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GOOD MORNING, LADIES AND GENTLEMEN. WELCOME TO THE FLORIDA SUPREME COURT. FIRST CASE ON THE COURT'S CAL ENCARD -- CALENDAR THIS MORNING IS THE STATE OF FLORIDA VERSUS JOCELYN PIERRE. YOU MAY PROCEED.

I AM ASSISTANT STATE ATTORNEY GENERAL, ERICA RAFFEL. BEFORE THE SECOND DISTRICT COURT OF APPEAL OR THE CIRCUIT COURT THERE WAS NO MENTION OF THE DEFENDANT GOING THROUGH A STOP SIGN, AND I WILL REFER TO MR. PIERRE AS THE DEFENDANT THROUGHOUT THE COURSE OF MY ARGUMENT. OFFICER MONTAGUE STOPPED HIM FROM RUNNING A STOP SIGN AND WENT UP TO THE VEHICLE AND MR. PIERRE WAS SEEN BY THE OFFICER GRASPING ON TO THE STEERING WHEEL, STARING STRAIGHT AHEAD. HE APPEARED VERY NERVOUS TO THE OFFICER. THE OFFICER TAPPED ON THE WINDOW AND MR. PIERRE ROLLED THE WINDOW DOWN HALFWAY, WHEREUPON OFFICER MONTAGUE REQUESTED HIS DRIVER'S LICENSE AND REGISTRATION. THE OFFICER DID NOT RECALL, DURING THE DEPOSITION THAT WAS USED AS TESTIMONY AND STIPULATED TO AS TO WHETHER HE RECEIVED INSURANCE PAPERS, BUT HE DID GET THE DRIVER'S LICENSE. AT THAT POINT HE LEFT MR. PIERRE IN THE VEHICLE, ADVISING HIM THAT HE WAS STOPPED FOR GOING THROUGH A STOP SIGN AND WENT BACK TO THE CHECK ON THE VEHICLE AND THE DRIVER'S LICENSE AND TO SEE IF THE TAG WAS ASSIGNED TO THAT VEHICLE.

IS IT SIGNIFICANT THAT, IF HE FEARED FOR HIS SAFETY, THAT HE WALKED AWAY FROM THE VEHICLE, WITH THE DRIVER'S LICENSE, RATHER THAN ORDERING THE DEFENDANT OUT AT THAT TIME?

HE DID NOT ORDER THE DEFENDANT OUT AT THAT TIME BECAUSE HE DID NOT FEAR FOR HIS SAFETY AT THAT TIME. HE HAD NOT MADE THE OBSERVATIONS THAT CAUSED HIM TO FEAR FOR HIS SAFETY. AFTER HE CHECKED THE DRIVER'S LICENSE THAT CAME BACK CLEAR AND THE TAG ASSIGNED TO THAT VEHICLE, TWO OTHER OFFICERS DROVE UP, AND THEY HEARD OFFICER MONTAGUE CALL IN THE STOP, AND THEY WERE NOT SUMMONED BY HIM AS BACK UP. HE FELT NO FEAR AT THAT JUNCTURE. THEY JUST SAW HIS CAR AND ROLLED UP AND PARKED BEHIND HIS VEHICLE. MONTAGUE'S VEHICLE IS PARKED BEHIND THE DEFENDANT'S VEHICLE. AS HE GETS OUT OF HIS CAR, HE HAS COMPLETED THE LICENSE CHECK. THE OTHER TWO OFFICERS DRIVE UP AND HE STATES TO THEM. THIS IS JUST GOING THROUGH A STOP SIGN. HIS LICENSE CAME BACK FINE. I AM NOT GOING TO CITE HIM BUT IS HE BE NERVOUS. HE MADE THE NOTE THAT HE WAS NERVOUS TO THE OTHER OFFICERS WHO HAD ARRIVED.

TWO OFFICERS IN ONE VEHICLE?

YES, TWO OFFICERS IN ONE VEHICLE, THERE WAS AT THAT POINT.

MONTAGUE WAS BY HIMSELF.

YES AND THERE WAS ANOTHER OFFICER THAT DROVE UP LATER MERELY TO CHAT WITH THE OFFICERS. SHE HAD SEEN THE CARS.

SO WE END UP WITH THREE VEHICLES AND FOUR OFFICERS?

YES, SIR, ALTHOUGH THE FEMALE OFFICER DID DRIVE UP TOWARD THE END OF THIS EVENT.

BUT NONE OF THOSE VEHICLES WERE THERE BEFORE BECAUSE OF ANY FEAR FOR OFFICER SAFETY.

NO. THEY WERE NOT SUMMONED BY OFFICER MONTAGUE, BUT AT THAT POINT, WHEN THE OFFICER GOT OUT OF HIS VEHICLE TO GO BACK AND TELL THE DEFENDANT HE WAS NOT GOING TO CITE HIM, THAT HE WAS GOING TO GIVE HIM BACK HIS DRIVER'S LICENSE AND TELL HIM EVERYTHING WAS IN ORDER. THAT IS WHEN THE OTHER OFFICERS DRIVE UP AND HE TELLS THEM I AM GIVING IT BACK TO HIM. HE IS FINE. EVERYTHING CHECKS OUT, BUT THE DEFENDANT IS VERY NERVOUS. AS NO -- MONTAGUE IS BACKING BACK TO THE DEFENDANT'S CAR, HE SEES THE DEFENDANT BEND DOWN AND REACH UNDER THE SEAT.

WHERE IS THAT IN THE RECORD? I THOUGHT THAT THE RECORD INDICATED THAT THIS TOOK PLACE WHILE MONTAGUE WAS AT HIS OWN CAR.

I THINK IT WAS WHEN HE WAS WALKING BACK TO THE DEFENDANT'S CAR.

WHERE, IN THE RECORD, IS THAT?

IN HIS DEPOSITION.

IN MONTAGUE'S DEPOSITION.

AND ALSO I BRING THE OFFICER'S ARREST AFFIDAVIT, WHERE HE MENTIONS THAT AS WELL.

ARE THESE IN THE JUDGE'S FINDINGS OF FACT, WHAT YOU ARE NOW RELATING IT TO US?

YES. AT THE SUPPRESSION HEARING, OFFICER PREBITCH WAS THE ONLY ONE WHO TESTIFIED AT THE SUPPRESSION HEARING. OFFICER MACFARLAND AND OFFICER MONTAGUE'S DEPOSITIONS WERE STIPULATED TO ANNUIYTLIZED AND RELIED UPON.

WHEN YOU SAY HE MADE FINDINGS OF FACT, DID HE MAKE FINDINGS OF FACT IN A WRITTENORDER?

I DON'T RECALL. I DON'T WANT TO MISREPRESENT TO THE COURT. HE MADE A VERBAL DETERMINATION ON THE RECORD, AS TO THE LEGAL PRINCIPLES HE WAS APPLYING.

I AM SORRY. I SAID DID HE MAKE FINDINGS OF FACT, AND NOW YOU ARE SAYING HE MADE A DETERMINATION AS TO THE LEGAL PRINCIPLES INVOLVED.

HE CERTAINLY MADE A RECITATION OF FACT ON THE RECORD. WHETHER THAT WAS REDUCED TO A WRITTEN ORDER, DESCRIBING FACTUALLY, THE EVENTS THAT TRANSPIRED, I CANNOT RECALL AT THIS TIME, BUT HE CERTAINLY DID RECITE ON THE RECORD.

DO YOU CONTEND THAT THERE WAS EVER ANY POINT WHEN THE ORIGINAL STOP HAD BEEN COMPLETED AND WAS OFFICER? -- AND WAS OVER?

