

>> THE NEXT CASE FOR THE DAY IS HINMAN VERSUS STATE OF FLORIDA.

>> GOOD MORNING, MAY IT PLEASE THE COURT.

ROBERT COULTER, ASSISTANT PUBLIC DEFENDER APPEARING ON BEHALF OF THE PETITIONER.

THE ONLY ISSUE THE COURT MUST RESOLVE IN APPEAL A REASONABLE INDIVIDUAL IN PETITIONER'S POSITION WAS PULLED OVER BY A POLICE CAR, HAS TWO POLICE OFFICERS APPROACH HER CAR, ONE TO THE DRIVER'S SIDE, ONE TO THE PASSENGER'S SIDE, WHICH PREVENTS HER FROM EXITING THE CAR WITHOUT EVER MENTIONING ANYTHING ABOUT A TRAFFIC STOP.

IMMEDIATELY CONFRONTS THAT DRIVER WITH THE ACCUSATORY QUESTION, OF WHETHER OR NOT SHE HAS DRUGS AND FIREARMS IN HER CAR.

>> SO DID THE SEQUENCE OF THE, OKAY, YOU GOT THE TWO POLICE OFFICERS ON EITHER SIDE WHICH IS CERTAINLY INTIMIDATING BUT I THINK THE U.S. SUPREME COURT SAID THAT'S NOT ENOUGH.

IS IT THE SEQUENCE THAT THEY SAID, PLEASE GIVE ME, WHICH IS, YOU JUST RAN A RED LIGHT OR JUST WHATEVER SHE DID, GIVE, LET ME HAVE YOUR LICENSE AND REGISTRATION, STILL IN THE VEHICLE.

AND GO BACK AND THEN SAY, BECAUSE ASKING IF THERE ARE WEAPONS, I DON'T KNOW WHAT THE DRUG ISSUE BUT APPARENTLY DRUG, WEAPONS AND DRUGS GET ASKED, SEEMS TO BE SOMETHING THAT HAS BEEN DONE IN OTHER CASES, FROM THE U.S. SUPREME COURT AND APPROVED.

IS IT THE SEQUENCE OF THE QUESTIONS OR SOMETHING ELSE?

>> I THINK IT'S A TOTALITY OF ALL OF THE CIRCUMSTANCES. AND WHAT THE UNITED STATES

SUPREME COURT HELD IN BERKEMMER,  
ALONG BY THE THIRD  
DISTRICT COURT OF APPEALS IN  
THIS CASE, THE THIRD DISTRICT  
COURT OF APPEALS CONCLUDE AD  
VALID TRAFFIC STOP, A LEGAL  
TRAFFIC STOP, AN INDIVIDUAL IS  
NOT IN CUSTODY.

THE UNITED STATES SUPREME COURT  
IN BERKENNER, RECOGNIZED THERE  
ARE A STOP, THEN, WHEN THE  
POLICE OFFICER STOP YOU WITH THE  
RED LIGHT AND SIRENS YOU HAVE TO  
LOOK AT THE SURROUNDING  
CIRCUMSTANCES.

>> THE PROBLEM, THERE CAN BE  
CONFLICT WITH THE U.S. SUPREME  
COURT CASE.

>> WHERE I BELIEVE THE CONFLICT  
IN THIS CASES, THE THIRD  
DISTRICT COURT -- WHAT THE U.S.  
SUPREME COURT CASE HELD WHICH  
THIS, THIS COURT HAS HELD IN  
OTHER DISTRICTS COURTS HAVE  
HELD, WHAT WOULD A REASONABLE  
PERSON HAVE BELIEVED UNDER THE  
CIRCUMSTANCE OF THE PETITIONER  
AS TO WHETHER SHE WOULD HAVE  
THOUGHT IT WAS ORDINARY TRAFFIC  
STOP, OR WHETHER SHE WOULD HAVE  
THOUGHT THAT SHE WAS IN CUSTODY?  
THE THIRD DISTRICT COURT OF  
APPEALS CONCLUDES AS LONG AS  
IT IS A LEGAL TRAFFIC STOP THE  
DEFENDANT IS NOT IN CUSTODY.

