, THAT JOSHUA LYLE CRELLER IS STOP FOR ANYTHING BUT A TRAFFIC STOP.

>> ONCE THE TRAFFIC STOP IS OVER WITH YOUR POSITION IS THEY REQUEST ZONE TO GET OUT OF THE CAR.

THERE HAS TO BE A REASONABLE SUSPICION THAT HE'S INVOLVED IN THIS.

>> AND THERE WASN'T.

DIDN'T SEEM LEAVING THE DRUG HOUSE OR BUYING OR SELLING DRUGS, NOTHING TO INDICATE THERE WERE ANY DRUGS IN THE CAR, DIDN'T SMELL ANY DRUGS IN THE CAR, HIS BEHAVIOR DIDN'T SHOW THERE WAS SOMETHING HE WAS HIDING.

SIMPLE HE STOPPED FOR TRAFFIC --

>> THEY SHOULD UNDER THE CIRCUMSTANCES ASK FOR KEYS.

>> THEY COULD HAVE ASKED HIM FOR HIS KEYS.

>> IS IT YOUR POSITION THEY SHOULD HAVE DONE THAT?

IS IT THE TEACHING OF MEMS TO THE CONTRARY THAT THE MISSION OF THE STOP IS IRRELEVANT TO THE QUESTION OF WHETHER HE COULD BE ORDERED TO EXIT THE CAR?

>> I DON'T THINK THAT'S TRUE.

>> I DON'T SEE THAT IN MIMS.

>> MIMS CREATED A BRIGHT LINE RULE BUT IT IS NOT ILLUMINATED. THEY CAN'T JUST ORDER ANYBODY, THEY CAN'T STOP ANYBODY FOR WHATEVER REASON OR ORDER SOMEBODY --

>> NOT FOR WHATEVER REASON.

MIMS ACKNOWLEDGES THAT.

IT IS NOT LIKE ANY TIME YOU HAVE AN INTERACTION, IF I AM AT A RED LIGHT, GOOD MORNING, MIMS DOES NOT TEACH THAT THAT'S IN THE CAR BUT IF I LOST A TAILLIGHT AND MY REGISTRATION AND THERE'S A TRAFFIC STOP I THINK MIMS CAN SQUARELY TEACHERS LAW ENFORCEMENT OFFICER IS UNDER NO OBLIGATION TO SAY GIVE YOUR CAR KEYS.

TO THE CONTRARY, HE COULD SAY
PLEASE STEP OUT OF THE CAR.

>> A COULD THAT THEY DIDN'T.
NO EVIDENCE THAT THEY ARE ON A
BUSY STREET OR THERE WAS A
REASON --

>> YOU ARE SUGGESTING A RULE
THAT LAW ENFORCEMENT WHEN THEY
DO STOP HAVE TO ASK OR DIRECT
THE DRIVER TO GET OUT OF THE CAR
AT THE BEGINNING OF THE STOP,
AND IF THEY DON'T DO THAT AND
SOMETHING DEVELOPS, THEY MAKE A
JUDGMENT, THEY CAN'T DO THAT.
THEY ARE LOCKED IN BY THE WAY
THE ENCOUNTER STOPS AND THAT IS
NOT CONSISTENT WITH WHAT WE KNOW
FROM MEMS AND THIS NOTION IN
CASE LAW THAT IN THESE
CIRCUMSTANCES LAW ENFORCEMENT,
BECAUSE OF THE OFFICER SAFETY
CONCERNS THAT ARE EVER PRESENT,
EVER PRESENT, THEY DON'T GO AWAY
BECAUSE THE OFFICER AT THE
OUTSET OF THE INTERACTION SAY
GET OUT OF THE CAR.

EVER PRESENT, JUST BECAUSE THEY
DIDN'T ACT ON IT THEN, THEY LOSE
COMMAND OF THE SITUATION, THE
CASE LAW IS IMPORTANT IN THESE
CIRCUMSTANCES THAT ARE FRAUGHT
WITH POTENTIAL FOR VIOLENCE,
THAT THEY BE ABLE TO CONTROL THE
SITUATION TO PROTECT THEMSELVES.
ISN'T THAT CORRECT?