SOMETIMES THE FACTS DO GET MUDDIED, AND CERTAINLY WHEN OFFICER MONTAGUE WENT BACK TO THE DEFENDANT'S CAR, HE ALREADY SAW, WHAT IS DESCRIBED IN CASE LAW, AS FURTIVE MOVEMENT. HE SAW THE DEFENDANT REACHING DOWN UNDER THE SEAT. HE FEARED --

HE GAVE THE DRIVER'S LICENSE AND WHATEVER PAPERWORK HE HAD TAKEN FROM HIM. HE GAVE THEM BACK TO HIM, AND HE TOLD THE OTHER OFFICERS THAT HE WAS FREE TO GO.

HE SAID THAT EVERYTHING WAS FINE. EVERYTHING CHECKED OUT, AND THEN HE WAS WALKING BACK TO THE CAR AND MADE THE OBSERVATION, AND WHEN HE ARRIVED AT THE CAR, HE ASKED THE DEFENDANT TO EXIT THE VEHICLE FOR HIS SAFETY, AND THEN WHEN THE DEFENDANT GOT OUT OF THE CAR, HE GAVE HIM BACK HIS LICENSE AND SAID EVERYTHING CHECKS OUT. NOW, FROM THE DEPOSITION TESTIMONY HE DID NOT STATE THAT HE SAID TO THE DEFENDANT AT

THAT TIME YOU ARE FREE TO GO. HE DID SAY, HOWEVER, IN HIS DEPOSITION, THAT HE GAVE BACK THE LICENSE AND TOLD THE DEFENDANT THAT EVERYTHING CHECKS OUT.

AND THAT HE WAS FREE TO GO. HE DIDN'T SAY THAT, BUT THAT IS WHAT HE SAYS IN HIS DEPOSITION, THAT, AT THAT POINT THE DEFENDANT WAS FREE TO GO.

MENTALLY. IN HIS MIND.

SO WHAT COULD HE DO AFTER THAT POINT? WHAT COULD THE OFFICER LEGITIMATELY DO, ONCE HE HAD DETERMINED THAT THE DEFENDANT WAS FREE TO GO?

WELL, CERTAINLY HE DID REQUEST CONSENT TO SEARCH THE VEHICLE, AND IF I THINK I UNDERSTAND WHERE THE COURT IS GOING, THE REQUEST FOR CONSENT WAS PROPER. STATE VERSUS KUMARDI, OUT OF THE SECOND DISTRICT COURT OF APPEAL TWO YEARS AGO, SAYS THAT AFTER COMPLETION OF THE STOP, AN OFFICER CAN REQUEST CONSENT TO SEARCH, EVEN THOUGH THE CITATIONS HAVE BEEN GIVEN AND EVERYTHING IS COMPLETE AND THE DRIVER IS AVAILABLE TO GO ON HIS MERRY WAY. OFFER HOWEVER, IN THIS CASE, STATE'S POSITION IS THAT, ONCE HE SAW THAT MOVEMENT, THE POLICE OFFICER'S PARTICULAR, AND I DON'T MEAN THIS IN A DEMEANING WAY, BUT THE OFFICER'S PONDERING OR HIS IGNORANCE OF THE LAW AT THAT MOMENT, STANDING IN THE STREET WITH SOMEONE HE KNOWS IS NERVOUS, WHO HAS SEEN MADE A FURTIVE MOVEMENT, WHO HAS EVERY JUSTIFICATION TO FEAR FOR HIS SAFETY, SHOULD HAVE A RIGHT TO NEUTRALIZE THAT DANGER THAT HE FEELS TO HIMSELF.

WHAT, FACTUALLY, HAPPENED, AT LEAST ACCORDING TO THE OFFICER THAT TESTIFIED, AT THE SUPPRESSION HEARING, WAS THAT THEY WERE -- HE WAS PREBITCH WAS STANDING THERE WITH MONTAGUE, AND MONTAGUE GAVE HIM BACK HIS LICENSE AND SAID CAN I SEARCH THE VEHICLE, AND THE DEFENDANT WAIVED WAVED TOWARD THE -- WAVED TOWARD THE VEHICLE, SO MONTAGUE BEGAN THE SEARCH. ISN'T THAT WHAT HAPPENED?

YES. THERE WAS SOME DISCRETION AS TO WHEN THE SEARCH BEGAN. HE SAID THAT HE BEGAN THE SEARCH AND THEN TURNED BACK TO FACE THE DEFENDANT, BECAUSE HE DIDN'T WANT TO HAVE HIS BACK TO THE DEFENDANT WHILE HE SEARCHED THE VEHICLE, OSTENSIBLY TO SEARCH FOR WEAPONS.

PREBITCH SAID THAT IT WAS WHILE HE BEGAN TO SEARCH THE VEHICLE THAT HE BEGAN TO RUN.

OFFICER MONTAGUE SAID THAT HE HADN'T GONE INTO THE CAR AND STARTED LOOKING. I THINK THE CAR DOOR WAS OPEN AND MONTAGUE WAS STANDING NEXT TO THE SEAT. THIS IS THE PICTURE THAT WAS PRESENTED TO ME.

MY READING OF THIS RECORD IS THAT THE TRIAL JUDGE FOCUSED UPON THE FACT THAT, WHEN HE TURNED AND RAN, THE SEARCH HAD ALREADY BEGUN, AND THAT HE, IN EFFECT, ABANDONED THE VEHICLE. WASN'T THAT WHAT THE TRIAL JUDGE FOCUSED UPON?

WELL, I THINK, YES, THE TRIAL JUDGE DID SAY THAT THE DEFENDANT HAD ABANDONED THE VEHICLE. THE SECOND DISTRICT COURT OF APPEAL DISAGREED WITH THAT, STATING THAT THE OFFICERS BROUGHT THE DEFENDANT BACK TO THE VEHICLE. IF THEY HAD NOT BROUGHT HIM BACK, THEY COULD HAVE BEEN DEEMED ABANDONED. DID NOT GIVE A BRIGHT-LINE AS TO HOW LONG THEY WOULD HAVE TO WAIT TO MAKE A DETERMINATION OF ABANDONMENT, WHETHER 20 MINUTES, 20 HOURS, 20 DAYS. IT LEFT IT OPEN ENDED, BUT IT DID NOT STATE HOW LONG THE OFFICERS WOULD HAVE TO STATE, BUT DID STATE THAT, BECAUSE THE OFFICERS DID GO AND CATCH THE DEFENDANT AND BRING HIM BACK TO THE VEHICLE, IT WAS NOT ABANDONED.

I AM HAVING A HARD TIME UNDERSTANDING WHAT THE STATE IS CONTENDING WAS THE BASIS FOR THE SEARCH. ON ONE HAND THE TRAFFIC STOP WAS COMPLETED AND THIS WAS A

CONSENTUAL BY THE WAY, DO YOU MIND IF I SEARCH YOUR VEHICLE FOR WEAPONS AND DRUGS?

-- FOR WEAPONS AND DRUGS?

YES.

HE JUST WANTED TO SEARCH THE VEHICLE. NOT FOR A SAFETY ISSUE.

HE SAID THAT HE WANTED TO CHECK THE VEHICLE FOR HIS SAFETY. THAT IS IN THE DEPOSITION.

WHAT HE ASKED FOR IS THE DEFENDANT PERMISSION TO SEARCH FOR GUNS AND WEAPONS.

AND DRUGS.

DRUGS WOULD NOT BE FOR THE OFFICER'S SAFETY.

THAT IS ABSOLUTELY CORRECT.