SO --

>> THEN A PART OF YOUR ARGUMENT  
THAT BECAUSE OF THE OFFICERS  
KNEW THAT THERE WAS A BOLO, THAT  
MADE MAKES A DIFFERENCE?

>> I DON'T BELIEVE THAT THE MERE  
FACT, WHAT THE OFFICER KNEW IS  
NOT RELEVANT.

>> OKAY.

>> WHAT THE DEFENDANT KNOWS IS  
WHAT'S RELEVANT.  
WHAT'S CRUCIAL THOUGH, WE KNOW  
WHAT THE OFFICERS KNEW AND WHAT  
THE UNITED STATES SUPREME COURT  
IN BERKIMER RECOGNIZED --

>> SHE KNEW SHE HAD RAN A RED LIGHT --

>> IT WAS DEBATABLE SHE KNEW WHETHER SHE RAN A RED LIGHT, AT HEARING THE OFFICER FIRST SAID SHE RAN A RED LIGHT. WHAT IT BECAME APPARENT, SHE DID NOT SLOW DOWN WHEN SHE MADE A RIGHT TURN ON A RED LIGHT. BUT THE CRUCIAL ISSUE, WHAT I GET TO WHAT BERKIMER SAYS, DIFFERENCE BETWEEN ORDINARY TRAFFIC STOP AND CUSTODY WHAT IS IN THE MIND OF THE DRIVER. WHAT BERKIMER SAYS, THERE ARE TWO FACTS TO LOOK AT. ORDINARY TRAFFIC STOP IS SOMETHING THAT A DRIVER KNOWS, THIS IS GOING TO BE A BRIEF ENCOUNTER. THAT THE DRIVER KNOWS HE WILL BE ASKED FOR LICENSE, REGISTRATION. MAY GET A TICKET. MAY NOT GET A TICKET AND HE GETS TO LEAVE. THAT IS THE FIRST THING THAT BERKIMER SAYS. THE SECOND THING BERKIMER SAYS, THE DRIVER DOESN'T THINK HE'S AT THE MERCY OF THE POLICE OFFICER. THOSE TWO FACTORS, WHEN THOSE TWO FACTORS OCCUR, SOMEONE DRIVING A CAR WOULD BELIEVE THAT'S AN ORDINARY TRAFFIC STOP AND THAT PERSON WOULD NOT THINK THEY'RE IN POLICE CUSTODY.

>> BUT AT THAT POINT THEY DID PULL HER OVER FOR A VALID TRAFFIC STOP.

>> CORRECT.

>> SO, AGAIN, I GUESS I'M STRUGGLING WITH HER I THINK THAT THIS CASE, AS SOME OF THE OTHER CASES, THEY FIRST ASK THEM TELL THEM WHAT'S GOING ON, THEY ASK FOR THEIR LICENSE.

>> AND I THINK THAT'S THE CRUCIAL THERE ARE THREE CRUCIAL FACTORS.

NUMBER ONE IS WOULD YOU KNOW  
THAT IT'S A BRIEF DETENTION?  
AND THE FIRST THING THAT WE  
WOULD NOTE, I WOULD ASSUME THAT  
MOST OF US HAVE BEEN STOPPED FOR  
A TRAFFIC STOP.

FIRST THING THAT GOES INTO OUR  
MIND, WHAT DID I DO?

POLICE OFFICER COMES TO YOUR  
CAR.

CAN I SEE YOUR LICENSE, YOUR  
REGISTRATION.

NEXT THING THAT HAPPENS, WE TAKE  
A DEEP BREATH.

OKAY.

WE'RE NOT GETTING ARRESTED.

OR THE POLICE OFFICER GOES YOU  
JUST RAN A RED LIGHT.

OR THE POLICE OFFICER GOES  
YOU'VE BEEN SPEEDING.

THE WHOLE PRESSURE OF THAT  
SITUATION GOES AWAY BECAUSE YOU  
KNOW IT'S GOING TO BE A BRIEF  
ENCOUNTER.

LET'S LOOK AT THIS SITUATION.