>> THAT IS CORRECT.
THEY NEED TO PROTECT THEMSELVES
BUT IN THIS CASE THEY DIDN'T
FEEL THE NEED TO PROTECT
THEMSELVES.

ONLY AFTER THE DOG SNIFF CAME.
ONLY AFTER THE DOG, THE CANINE
WAS CALLED.

>> BUT WE KNOW THAT THAT IS
PERMITTED.
IT IS PERMITTED FOR THEM TO DO
THE DOG SNIFF.
WOULDN'T YOU CONCEDE THAT HAVING
THE DOG SNIFF THE CAR
POTENTIALLY RAISES THE RISK THAT
SOMETHING UNTOWARD IS GOING TO
HAPPEN?

>> THERE HAS TO BE A REASON FOR
THE DOG SNIFF.

THERE HAS TO BE A REASON THEY CALL FOR THE DOG BECAUSE THERE WAS NO EVIDENCE THAT JOSHUA LYLE CRELLER HAD DONE ANYTHING.

>> THEY CAN DO THE SNIFF WITHOUT A REASON.

>> THEY CAN DO THE SNIFF IN THIS CASE THE SNIFF WAS A DETOUR.

>> YOU THINK THEY WENT SOMEHOW BEYOND THE SCOPE, I UNDERSTAND THAT.

BUT WE KNOW THEY DON'T NEED JUSTIFICATION.

ON THE SIDE OF THE ROAD, THEY DON'T NEED JUSTIFICATION, SEPARATE JUSTIFICATION FOR THE SNIFF, RIGHT?

>> IN THIS CASE THEY NEEDED A JUSTIFICATION.

>> YOU ARE ASKING US TO IGNORE THE RECORD AND HOW WE FIND THE CASE IN TERMS OF THE IDEA IT WASN'T NECESSARILY PROLONGED, TO IGNORE THE CATEGORICAL RULE FOR MIMS AND THE CATEGORICAL DOG SNIFF RULE SO THAT WE CAN REACH THIS IN THE SAME RESULT THAT SAYS AN OFFICER UNDER THESE CIRCUMSTANCES CAN TAKE THIS MINIMAL SAFETY PRECAUTION?

>> ASKING TO UPHOLD MIMS AND RODRIGUEZ, THE SPECIFIC FACTS OF THIS CASE.

IF THERE ARE NO FURTHER QUESTIONS.

>> I WANT TO TOUCH ON TWO BRIEF POINTS.

I WILL NOTE YOUR HYPOTHETICAL YOU POSED TO MY FRIEND RESTS ON THE IDEA OF THE STOP ACTUALLY ENDED AND THE STOP HAD NOT ENDED.

TO PROVIDE SOME CLARITY FOR WHAT WE THINK RODRIGUEZ --

>> NO MENTION THAT ONCE THE CANINE OFFICER ARRIVED, PROVISIONAL FACTORS TO CONSIDER, HE MENTIONED, DIAZ DIDN'T, THAT IN HIS EXPERIENCE, PEOPLE HAVE A TENDENCY TO DRIVE AWAY AND ENDANGER HIM.

>> THAT IS ABSOLUTELY RIGHT. THIS GETS AT THE IDEA SAFETY CONCERNS CAN PRESENT THEMSELVES.

>> MAY NOT HELP IT.

>> I WILL TAKE ALL THE HELP I
CAN GET AND IT HITS THE POINT
SAFETY CONCERNS CAN ARISE IN THE
MIDDLE OF A TRAFFIC STOP AND
RULES ARTICULATED.

UNLESS THE COURT HAS ANY FURTHER
QUESTIONS THEY SHOULD CROSS THE
SECOND DISTRICT'S DECISION.

>> WE WILL TAKE A SHORT BREAK
AND BE BACK FOR OUR FINAL CASE
FOR TODAY.

>> ALL RISE.