ARE YOU SAYING THAT YOU CAN HAVE TWO SITUATIONS GOING AT ONE TIME, ONE BEING THAT IT WAS A PERRY STOP, WHERE HE HAD REASONABLE SUSPICION TO BELIEVE THAT THERE WAS CRIMINAL ACTIVITY GOING ON, AND THEREFORE YOU COULD DO A LIMITED SEARCH, OR WAS IT UNDER LONG, WHERE HE IS CONCERNED FOR HIS SAFETY AND PURSUANT TO THE STOP, HE CAN ORDER HIM OUT OF THE VEHICLE, UNDER MIMS, AND THEN, ALSO, HAVE A LIMITED SEARCH, OR WAS IT THAT THE STOP WAS OVER AND HE HAD JUST WAS ASKING HIM FOR PERMISSION TO SEARCH THE VEHICLE? OR CAN IT BE -- OR IS IT SOME KIND OF BLEND OF ALL THREE?

ALL OF THE ABOVE EXCEPT TO THE LAST. UNDER PENNSYLVANIA VERSUS MIMS, HE HAS THE RIGHT TO ORDER THE DEFENDANT OUT OF THE CAR.

AT WHAT POINT, AND THAT IS WHAT I, AGAIN, WANT TO GO BACK TO. HE HAS A RIGHT TO ORDER HIM OUT OF THE VEHICLE, ONCE HE IS LAWFULLY DETAINED FOR A TRAFFIC STOP, BUT DOES THAT -- ONCE THE TRAFFIC STOP IS OVER, HE DOESN'T HAVE THAT RIGHT TO STILL ORDER HIM OUT OF THE VEHICLE, DOES HE?

WELL, THE STATE IS NOT ASKING THIS COURT TO MAKE A DETERMINATION WHETHER THE TRAFFIC STOP IS OVER WHEN THE OFFICER THINKS, IN HIS OWN MIND, THAT IT IS OVER, OR WHETHER THAT IS ACTUALLY COMMUNICATED TO THE DEFENDANT, BUT IT WASN'T YET COMMUNICATED TO THE DEFENDANT YOU ARE FREE TO LEAVE. HIS LICENSE WAS GIVEN BACK TO HIM. HE WAS TOLD EVERYTHING IS IN ORDER AND OFFICER MONTAGUE WAS THINKING I AM GOING TO GIVE HIM A WARNING. HOWEVER, HE MADE THAT OBSERVATION, AND THAT OBSERVATION, THE BASIS, THAT OBSERVATION ALONE PROVIDES THE BASIS TO INVOKE MICHIGAN VERSUS LONG, WHICH EXTENDED TERRY SEARCHES TO AUTOMOBILES, AND ONCE THE OFFICER SEES THAT, THE FACT THAT OFFICER MONTAGUE STOOD ON THE SIDEWALK AND SAID I DON'T KNOW IF THE SUPREME COURT WILL CONSIDER THIS CONSENT OR NOT, SO I AM GOING TO ASK FOR HIS CONSENT, IS SOMETHING THAT SHOULD BE CONSIDERED.

WHAT SEEMS TO BE HAPPENING TO ME IS ALL OF THIS STUFF HAS BLENDED TOGETHER.

THANK YOU VERY MUCH, YOUR HONOR.

HOW ABOUT TAKING YOUR FIRST THEORY, AS I UNDERSTAND IT TO BE, THAT, REALLY, THE POLICE OFFICER, UNDER THE OFFICER SAFETY ISSUE, HAD A RIGHT TO SEARCH THE VEHICLE. ONCE HE OBSERVED THE NERVOUSNESS OF THE DRIVER AND THE GESTURE OF THE HAND GOING UNDER THE SEAT. IS THAT CORRECT?

THAT'S CORRECT, PURSUANT TO STATE VERSUS DILL BEYOND A REASONABLE DOUBT, IN 19 -- TO STATE VERSUS DILLIARD, IN 1985, OUT OF THIS COURT, WHERE THE OWNERS OF A GROVE ASKED POLICE TO LOOK FOR TRESPASSERS AND THE OFFICER CAME UPON A CAR, DARK, LATE AT NIGHT, IN THE GROVE, AND HE KNEW HE WAS NOT GOING TO ISSUE A CITATION OR MAKE AN ARREST FOR TRESPASS. HE WAS MERELY GOING TO WARN THE OUTSIDE, BUT HE SAW THE PASSENGER REACH DOWN UNDERNEATH AND AT THAT MOMENT HE CALLED FOR BACK UP. HE THEN APPROACHED THE VEHICLE AND ASKED FOR I HAD FIX. -- ASKED FOR IDENTIFICATION, AND WHEN BACK UP CAME, HE LOOKED UNDER THE VEHICLE FOR HIS SAFETY AND HE FOUND COCAINE.

TRYING TO MATCH UP IDENTICAL CIRCUMSTANCES.

THOSE ARE PRETTY CLOSE, YOUR HONOR.

HERE WE DON'T HAVE ANY OF THE CIRCUMSTANCES OF ISOLATION OR, YOU KNOW, INRA ORANGE GROVE. WAS THIS AT DATE OR AT -- SATURDAY TIME OR AT NIGHT?

DILLIARD WAS AT NIGHT, SO THIS WAS AT 6:30 ON A NIGHT IN JUNE, SO IT WAS LIGHT OUT.

THE PROPOSITION OF WHAT YOU ARE SAYING HERE, BECAUSE WE ARE CONCERNED ABOUT THE RESOLUTION OF AN INDIVIDUAL CASE, WE ARE MUCH MORE CONCERNED WITH WHAT IS GOING ON OUT THERE. YOU ARE SAYING, NOW, THAT IF A CITIZEN IS NERVOUS, FIRST OF ALL, AFTER BEING STOPPED BY THE POLICE, THAT THAT IS A SUBSTANTIAL FACTOR THAT THE POLICE CAN CONSIDER. LET'S STOP AT THAT.

IT IS CERTAINLY A FACTOR THAT CAN BE CONSIDERED.

DON'T YOU THINK THAT THE ORDINARY CITIZEN, AS SOON AS HE SEES A POLICE OFFICER IN HIS REARVIEW MIRROR, IS GOING TO BE NERVOUS?

ABSOLUTELY.

AND THAT NERVOUSNESS IS GOING TO CONTINUE, PERHAPS, YOU KNOW, FOR A HALF-HOUR AFTER THE ENCOUNTER WITH THE POLICE OFFICER, SO YOU CAN'T HANG YOUR HAT, REALLY, ON NERVOUSNESS, CAN YOU?

AND THE STATE IS NOT HANGING ITS HAT ON NERVOUSNESS. IT IS TAKING THAT AS FACTOR.

ARE WE SAYING TO THE AVERAGE CITIZEN THAT, NOW, WHILE YOU ARE SITTING IN THE DRIVER'S SEAT, THAT UNLESS YOU JUST SIT THERE, AND DON'T MOVE A MUSCLE, BUT IF YOU REACH OVER, YOU KNOW, TO THE OTHER SIDE OF THE CAR, IF YOU REACH INTO THE GLOVE COMPARTMENT OR, FOR INSTANCE, IF YOU REACH UNDERNEATH AND PUSH THE SEAT BACK, TO MAKE YOURSELF MORE COMFORTABLE, IF YOU DO ANY OF THOSE THINGS, YOU HAVE, NOW, SUBJECTED YOURSELF TO THE POLICE HAVING THE RIGHT TO SEARCH YOUR VEHICLE?

MAY I RESPOND, YOUR HONOR?

YES.

I UNDERSTAND THE FINE LINE THAT THE COURTS --

IF THOSE TWO FACTORS.

AND THE STATE IS CERTAINLY WELCOMING ZANDT OF THE FINE LINE OF THIS COURT AND ALL COURTS WALK, WHEN THEY ARE BALANCING THE IN TRUINGS ON A CITIZEN'S PRIVATE -- THE INTRUSION ON A CITIZEN'S PRIVACY AGAINST THE ABILITY OF A POLICE OFFICER TO --

YOUR EARLIER STATEMENT, IF I UNDERSTAND IT CORRECTLY, BY THE TIME THIS IS HAPPENING, WE HAVE TWO ADDITIONAL POLICE OFFICERS.