THIS SITUATION WE HAVE TWO  
NARCOTICS TWO OFFICERS

WORKING IN A NARCOTICS

>> BUT, AGAIN, YOU ARE

CONTRADICTING YOURSELF WHEN YOU  
MAKE A REFERENCE TO THE FACT  
THAT THEY'RE WORKING NARCOTICS  
BECAUSE YOU'VE ALREADY SAID THAT  
THAT'S GOT NOTHING TO DO WITH  
THE MIND WHAT'S IN THE MIND  
OF THE DEFENDANT.

AGAIN, THIS IS A RECURRING  
THEME.

I DON'T UNDERSTAND WHY THAT  
SELFCONTRADICTION COMES IN.

>> WHAT I MEAN TO SAY IS THAT IF  
THE POLICE OFFICER'S INTENTION  
IS NOT RELEVANT.

WHAT THE U.S. SUPREME COURT SAID  
IS YOU LOOK TO THE POLICE  
OFFICER'S ACTIONS TO SEE IF THEY  
RELAYED THEIR INTENTIONS TO THE  
DEFENDANT.

SO WHAT WE HAVE HERE IS IN A  
NORMAL TRAFFIC STOP, THERE MAY

BE TWO POLICE OFFICERS, BUT IN A NORMAL TRAFFIC STOP, TWO POLICE OFFICERS DON'T COME TO THE DRIVER'S SIDE AND THE PASSENGER SIDE.

>> WELL, IF YOU LOOK AT BERKEMER, THEY SPECIFICALLY MADE REFERENCE TO ONE OR TWO OFFICERS COMING TO THE CAR.

DID THEY NOT?

>> YES, THEY DID.

BUT IN BERKEMER WHAT THEY DID NOT REFERENCE TO YOU WERE BLOCKED INTO THE CAR.

IN BERKEMER WHAT THEY SPECIFICALLY SAID WAS THE INDIVIDUAL WAS OUTSIDE THE CAR. SHE HAD ONE ROADSIDE TEST IN FULL VIEW OF THE PUBLIC, SO SHE DID NOT BELIEVE SHE WAS AT THE MERCY OF THE POLICE.

WHAT WE HAVE IN THIS CASE IS A WOMAN IN A CAR, SOMEONE ON THE DRIVER'S SIDE, SOMEONE ON THE PASSENGER SIDE, NO WAY OUT. THE NEXT THING THAT HAPPENS, NO MENTION OF A TRAFFIC TICKET. NOTHING WHATEVER TO DO WITH A TRAFFIC TICKET.

>> OBVIOUSLY WHEN YOU ARE STOPPED, WHEN THERE'S A TRAFFIC STOP, TO A CERTAIN EXTENT THERE'S NO WAY OUT.

YOU ARE DETAINED.

>> NO QUESTION ABOUT IT.

>> THE QUESTION IS WHETHER THAT DETENTION, WHICH IS AUTHORIZED, THE CHARACTER OF IT IS CHANGED BY THIS SIMPLE QUESTION THAT WAS ASKED AT THE OUTSET OF THE ENCOUNTER.

YOU CONCEDE THAT THAT'S REALLY WHAT THIS IS ABOUT.

>> THIS IS WHAT IT'S ABOUT, YES.

>> NOW, IT SEEMS TO ME YOU'VE GOT THESE TRAFFIC STOPS.

A TRAFFIC STOP IS LIKE A TERRY STOP THAT DOESN'T INVOLVE A VEHICLE, WHERE I MEAN, IT'S SIMILAR IN MANY RESPECTS, WHERE

THE POLICE HAVE REASONABLE  
SUSPICION.

ACTUALLY LESS OF REASON TO STOP  
SOMEBODY, BUT BASED ON  
REASONABLE SUSPICION CAN STOP  
SOMEONE, DETAIN THEM IN A TERRY  
STOP.

I WOULD HAZARD A GUESS THAT  
TERRY STOPS ALL ACROSS THIS  
COUNTRY WOULD FREQUENTLY BE  
PREFACED BY A QUESTION, DO YOU  
HAVE ANY GUNS OR DRUGS ON YOU.  
WOULD THAT CONVERT THOSE TERRY  
STOPS INTO A CUSTODIAL SITUATION  
WHERE MIRANDA HAS TO BE  
ADMINISTERED, IN YOUR OPINION?