THAT'S CORRECT.

AT THE SCENE. ANOTHER POLICE CAR. HAS THE THIRD POLICE CAR ARRIVED YET?

I DON'T KNOW. IT IS VERY UNCLEAR. MR. GIMMER IS SHAKING HIS HEAD YES, AND I DON'T KNOW THAT I AM GOING TO TAKE HIS WORD FOR IT, BUT I WILL DO THAT.

IN TERMS OF OFFICERS' SAFETY --

THEIR GUNS WERE NOT DRAWN.

SHOULD WE IGNORE THE FACT THAT THERE IS TWO OTHER POLICE CARS AND THREE OTHER ARMED POLICE OFFICERS ON THE SCENE AT THE TIME OF HIS CONCERN FOR SAFETY?

WHEN THEY ARE STANDING TWO CARS BACK AND OFFICER MONTAGUE HAS APPROACHED THE VEHICLE.

I UNDERSTAND THAT, BUT IN TERMS OF BEING WORRIED ABOUT THE OFFICER'S SAFETY, IS THERE REALLY A LEGITIMATE CONCERN THAT YOU NOW HAVE FOUR POLICE OFFICERS ON THE SCENE?

THERE IS AN OFFICER STANDING NEXT TO THIS VEHICLE, AND IF THE DEFENDANT DOES NOT GET OUT AND HE GOOD DOES HAVE A WEAPON AT THE READY, HE CAN PULL IT AND USE IT ON THE POLICE OFFICER, WITH THREE OTHER POLICE OFFICERS STANDING TWO CAR LENGTHS AWAY.

DOESN'T THE OFFICER, FOR INSTANCE, OF SAYING, WELL, BECAUSE OF THAT GESTURE, I HAVE GOT SOME CONCERN. BEFORE I LET HIM GET BACK IN THE CAR, I AM GOING TO HAVE THE THREE OTHER OFFICERS COME UP HERE AND STAND BEHIND ME, WITH DRAWN GUNS, OKAY, AND SAY NOW YOU CAN GET BACK IN THE CAR.

THAT IS AN IN TRUCKS, YOUR HONOR. THAT IS FAR MORE OF AN INTRUSION THAN ASKING A DEFENDANT TO STEP OUT OF HIS VEHICLE. IF SOMEONE IS DRIVING DOWN THE STREET AND OFFICERS PULL THEIR GUNS AND POINT THEM AT THE DEFENDANT.

WE ARE NOT TALKING ABOUT STEPPING OUT OF HIS VEHICLE. WE ARE TALKING ABOUT SEARCHING THE CAR.

LET'S LOOK AT THE EXTENT OF THE INTRUSION. SIR, CAN YOU STEP OUT OF YOUR CAR? I WOULD LIKE TO SEARCH FOR WEAPONS, BECAUSE I HAVE SEEN YOU MAKE A MOVEMENT UNDER PD YOUR SEAT. THAT IS A -- UNDER YOUR SEAT. THAT IS A MIGHT NOT MULL INTRUSION AS COMPARED TO HAVING FOUR POLICE OFFICERS PULL THEIR GUNS AND HE LOOKS UNDER THE SEAT AND THEN, OKAY, LEAVE.

YOU ARE OUT OF TIME.

I ALSO HAVE ANOTHER PRONG TO MY ARGUMENT ON ILLINOIS VERSUS WARDLOW, WHICH THE SECOND COURT OF APPEAL DID NOT HAVE BENEFIT OF.

AS I UNDERSTAND IT, THAT THIS WAS A PERRY STOP PLUS. IS THAT RIGHT?

WELL --

IS THAT RIGHT? SOMEHOW IT TURNED INTO A LONG TIME SEARCH. IS THAT THE POSITION OF THE STATE?

WELL, I THINK THAT MICHIGAN VERSUS LONG EXTENDED TERRY SEARCHES TO VEHICLES, AND I THINK THAT IS BASICALLY WHAT THIS WAS. IT WAS A MICHIGAN VERSUS LONG TIME TERRY START.

IT STARTED AS A TERRY STOP.

OKAY.

IS THAT CORRECT?

WELL, THE DEFENDANT, HIM SELF, WAS NOT SEARCH, SO IT WAS NOT A SEARCH OF HIS PERSON. THE OFFICER DID NOT HAVE FEAR OF WHAT HE HAD ON HIMSELF. HE HAD FEAR OF WHAT HE OBSERVED HE MIGHT HAVE PUT UNDER THE CAR SEAT.

WHAT WAS THE BASIS FOR THE SEARCH? WAS IT REASONABLE SUSPICION?

YES, YOUR HONOR.

OR AN EXTENSION OF THE TERRY STOP?

I THINK IT WAS REASONABLE SUSPICION, AND I WOULD, ALSO --

IF IT IS REASONABLE SUSPICION, WAS IT THE FLIGHT OF THE DEFENDANT?

IN LIGHT OF ILLINOIS VERSUS WARDLOW, CERTAINLY THE FLIGHT DID NOT HELP THE DEFENDANT.

EXACTLY WHAT WAS IT THAT LED TO THE REASONABLE SUSPICION?

THE OBSERVATION OF THE DEFENDANT REACHING DOWN UNDER THE SEAT AND GIVING A HALF LOOK BACK AT THE OFFICER WHILE HE IS OBVIOUSLY PUTTING SOMETHING UNDER THE SEAT.

SO YOUR ARGUMENT, REALLY, IS THAT THE TRAFFIC STOP WAS OVER --

JUST A MINUTE, JUSTICE.

I AM SORRY.

THE TRAFFIC STOP WAS OVER, AND THEN A TERRY STOP BEGAN, BASED ON THE FACT THAT HE MADE A FURTIVE MOVEMENT?

THAT'S CORRECT, YOUR HONOR. IT IS AS SIMPLE AS THAT. IT IS VERY BASIC AND IT IS VERY STRAIGHTFORWARD. HE MADE AN OBSERVATION, AS HE WAS GOING BACK TO RETURN THE LICENSE TO THE DEFENDANT, AND HE WITNESSED SOMETHING THAT CAUSED HIM REASONABLE SUSPICION TO BELIEVE THAT A WEAPON HAD BEEN HIDDEN UNDER THE FRONT SEAT OF THE CAR. HE ASKED THE DEFENDANT, COULD YOU PLEASE STEP OUT OF YOUR CAR FOR MY SAFETY. THE DEFENDANT GOT OUT OF THE CAR AND RETURNED HIS LICENSE, AND I AM ONE MINUTE AWAY FROM MY MAXIMUM LIMIT, GOING INTO MY REBUTTAL TIME, BUT WHEN HE RETURNED THE LICENSE, HE ASKED FOR CONSENT. THE STATE'S POSITION IS THAT HE DID NOT NEED TO ASK FOR CONSENT AT THAT POINT.

THANK YOU. IF YOU WISH TO SAVE SOME TIME, YOU MAY.

THANK YOU. I HAVE GOT ONE MINUTE.

MR. GEMMER.

MAY IT PLEASE THE COURT. I AM DAVID GEMMER, REPRESENTING MR. PIERRE.

DO YOU AGREE THAT CONSENT WAS VALID?

I AGREE THAT, ON THE FACTS AS THEY APPEAR BEFORE THIS COURT, THE CONSENT WAS QUESTIONABLE.

BUT THE JUDGE FOUND THAT CONSENT WAS VALID.

THE JUDGE FOUND CONSENT WAS VALID. YES. HE MADE A FINDING.

HE FOUND THAT ON A BASIS OF THE TOTALITY OF THE CIRCUMSTANCES. CORRECT?

EXACTLY. THAT THE INITIAL CONSENT, WELL, HERE, ON THE REHEARING AT 201 IN THE RECORD, HE SAYS THAT THE ISSUE HAS BEEN RAISED. ILLEGAL DETENTION. I FIND THAT IT WAS ILLEGAL DETENTION. ALSO THE FACT THE SEARCH BEGAN BEFORE HE RAN, WHERE HE GAVE CONSENT AND THEN RAN FROM THE SCENE, SO I THINK THAT WE CAN'T ARGUE THAT THE JUDGE DID NOT FIND THAT CONSENT WAS GIVEN.

SO IF THE CONSENT WAS VALID, WHEN HE RUNS, WHEN HE RUNS, THERE WAS A CASE, JACOBSEN, WHICH SAID THAT HE WITHDREW HIS CONSENT BY RUNNING, BUT THAT WAS A CONSENT TO SEARCH THE PERSON. WHAT I AM HAVING TROUBLE WITH, FRANKLY, IF THE CONSENT WAS VALID, WHEN HE RAN, LIKE IF I SAY COME IN AND SEARCH MY HOUSE, AND I, THEN, RUN OUT OF MY HOUSE, HAVE I WITHDRAWN MY CONSENT TO SEARCH MY HOUSE, OR HAVE I, REALLY, SAID BE MY GUEST? SEARCH MY HOUSE? SAME HERE, MR. PIERRE, HE GAVE HIS CONSENT. HIS CONSENT WAS VALID, AND HE RUNS. HERE IS MY CAR. GO AHEAD. SEARCH THE CAR. IT'S NOT MY STUFF IN THERE, SO GO AHEAD. IT'S NOT MY CAR AND I AM OUT OF HERE. WHAT IS WRONG WITH -- WHY IS THAT -- WHY DO WE HAVE TO GET TO ABANDONMENT OR ANY OTHER THEORY, BUT WHY WOULD THAT BE RUNNING FROM, AFTER YOU HAVE GIVEN VALID CONSENT AND YOU RUN OR WALK AWAY, WHY IS THAT WITHDRAWING YOUR CONSENT TO SEARCH A VEHICLE? NOW, IF HE SAID, IF THE QUESTION WAS CAN YOU SEARCH MY PERSON, AND THEN YOU RUN, OBVIOUSLY BY RUNNING AWAY, YOU ARE WITHDRAWING YOUR CONSENT TO SEARCH THE PERSON, BUT I AM HAVING A HARD TIME UNDERSTANDING WHY RUNNING AWAY IS A WITHDRAWAL OF CONSENT TO SEARCH THE CAR, WHICH THE JUDGE FOUND WAS VALIDLY GIVEN.

BECAUSE -- I AM SORRY. MY CLOCK IS WRONG AND IT THREW MY MIND OFF. OKAY. HE GAVE THE CONSENT, AND WE HAVE A FICTION IN THE LAW THAT WE HAVE A REASONABLE SUSPECT WHO KNOWS THE LAW, AT LEAST THE CONSTITUTIONAL LAW, SO OUR REASONABLE SUSPECT WAS AWARE OF JACOBSEN THAT SAYS, GENERALLY, THAT FLIGHT, AFTER CONSENTUAL OR DURING A CONSENTUAL STOP ENDS THE CONSENT JUST GENERALLY. NOW, YOU ARE SAYING THAT YOU CAN LIMIT JAKE ONE IS HE NOT ON -- JAKE ONE -- JACOBSEN ON THAT, BUT IN THE NEECE CASE, THE STATE HAD SPECIFICALLY MADE THE ARGUMENT THAT IT CONSTITUTED ABANDON PRESIDENT OF THE LUGGAGE, PERSONAL PROPERTY, WHEN THE SUSPECT IN NEECE FLED, I THINK IT WAS IN AN AIRPORT, FLED ASZ HE WAS BEING LED WITH HIS LUGGAGE TO A PRIVATE ROOM TO SEARCH THAT LUGGAGE, AND THE NEECE COURT, ALTHOUGH IT WASN'T THIS COURT IT WAS FLORIDA COURT, AND APPARENTLY THE ONLY CASE ADDRESSING THIS PARTICULAR ISSUE, HELD THAT, WHEN YOU WITHDRAW YOUR CONSENT BY FLEEING, YOU, ALSO, WITHDRAW YOUR CONSENT TO THE SEARCHING OF PERSONAL PROPERTY.

WAIT A MINUTE. BUT NEECE HAD TO DO WITH A SUITCASE IN AN AIRPORT AND WE HAVE GOT, NOW, OUT OF THE U.S. SUPREME COURT, SEVERAL CASES WHICH, IT APPEARS TO ME, YOU HAVE SOME BEARING ON THIS MATTER. ONE OUT OF THIS COURT HAVING TO DO WITH THE VOOES YOUR OF AN AUTOMOBILE -- WITH THE SEIZURE OF AN AUTOMOBILE, WHITE, AND THE FACT THAT THE U.S. SUPREME COURT WAS EMPHASIZING, IN WHITE, THAT WE ARE DEALING WITH SOMETHING

THAT IS DIFFERENT IN AN AUTOMOBILE, BECAUSE OF THE CALIFORNIA CASE THAT HAD TO DO WITH THE FACT THAT AUTOMOBILES ARE ABLE TO GET OUT OF WHEREVER THEY ARE AND THE FACT THAT THIS SEARCH HAD ALREADY BEGUN, AND THEN THE FELLOW TAKES OFF. AND SO WHY DOESN'T WARDLOW AND THE AUTOMOBILE INDICATE THAT WE HAVE GOT A SITUATION IN WHICH THERE IS ENOUGH REASONABLE SUSPICION, AT THAT POINT, FOR THERE TO -- FOR THEM TO GO FORWARD WITH WHAT HAD STARTED OUT AS A CONSENTUAL SEARCH AND HE NEVER TOLD THEM TO STOP SEARCHING THE AUTOMOBILE.

I THINK YOU ARE TALKING ABOUT THE EX-I GENERALITY CIRCUMSTANCES -- EXIGENT CIRCUMSTANCES EXCEPTION, WHICH REQUIRES PROBABLE CAUSE TO MAKE A SEARCH OF THE VEHICLE, AND OUR ARGUMENT, OF COURSE, IS THAT PROBABLE CAUSE HAD NOT ARISEN, IT WAS STILL IN A TERRY STOP SITUATION, EVEN AFTER THE FLEA.

WE ARE STARTING -- EVEN AFTER THE FLEE.

WE ARE STARTING OUT WITH A PREMISE, HERE, WHERE WE HAVE GOT CONSENT.

YOU HAVE CONSENT. YOU, ALSO, HAVE A SUSPECT THAT WAS AWARE OF NEECE AND AWARE OF JACOBSEN, APPARENTLY, AND WAS AWARE THAT HE COULD WITHDRAW CONSENT TO THE SEARCH OF HIS OWN PERSON BY FLEEING.

LESS GO BACK AND SEE IF WE CAN APPROACH IT FROM A DIFFERENT DIRECTION, TO TEST WHAT YOU ARE SAYING. LET'S SUPPOSE THAT THE OFFICER, HERE, WAS REALLY CONCERNED ABOUT DOING ALL HIS I'S AND CROSSING ALL OF HIS T'S, AND SO HE HAD SOME CONSENT FORMS IN THE POLICE CAR, AND SO HE BROUGHT THE CONCEPT FORM UP. HE SAID THE FLORIDA SUPREME COURT IS NOT GOING TO NAIL ME. I AM GOING TO TAKE CARE OF THIS THING HERE, AND SO HE EXPLAINED TO THE DRIVER THAT HE WANTED TO SEARCH THE AUTOMOBILE BUT HE NEEDED TO HAVE HIS CONSENT BEFORE HE COULD DO, IT AND SO HE READ HIM THE CONSENT FORM, AND THEN HE SAID, NOW, I WANT YOU TO SIGN THIS, AND AS A MATTER OF FACT I HAVE GOT AN OFFICER IN THE CAR BEHIND ME THAT IS A NOTARY PUBLIC, AND HE IS GOING TO NOTARIZE YOUR SIGNATURE ON THIS.