>> IF THE TERRY STOP IS HELD  
OUTSIDE OF A CAR WHERE YOU'RE  
NOT CONFINED INTO A CAR, IF THE  
TERRY STOP IS ASKED DO YOU HAVE  
GUNS

>> CONFINED IN A CAR?  
THE CAR IS THE WAY SHE WOULD  
DRIVE AWAY.

>> SHE HAD A POLICE OFFICER ON  
THE DRIVER'S SIDE, ON THE  
PASSENGER SIDE.

AND WHAT THE SUPREME COURT IN  
BERKEMER SAID THEY RECOGNIZED

>> IN MY QUESTION GO BACK TO  
MY QUESTION.

YOU DON'T THINK THAT IN A TERRY  
STOP SITUATION, UNLIKE THIS  
TRAFFIC STOP, THAT THE ASKING OF  
THAT QUESTION WOULD TRANSFORM IT  
INTO A CUSTODIAL

>> IT WOULD BE ACCORDING TO WHAT  
THE TERRY STOP THE EXTENT OF  
THE TERRY STOP.

IS A TERRY STOP IS GOVERNED BY  
THE 4TH AMENDMENT.

MIRANDA IS GOVERNED BY THE FIFTH  
AMENDMENT.

ONE TYPE OF TERRY STOP, TWO  
POLICE OFFICERS WALK UP, I HAVE  
ONE OR TWO QUESTIONS AND THEY  
PAT THEM DOWN.

COURTS HAVE RECENTLY HELD THAT A  
TERRY STOP CAN ALSO CONSIST OF

PUTTING A HANDCUFF IN SOMEBODY,  
PUTTING THEM IN A POLICE CAR.  
THAT'S THE 4TH AMENDMENT  
INQUIRY.

THE FIFTH AMENDMENT INQUIRY IS  
WHAT WOULD A REASONABLE PERSON  
BELIEVE?

REASONABLE PEOPLE DON'T REALLY  
DISTINGUISH BETWEEN TERRY STOPS  
AND ARRESTS.

>> WHAT YOU'RE REALLY SAYING IS  
IF THE INTIMIDATION IS DO YOU  
HAVE DRUGS OR WEAPONS IN THE CAR  
AND THEN THAT THAT IS THE  
TRIGGER FOR WHETHER YOU THINK  
YOU'RE IN CUSTODY, IT CAN'T BE,  
YOU KNOW, GIVING MIRANDA,  
BECAUSE IN THE TERRY STOP  
SITUATION, THEY THEN PROCEED  
AFTER THEY PAT THE PERSON DOWN  
TO ASK QUESTIONS AND THEY DON'T  
GIVE MIRANDA WARNINGS AT THAT  
TIME, SO

>> WELL, THE U.S. SUPREME COURT  
HAS TALKED ABOUT IN BERKEMER  
THAT I WOULD CONTEND THERE ARE  
CASES THAT TERRY STOPS DON'T  
EXCLUDE THE MIRANDA ISSUE.

>> BUT THE MIRANDA ISSUE

>> IS A FIFTH AMENDMENT ISSUE.

>> IT IS, BUT IT'S REALLY SO  
THAT I FOCUS, AGAIN, YOU'RE  
CLAIMING A VIOLATION FOR FIFTH  
AMENDMENT RIGHTS TO REMAIN  
SILENT.

>> CORRECT.

>> SO YOU WOULD THINK THAT WHEN  
THERE'S A TRAFFIC STOP AND  
THAT BUT IF THEY FIRST SAY  
LICENSE AND REGISTRATION, THEY  
CAN DO THAT.

THEY COME BACK AND BEFORE THEY  
CAN ASK DO YOU HAVE DRUGS OR  
WEAPONS IN YOUR VEHICLE, THEY  
HAVE TO SAY BUT NOW I'M GOING TO  
MIRANDAIZE YOU?