EXACTLY.

AND SO HE HAS GOT A GREAT BIG FORM, NOW, WHERE THE DEFENDANT HAS CONSENTED TO SEARCH, AND NOW THE DEFENDANT TAKES OFF. AFTER THAT. AND THE OFFICER SAYS, WELL, LET HIM GO. ALL RIGHT. WE CAN GET HIM LATER. WE HAVE THE A PERFECTLY VALID CONSENT FORM HERE TO SEARCH THAT VEHICLE. NOW, I -- WHY WOULDN'T THAT BE A PERFECTLY VALID WAY TO GO, ASSUMING WE HAVE CONSENT, AND HERE, BOTH THE TRIAL COURT AND, IT SEEMS TO ME, THAT IT IS A COMPLETE PREDICATE AT THE SECOND DISTRICT OPINION THAT THEY ACCEPT THAT THERE HAS BEEN A VALID CONSENT. WHY -- IT STRIKES ME INITIALLY, AND I WOULD LIKE YOU TO RESPOND, UNREASONABLE TO SAY THAT THE OFFICER, HAVING GONE TO ALL OF THAT TROUBLE TO GET A CONSENT, CAN'T GO FORWARD WITH THE CONSENT. WHY CAN'T HE?

WELL, I DIDN'T WRITE NEECE, AND THE COURT, IN NEECE, SAID YOU WITHDRAW YOUR CONSENT. IT DOESN'T MATTER HOW VALID ON THE FACTS BASICALLY STIPULATED.

YOU WITHDRAW YOUR CONSENT TO THE SEARCH OF THE VEHICLE. DID NEECE INVOLVE A VEHICLE?

IT INVOLVED PERSONAL PROPERTY THAT WAS LEFT BEHIND, YES. IT WAS LUGGAGE. IT WAS NOT A VEHICLE. NO. BUT AT THAT POINT, THE LUCK LUING AGE, IT WAS STILL A -- THE LUGGAGE, IT WAS STILL A REASONABLE SUSPICION. IN THIS CASE THEY COULD HAVE GOTTEN A DOG IN TO SNIFF, TO RAISE THE LEVEL TO PROBABLE CAUSE, WHICH ALLOWS, UNDER THE EXIGENT SEARCH DOCTRINE, TO ALLOW THE OFFICER TO SEARCH WITHOUT A SEARCH WARRANT, BUT HE CAN'T

SEARCH ON SUSPICION OF CRIMINAL ACTIVITY, NOT SAFETY. HE SUSPICION OF CRIMINAL ACTIVITY, HE CANNOT SEARCH UNTIL HE HAS PROBABLE CAUSE.

IS IT YOUR POSITION THAT WARDLOW DOESN'T APPLY TO THIS CASE?

LET ME GET TO MY WARDLOW NOTES. TWO THINGS. HEADLONG NIGHT, WHEREVER IT OCCURS, IS AN ACT OF EVASION, AND IS NOT NECESSARILY INDICATIVE OF WRONGDOING BUT IS CERTAINLY SUGGESTIVE OF STUFF. UNPROVOKED FLIGHT IMPLIES NOT MERE REFUSAL TO COOPERATE. FLIGHT IS NOT GOING ABOUT ONE'S BUSINESS. IN FACT IT IS JUST OPPOSITE. AND PARTIAL CONCURRENCE JOINED BY ONE SHORT OF A MAJORITY OF THE COURT NOTES THAT, QUOTING UNPROVOKED FLIGHT, IN SHORT, DESCRIBES A CATEGORY OF ACTIVITY TOO BROAD AND VARIED TO PERMIT A PER SE REASONABLE INFERENS REGARDING THE MOTIVATION FOR THE ACTIVITY. SO REGARDLESS OF WHETHER WARDLOW WOULD INCREASE THE LEVEL OF SUSPICION TO INCREASE A REASONABLE SUSPICION ISSUE, IT DOES NOT AFFECT JACOBSEN AND NEECE, TO THE EXTENT THAT THAT FLIGHT CAN, ALSO, SIMULTANEOUSLY CONSTITUTE A WITHDRAWAL OF CONSENT. SO WARDLOW, WELL, THROWING SOME HA LIGHT ON SOME OTHER ISSUES -- ON SOME -- SOME LIGHT ON SOME OTHER ISSUES, AND ACTUALLY WARDLOW IS NOT NEW FOR THIS COURT, AS FAR AS CONSTRUCTION. IT IS TO DETERMINING FOURTH AMENDMENT ISSUES, AND SO WARDLOW IS NO NEWS, NOT TO THIS COURT, OTHER THAN THE UNITED STATES SUPREME COURT HAS ISSUED ISSUED A NATIONWIDE STANDARD NOW.

WHY DOESN'T FLIGHT GIVE SOME CREDENCE TO PROBABLE CAUSE, RELATIVE TO SOME CRIMINAL ACTIVITY TAKING PLACE? CAN YOU EXTRAPOLATE FROM FLIGHT?

I THINK IT IS PART OF THE TOTALITY OF THE CIRCUMSTANCE.

IS THAT A REASONABLE EXTRAPOLATION, IF THE PERSON RUNS OFF, THAT THERE IS PROBABLY SOME CRIMINAL ACTIVITY?

NOT PROBABLY. INWARD LOW, IT WAS ONLY -- -- IN WARDLOW, IT ONLY RAISED THE SITUATION FROM INNOCENT CIRCUMSTANCES TO A REASONABLE SUSPICION PERMITTING A TERRY DETENTION. IN THIS CASE, MR. PIERRE RUNNING, AND I THINK THE STATE ARGUED THAT THE POLICE HAD NO INTENTION TO SEARCH HIS PERSON, BECAUSE THE STATE'S ENTIRE THEORY BEFORE THIS COURT IS OFFICER SAFETY, BUT WE ARE BACK TO THIS WHOLE CONSENT THING NOW, ANYWAY, THEY WEREN'T GOING TO SEARCH HIS PERSON. WHEN HE RAN, THEN IT RAISED IT TO THE LEVEL OF A REASONABLE SUSPICION, PERHAPS. I AM NOT CONCEDED IT, BUT ARGUING THE WORST EFFECT OF WARDLOW ON MY CASE, IT RAISES IT TO A REASONABLE SUSPICION, PERMITTING, WHEN THEY DETAINED HIM TWO BLOCKS AWAY, WHEN THEY STOPPED HIM, FINALLY, AND IT TOOK MOST OF THE OFFICERS TO FIND AND CATCH HIM. WHEN THEY DETAINED HIM, THEN PRESUMABLY, ALTHOUGH IT WASN'T AN ISSUE, PRESUMABLY THEY DID A PAT DOWN AT THAT POINT, AND ONCE --

WHY WOULDN'T THAT LET THEM GO INTO A LONG AT THAT POINT?

BECAUSE THEY STILL HAD NO PROBABLE CAUSE TO ARREST MR. PIERRE. IT WAS STILL A TERRY, REASONABLE SUSPICION. HE WAS TWO BLOCKS AWAY. HE WAS ABSOLUTELY NO THREAT THAT HE WAS GOING TO BE ABLE TO RUN TO HIS CAR AND PULL OUT A GUN, WHICH IS THE DILLIARD RATIONALE, IN INITIAL V LONG. YOU ARE STILL REASONABLY CLOSE, WHEN THERE IS STILL A SUSPICION, PROBABLE CAUSE, ONCE YOU HAVE AN ARREST, THEN --.

ONCE THEY BRING HIM BACK TO THE CAR --

THEY SHOULDN'T HAVE.

WHY DIDN'T THEY, PURSUANT TO LONG, GO AHEAD AND SEARCH THE CAR. IF THEY HAVE SEEN

HIM BEND DOWN LIKE HE IS GETTING SOMETHING OR PUTTING SOMETHING ON THE FLOOR BOARD, THAT MAKES THEM SUSPICIOUS?

WHY CAN'T THEY, PURSUANT TO LONG, GO AHEAD AND SEARCH THE CAR AT THAT POINT?

BECAUSE, FIRST OFF, JUSTES PIN OWES, A IN THE TRIAL -- JUDGE ESPINOSA MADE A DECISION THAT HE WAS ILLEGALLY DETAINED AND ILLEGALLY BROUGHT BACK, WHEN HE RAN, AND BY THE WAY, YOUR CONCERN ABOUT THAT, THERE WERE NO, REALLY, DETAILED FINDINGS ON THE, BY THE JUDGE, BUT AT OUR 188 TO 201 OR THEREABOUTS ARE HIS VERBAL FINDINGS IN BOTH THE ORIGINAL HEARING AND ON THE MOTION FOR REHEARING, AND IN NONE OF THOSE, WELL, AND THERE HE DOES FIND IT WAS AN ILLEGAL DETENTION, AND THEREFORE HE SHOULD NOT HAVE BEEN BROUGHT BACK. EVEN IF WHEN HE WAS BROUGHT BACK, THOUGH, OUR ARGUMENT IS THAT NEECE AND JACOBSEN STILL CREATE WITHDRAWAL OF CONSENT, AND SO --

ARE WE REALLY SAYING THAT WE WANT TO CREATE A BODY OF LAW WHERE, IF WE RECOGNIZE THE CONCEPT OF CONSENT AND PRESUMABLY IF HE HAD STAYED THERE, THAT THE SEARCH WOULD HAVE BEEN VALID, BECAUSE THE CONSENT WAS VALID? THAT WHAT WE WANT TO DO IS REALLY TELL CITIZENS THE WAY IN WHICH YOU WITHDRAW YOUR CONSENT, RATHER THAN SAYING PLEASE DON'T SEARCH MY -- I CHANGED MY MIND, IS TO HAVE THEM RUN AWAY FROM POLICE? I MEAN IS THAT REALLY GOOD -- IS THAT GOOD POLICY?

IT MAY NOT -- NOT THE BEST POLICY. I AGREE IT IS BOTHERSOME TO ME, BUT WE HAVE NEECE AND JACOBSEN.

JACOBSEN HAS ONE LITTLE LINE THAT TALKS ABOUT WHEN HE STARTED TO SEARCH HIS PERSON AND HE RAN, OBVIOUSLY THE CONSENT WAS WITHDRAWN. THAT IS NOT A BODY OF LAW. THAT IS JUST A COMMONSENSE IDEA. IF I AM RUNNING, AND YOU ARE ABOUT TO SEARCH ME AND I SAID YES BUT THEN I RAN, YOU ARE NOT GOING TO BE ABLE TO SEARCH ME, SO THAT IS NOT A BODY OF LAW, BUT I GUESS WHAT I AM TRYING TO UNDERSTAND, HERE, IS THAT THEY BRING HIM BACK. THE CONSENT WAS VALID BEFORE. IF THE STATE IS RIGHT, THERE WAS, ALSO, A CONCERN ABOUT OFFICER SAFETY IN THE FIRST PLACE, FOR WHAT WAS IN THE CAR, AND WERE THEY SUPPOSED TO JUST LET HIM GO AND GET BACK AND ESCORT HIM TO THE CAR, WITHOUT DOUBLECHECKING TO MAKE SURE THAT AT LEAST THAT HE DIDN'T HAVE ACCESS TO A GUN, AS HE GOT BACK IN THE CAR? IN OTHER WORDS YOU AGREE, EVERYONE AGO GREASE THEY COULDN'T -- WHEN THEY BROUGHT HIM BACK, THERE WAS STILL NOTHING TO ARREST HIM FOR, SO THEY COULDN'T ARREST HIM, SO THEY HAD TWO CHOICES. THEY COULD EITHER DO THE TERRY PAT DOWN, WHICH REVEALED NO WEAPONS, AND WE DON'T KNOW WHAT YOU WOULD SAY IF THEY HAD FOUND WEAPONS, WHETHER THAT WOULD HAVE, SHOULD HAVE BEEN SUPPRESSED, BUT THEN THEY ARE BASICALLY HAVING TO MAKE A DECISION DO WE ARREST HIM OR NOW, BEFORE WE HAVE HIM GET BACK IN THE CAR, WE ARE GOING TO EITHER DO THE SEARCH WE WOULD HAVE DONE BEFORE HE RAN WAY, OR WE ARE GOING TO SURE MAKE SURE THAT THINGS ARE OKAY IN THAT CAR, SO WHEN HE GETS BACK IN HE CAN DRIVE AWAY.

OKAY. WHEN THEY STOPPED HIM TWO BLOCKS AWAY, THEY COULD DO A TERRY PAT DOWN ON HIM AT THAT POINT. AT THAT POINT, FINDING NO DRUGS OR GUNS, THEY HAD NO PROBABLE CAUSE TO ARREST HIM. THEY HAD, HOWEVER, PERHAPS, UNDER WA R. DLOW -- UNDER WARDLOW, ENOUGH CIRCUMSTANCES UNDER THE TOTALITY TO DETAIN HIM TWO BLOCKS AWAY. AT THAT POINT THEY HAD NO OFFICER SAFETY RATIONALE TO DO A SEARCH OF THE CAR, BUT THEY WOULD HAVE A RATIONALE FOR TEMPORARY TERRY DETENTION TO PERMIT THEM THOUGH BRING IN A DOG TO DO A SNIFF. SL IS PLENTY OF CASE -- THERE IS PLENTY OF CASE LAW THAT SAYS TEMPORARY DETENTION AND A REASONABLE SUSPICION TO DO A SEARCH, YOU HAVE GOT EXIGENT CIRCUMSTANCES TO GO INTO THE CAR. YOU DO NOT GO INTO THE CAR, UNLESS YOU HAVE THE PROPER CIRCUMSTANCE. THEY ARE NOT --

YOU ARE BACK TO THE CAR AND BACK TO POINT ONE.

YES. YES.

HE HAS COMMITTED NO CRIME. BUT YOU ARE WIPING AWAY THE INITIAL REASON THAT THEY WANTED TO SEARCH THE CAR TO BEGIN WITH, AND THAT IS FOR THE SAFETY OF THE OFFICERS WHILE HE IS IN THE CAR, IN PREPARATION FOR DRIVING AWAY. AND SO, BUT, YOU ARE SAYING THAT, BY HIS FLIGHT, THAT THEY HAVE WIPED OUT THE OPPORTUNITY OR HIS CONSENT TO SEARCH THE CAR.