>> THAT IS EXACTLY OUR POSITION  
UNDER THE FACTS OF THIS CASE  
LEAVING OUT WEAPONS.

I BELIEVE THE POLICE WOULD HAVE

THE RIGHT TO ASK WEAPONS, NOT DRUGS.

WHAT WE NEED TO WHEN WE LOOK AT BERKEMER, THE CRUCIAL ISSUE IS DID A PERSON IN MY CLIENT'S POSITION BELIEVE THIS WAS A TRAFFIC STOP OR DID SHE BELIEVE IT WAS MORE THAN A TRAFFIC STOP? AND ONCE YOU'VE BEEN PULLED OVER BY A POLICE CAR, WHERE YOUR MOVEMENT HAS BEEN CONFINED, YOU'RE EITHER AT THE STAGE

>> WELL, HOW DOES THAT FIT IN WITH WHAT THE U.S. SUPREME COURT SAID IN ARIZONA VERSUS JOHNSON, WHERE THEY SPECIFICALLY, IF I CAN GET THIS MOVING HERE THEY SPECIFICALLY RECOGNIZED THAT ASKING OF QUESTIONS THAT WERE UNRELATED TO THE REASON FOR THE DETENTION WOULD NOT TRANSFORM IT INTO A

>> ARREST UNDER THE 4TH AMENDMENT.

WHAT THAT CASE IS TALKING ABOUT IS THE LENGTH OF THE DETENTION DOESN'T AUTOMATICALLY THE CRUCIAL ISSUE FOR THE 4TH AMENDMENT WHETHER IT'S REASONABLE VIA TERRY STOP OR WHETHER IT'S REASONABLE UNDER THE FIFTH AMENDMENT, WHAT A REASONABLE PERSON WOULD BELIEVE. AND I WOULD I THINK THE EASIEST WAY TO GET DOWN TO UNDERSTAND THIS ISSUE IS WHAT IN THIS CASE WOULD HAVE LET THIS INDIVIDUAL REMOTELY TO BELIEVE THAT THIS WAS A TRAFFIC STOP? AND THAT'S WHAT BERKEMER IS TALKING ABOUT.

WHY WOULD SHE HAVE BELIEVED THIS WAS A TRAFFIC STOP? SHE IS DRIVING IN HER CAR. SHE GETS PULLED OVER. SHE HAS POLICE COME

>> MAYBE THE FACT THAT SHE BLEW THROUGH THE RED LIGHT WOULD MAKE HER

>> WELL, SHE DIDN'T BLOW THROUGH



A RED LIGHT.

THE TESTIMONY FROM THE OFFICER WAS HE WASN'T SURE IF IT WAS A RED LIGHT.

THEN HE SAID SHE FAILED TO YIELD ON THE TURNING OF THE RED LIGHT. EVEN IF SHE DID BLOW THROUGH A RED LIGHT, THE POINT IS TWO POLICE OFFICERS COME UP TO HER WITH NO CUES TO REMOTELY SUGGEST TO HER THAT THIS IS A TRAFFIC STOP.

>> BUT I THINK YOU'D HAVE A DIFFERENT FACTUAL SITUATION IF YOU HAD A CIRCUMSTANCE LIKE IN HALL, WHICH ACTUALLY WASN'T A TRAFFIC STOP, BUT WAS AN ENCOUNTER WHERE THE POLICE APPROACH AND SAY WE'VE BEEN WATCHING YOU.

WE THINK YOU GOT DRUGS IN THERE. NOW, AT THAT POINT IT MAY WELL BE THE CASE THAT THE PERSON SITTING THERE IS THINKING I AM NOT GOING HOME FROM THIS ENCOUNTER.

THEY HAVE WATCHED ME.

THEY KNOW I'VE GOT DRUGS, AND I'M TOAST.

BUT THAT'S NOT WHAT HAPPENED HERE, IS IT?

>> IT'S NOT EXACTLY WHAT HAPPENED HERE.

IT'S PRETTY CLOSE TO WHAT HAPPENED HERE, PLUS ONE FACTOR I THINK IN OUR CASE, WHICH IS WORSE.

WE START OFF WITH GETTING PULLED OFF IN A TRAFFIC STOP, SO WE'RE GOING OUR MERRY WAY, WE GET PULLED OVER, WE GET SURROUNDED BY LIKE IN HALL.

THE ONLY DIFFERENCE BETWEEN THIS CASE AND HALL IS THE DISTINCTION OF I THINK YOU HAVE DRUGS, DO YOU HAVE DRUGS

>> BUT IN TERMS OF HOW WE ANALYZE WHETHER A CUSTODIAL STATUS EXISTS FOR PURPOSES OF MIRANDA, THE PRESENTATION OR THE

CONFRONTATION WITH EVIDENCE OF GUILT OR AN ACCUSATION OF GUILT IS A FACTOR THAT ENTERS VERY SIGNIFICANTLY INTO THAT ANALYSIS.

IS THAT NOT TRUE?

>> DEFINITELY TRUE.

THAT'S A VERY IMPORTANT FACTOR, AND IT IS OUR CONTENTION THAT

>> BUT DOESN'T THAT DISTINGUISH THIS CASE FROM HALL IN A FUNDAMENTAL IN A QUITE SALIENT WAY?

>> I DON'T BELIEVE IT DISTINGUISHES IT.

IT MAKES IT A LITTLE BIT DIFFERENT, BUT IN BOTH SITUATIONS, ONCE AGAIN WE'RE BEING ASKED TO PUT OURSELVES IN THE POSITION OF A REASONABLE PERSON IN THE STREET.

>> WHAT IF UPON APPROACHING THE POLICE OFFICER HAD ASKED NOTHING ABOUT THE DRUGS, ONLY IF SHE HAD WEAPONS?

>> WE WOULD NOT BE HERE TODAY BECAUSE I THINK MOST PEOPLE WHEN THEY ARE ASKED ABOUT WEAPONS DON'T VIEW THAT AS ANYTHING INCONSISTENT WITH A TRAFFIC STOP.

IF WE ALL GET STOPPED AND A POLICE OFFICER COMES UP TO US AND GOES DO YOU HAVE WEAPONS, THAT'S CONSISTENT WITH BEING A TRAFFIC STOP.

>> I HAVE TO TELL YOU, I HAVE BEEN THE SUBJECT OF SOME TRAFFIC STOPS.

IT WAS A LONG TIME AGO, BEFORE I WAS A JUDGE, BUT I WILL ALSO TELL YOU THAT WHEN THAT HAPPENED TO ME, THEY NEVER ASKED ME IF I HAD WEAPONS.

>> THE FACT THAT THEY CHOSE NOT TO ASK YOU ABOUT WEAPONS I THINK THERE IS A MASSIVE DISTINCTION BETWEEN BEING ASKED

ABOUT DRUGS AND ABOUT WEAPONS.  
WHEN SOMEONE IS BEING ASKED  
ABOUT

>> IF THEY HAD FIRST SAID YOU  
JUST RAN THAT RED LIGHT, GIVE ME  
YOUR LICENSE AND REGISTRATION,  
AND DO YOU HAVE WEAPONS OR DRUGS  
ON YOU, WOULD WE STILL BE HERE?

>> NO, BECAUSE

>> SO THE PROBLEM IS THAT THEY  
DID NOT ALERT HER THAT THIS WAS  
A TRAFFIC STOP.

>> THAT IS THE PROBLEM HERE  
BECAUSE WE'RE BEING ASKED TO PUT  
OURSELVES WHICH IS NOT AN  
EASY THING TO DO, TO PUT  
OURSELVES IN THE POSITION OF A  
REASONABLE PERSON WHEN THEY'RE  
ENCOUNTERED BY THE POLICE AND  
HOW THEY MAY FEEL.

>> I'VE BEEN STOPPED SINCE I WAS  
A JUDGE.

AND THE QUESTIONS WERE, YOU  
KNOW, FIRST OF ALL, YOU KNOW,  
HAVE YOU BEEN DRINKING?  
AND HAVE YOU ANY WEAPONS ON YOU?  
NOW, WOULD THE QUESTION HAVE YOU  
BEEN DRINKING, WOULD THAT TURN  
THIS STOP INTO A CUSTODIAL?