I AM SAYING, WELL, YEAH, ON THE CONSENT ISSUE, IT WITHDREW THE CONSENT. IF YOU ARE GOING TO CHANGE THE LAW. IF YOU ARE GOING TO RECEDE FROM JACOBSEN AND JACOBSEN WAS STUDIED OPINION ON THAT, BECAUSE THERE IS A LENGTHY FOOTNOTE THAT GOES INTO, AT THE END, GOING INTO THE WHOLE QUESTION ABOUT WITHHOLDING A FINAL DECISION ON FLIGHT, KIND OF -- IT'S COMPLEX BUT READ THE FOOTNOTE. THE COURT WAS VERY CLEAR, WHEN IT WROTE THAT. IT WAS A STUDIED DECISION TO WRITE THAT THE CONSENT WAS WITHDRAWN. SO IT WASN'T JUST A PASSING REMARK. THEN YOU HAVE NEECE, AND NEECE HOLDS WITHDRAW. IF YOU ARE GOING TO CHANGE THE LAW, DON'T DO IT TO MY CLIENT, BECAUSE HE WAS AWARE OF THE LAW AT THAT TIME. MAKE IT PROSPECTIVE, IF YOU HAVE TO, BUT --

AND THAT GOES -- SO YOU ARE SAYING, REALLY, IF WE CONSIDER WARDLOW, WE SHOULD NOT CONSIDER THAT ASAP APPLIED TO THIS CASE, BECAUSE IT HAPPENED -- AS APPLIED TO THIS CASE, BECAUSE IT HAPPENED THAT IT WAS HANDED DOWN AFTER --

IF YOU HAD A LAW PROFFER ON THE SCENE, HE WOULD HAVE TO RELY ON JACOBSEN AND NEECE, AND HE SHOULD NOT BE PUNISHED FOR HIS REASONABLE RELIANCE ON THE CASE LAW AS IT STOOD CURRENTLY IN THE STATE OF FLORIDA AT THE TIME THAT HE WITHDREW HIS CONSENT, AND KNOWING THE REASONABLE SUSPECT, HE WOULD NOT HAVE ANY FURTHER NEED TO, WHEN HE WAS DRAGGED BACK TO THE CAR, TO SAY, NO, NO, NO. DON'T SEARCH THE CAR. I NOW VERBAL I WITHDRAW MY CONSENT AS WELL AS WITH MY BODY LANGUAGE AND BEHAVIOR NOW WITHDRAW MY CONSENT. HE WOULD NOT HAVE HAD ANY REASON TO DO THAT, BECAUSE REASONABLY RELYING ON JACOBSEN AND NEECE, HE WOULD HAVE KNOWN THAT HIS CONSENT WOULD ALREADY HAVE BEEN WITHDRAWN.

IS THAT A LOGICAL EXTENSION, REALLY, OF HIS WITHDRAWAL OF CONSENT? HIS FLIGHT MEANS, ALL RIGHT, I WITHDRAW MY CONSENT TO SEARCH ME, BECAUSE I AM GOING TO BE GONE. BUT THIS PREVIOUS CONSENT THAT HE HAS GIVEN TO THE SEARCH OF THE CAR, IS IT NECESSARILY LOGICAL THAT HE WITHDREW THAT CONSENT BY HIS FLIGHT?

WELL, YOU KNOW, WE HAVE BEEN HUNG UP ON THIS CONSENT ISSUE, AND I HAVEN'T REALLY HAD A CHANCE TO ARGUE EVERYTHING THAT TOTALLY NEGATES ANY CLAIM OF OFFICER SAFETY, BUT ON THE CONSENT WITHDRAWN UNDER JACOBSEN AND NEECE, I AM SORRY, I FORGOT WHERE I WAS GOING WITH THAT, BECAUSE I HAD --

NO. MY QUESTION WAS DOES IT FOLLOW AS AN ITEM, TODAY, THAT HE WITHDREW HIS CONSENT TO SEARCH THE CAR, BECAUSE HE FLED? THAT WAS MY QUESTION, AND THAT IS WHAT YOU WERE ANSWERING.

HE WITHDREW IT BECAUSE HE WAS RELYING ON JACOBSEN AND NEECE, A REASONABLE SUSPECT. IF YOU WANT TO CHANGE THE LAW, DON'T PUNISH HIM FOR RELYING ON IT. ALSO WE HAVE A QUESTION, A, WE HAVE A QUESTION HERE, AS I ARGUED IN MY MERIT, ON MY DISCRETIONARY JURISDICTION BRIEF, THAT WE ARE STUCK WITH A FINDING OF CONSENT. WE HAVE AN ALTERNATIVE SCENARIO, WHERE CONSENT WAS NOT GIVEN, BUT WE HAVE A POLICE OFFICER WHO WANTS TO BUTTRESS HIS CLAIM OF LEGITIMACY IN THAT SEARCH AND THEREFORE THROWS IN A CLAIM OF CONSENT. THE JUDGE DID NOT RELY ON THAT CONSENT, WHEN, WHICH HE WAS

FREE TO DO. HE DID NOT RELY ON THAT CONSENT, WHEN HE HELD THAT THE SEARCH WAS JUSTIFIED. HE RELIED ON THE FACT THAT IT WAS ABANDONED AND HE DID NOT RELY ON OFFICER SAFETY. OFFICER SAFETY, THE ONLY TWO TIMES THAT IT WAS MENTIONED IN THE DEPOSITION OF OFFICER MONTAGUE WAS, WHEN ONE OF THE OTHER OFFICERS ARRIVED ON THE SCENE FOR BACK UP, THAT OFFICER, FOR OFFICER SAFETY, WALKED UP, APPARENTLY TO THE PASSENGER SIDE OF MR. PIERRE'S CAR AND THEN, FOR OFFICER SAFETY, I ASKED HIM TO GET OUT OF THE CAR. AT NO FURTHER POINT DID HE EVER MENTION OFFICER SAFETY, AND, OF COURSE, ONCE HE WAS FREE TO LEAVE, THE OFFICER SAFETY DISAPPEARED, AND I AM OUT OF TIME.

THANK YOU VERY MUCH.

PLEASE I ASK THE COURT TO PLEASE RELY ARE REVIEW ON THAT OFFICER SAFETY, IF YOU ARE GOING TO GO OFF ON THAT, BECAUSE THE RECORD IS REplete WITH REFUTE OF THAT CLAIM AT ALL. I AM SORRY. IT WASN'T EVEN ARGUED OR HELD BY THE TRIAL JUDGE.

THANK YOU. REBUTTAL?

YES. I HAVE ONE MINUTE LEFT, AND --

WAS OFFICER SAFETY ARGUED IN THE TRIAL COURT? DID THE JUDGE MAKE ANY FINDINGS ON OFFICER SAFETY?

I DON'T RECALL.

WHEN YOU SAY YOU DON'T RECALL. THIS IS NOT A LONG RECORD.

I UNDERSTAND, YOUR HONOR. I DO NOT UNDERSTAND WHETHER THE PROSECUTOR ARGUED OFFICER SAFETY BEFORE THE TRIAL COURT.

DO YOU RECALL WHETHER THE JUDGE MADE FINDINGS ON OFFICER SAFETY?

NO. I AM NOT BEING EVASIVE. I HONESTLY DON'T RECALL, AND I DON'T WANT TO PLACE MYSELF IN A POSITION OF MISREPRESENTING. I KNOW THAT THE STATE ARGUED IT BEFORE THE SECOND DISTRICT COURT OF APPEAL AND PRESERVATION WAS ARGUED AS WELL, AND THE SECOND DISTRICT COURT OF APPEAL MENTIONED IT IN ITS OPINION. SO I HAVE TO LEAVE IT AT THAT. I HATE TO DISAPPOINT THE COURT, BUT I CAN'T MISREPRESENT. I THINK THAT THE SECOND DISTRICT COURT OF APPEAL DID NOT HAVE BENEFIT OF WARDLOW VERSUS ILLINOIS OR ILLINOIS VERSUS ILLINOIS, AT THE TIME IT MADE THE OPINION, AND FLIGHT IS NOT WITHDRAWAL OF CONSENT. IT CAN NO LONGER BE CALLED A REASONABLE SUSPICION. I SEE MY RED LIGHT IS ON.

THANK YOU, THE BOTH OF YOU.