>> I DON'T THINK IT WOULD  
BECAUSE IT WOULD STILL BE IN  
REFERENCE TO A TRAFFIC STOP.  
THAT THE IDEA WHEN SOMEONE WALKS  
UP TO YOU AND SAYS TO YOU  
SURROUNDS YOUR CAR AND CONFRONTS  
YOU WITH DO YOU HAVE DRUGS, ONCE  
AGAIN, WE'RE AT THE STAGE WHERE  
THE U.S. SUPREME COURT SAID  
WOULD A REASONABLE PERSON HAVE  
THOUGHT THIS WOMAN WAS IN AN  
ORDINARY TRAFFIC STOP.

THIS WAS NOT AN ORDINARY TRAFFIC  
STOP, NUMBER ONE, AND EVERY CLUE  
THAT WAS GIVEN TO THIS DRIVER  
WAS THAT THIS WAS NOT AN  
ORDINARY TRAFFIC STOP.

>> WELL, IT'S A PRETTY SAD  
DISTINCTION BETWEEN DRUGS AND  
ALCOHOL.

YOU'RE TALKING ABOUT IMPAIRMENT

IN BOTH, SO WHY WOULDN'T THAT BE

>> DRUGS IS INHERENTLY ILLEGAL,  
IS A CRIME.

SO YOU'RE BEING CONFRONTED  
DRINKING AND DRIVING AT A  
CERTAIN LEVEL MAY GET YOU

>> THE QUESTION WAS ARE YOU ON  
DRUGS INSTEAD OF HAVE YOU BEEN  
DRINKING?

WOULD THAT CHANGE YOUR SCENARIO?

>> IF YOU ARE ON DRUGS.

>> YEAH.

PULL YOU OVER, LET ME SEE YOUR  
DRIVER'S LICENSE, LET ME SEE  
YOUR REGISTRATION, DO YOU HAVE  
DRUGS ON YOU, ARE YOU ON DRUGS?

>> ONCE YOU SAY LICENSE AND  
REGISTRATION I THINK THE  
PRESSURE IS GONE AND YOU'RE NOT  
IN CUSTODY.

ONCE THE SUPREME COURT

>> HANG ON A SECOND.

CALM DOWN.

IF YOU ASK THE THIRD QUESTION,  
ARE YOU ON DRUGS RIGHT NOW, HAVE  
YOU BEEN SMOKING, HAVE YOU BEEN  
TAKING DRUGS

>> TAKING YOUR MEDICAL  
MARIJUANA.

>> WELL, YEAH.

WELL, I MEAN, DOES THAT CHANGE  
THE SCENARIO INTO A CUSTODIAL  
SETTING?

>> IS THE INITIAL QUESTION  
LICENSE AND REGISTRATION?

I THINK THAT'S WHAT YOU SAID,  
WAS

>> OKAY.

>> IF YOU TELL ASK SOMEBODY  
FOR THEIR LICENSE AND  
REGISTRATION OR IF YOU GIVE THEM  
ANY CUE THAT THIS IS A TRAFFIC  
ENCOUNTER, THE DEFENDANT IS NOT  
ENTITLED TO HIS MIRANDA RIGHTS.

>> THE ONLY REASON THE DEFENDANT  
WOULD THINK THAT THEY'RE IN  
CUSTODY IF THEY'RE ASKING FOR  
DRUGS IS IF IN FACT THEY HAD  
DRUGS IN THE CAR, RIGHT?

>> WELL, UNFORTUNATELY WE'RE NOT ALLOWED TO CONSIDER THAT FACTOR BECAUSE A REASONABLE PERSON DOESN'T GET TO THE PREMISE THAT OBVIOUSLY THIS DEFENDANT WOULD HAVE BELIEVED SHE WAS IN CUSTODY BECAUSE SHE DID HAVE DRUGS.

BUT THE LAW DOESN'T ALLOW US TO USE THAT PRESUMPTION.

WE HAVE TO GO ON THE PREMISE SHE DIDN'T HAVE DRUGS.

IN CONCLUSION BECAUSE I THINK MY TIME IS UP, IT IS OUR CONTENTION THIS WAS NOT AN ORDINARY TRAFFIC STOP AND NOBODY WOULD HAVE BELIEVED IT WAS AN ORDINARY TRAFFIC STOP.

>> DO YOU HAVE TO LOOK AT WHAT A REASONABLE PERSON?

OR DO YOU HAVE TO LOOK AT THE INDIVIDUAL DEFENDANT?

WHAT ABOUT THE DEFENDANT WHO'S HAS VIOLATED PROBATION, THEY'RE OUT, THEY HAVE A WEAPON ON THEM WHEN THEY KNOW WHEN THE POLICE OFFICER WALKS UP THERE TO THE CAR THAT AND ASKS THE QUESTION IF THEY HAVE A WEAPON ON THEM THAT THEY'RE GOING TO GO TO JAIL?

>> WE HAVE TO USE A REASONABLE PERSON.

>> SO IT DOESN'T APPLY IN THAT CIRCUMSTANCE.

>> RIGHT.

AND UNFORTUNATELY IN THIS CASE IT WOULD BE EASIER IF WE COULD USE THE DEFENDANT.

>> A REASONABLE PERSON.

SO YOU'RE SAYING A REASONABLE PERSON WHO IS STOPPED BY THE POLICE AND THE FIRST QUESTION IS ASKED DO YOU HAVE ANY GUNS OR DRUGS IN THERE IS GOING TO ASSUME THAT THEY'RE ON THEIR WAY TO JAIL.

THEY'RE GOING TO BELIEVE THAT THEY'RE ON THE WAY TO JAIL.

>> I BELIEVE THAT A REASONABLE

PERSON IN THE CIRCUMSTANCES OF THIS GETS PULLED OVER THAT HAS SOMEONE ON THE RIGHT AND LEFT AND SAYS DO YOU HAVE DRUGS THINKS THE NEXT STEP IS THEY'RE GOING TO JAIL.  
THE CHOICES, DO THEY THINK IT'S AN ORDINARY TRAFFIC STOP  
>> THAT SEEMS RATHER IMPLAUSIBLE.  
>> IT CLEARLY IS NOT AN ORDINARY TRAFFIC STOP.  
THAT'S THE CHOICE.  
WAS IT AN ORDINARY TRAFFIC STOP, WHICH NO ONE WOULD HAVE BELIEVED IT WAS, OR WAS IT SOMETHING WHERE THE POLICE WANTED THIS DEFENDANT TO THINK, WHICH IS EXACTLY WHAT THE FACTS IN THIS CASE ESTABLISH.  
SHE KNEW SHE WAS GOING NOWHERE. WHAT BERKEMER SAYS, WHICH IS THE LAST AND MOST CRUCIAL FACT, BERKEMER SAYS DID THAT PERSON FEEL THAT THEY WERE COMPELLED TO ANSWER THAT QUESTION OR THEY WERE GOING NOWHERE.  
DOES ANY PERSON IN MY CLIENT'S POSITION FEEL IF SHE DIDN'T ANSWER THE QUESTION ABOUT DRUGS THAT'S WHEN YOU'RE ENTITLED TO MIRANDA.  
>> IF SHE HAD SAID I DON'T HAVE A WEAPON, NO, I DON'T.  
THE QUESTION SAID WEAPON AND DRUGS AND SHE SAID, NO, I DON'T, DO YOU THINK AN ORDINARY PERSON ANSWERING THAT QUESTION WOULD STILL THINK THEY'RE GOING TO JAIL?  
>> IF THEY'RE ONLY ASKED WEAPONS AND THEY SAY NO?  
>> NO.  
THE SAME QUESTION, BUT YOU JUST SAY NO.  
>> I THINK THAT YES.  
I THINK A THE QUESTION IN MIRANDA IS NOT WHAT THE PERSON THINKS AFTER THE ANSWER.  
THE QUESTION IS THE QUESTION.

>> BUT YOU THINK THE AVERAGE PERSON WHO SAID NO TO THAT QUESTION WOULD THINK THEY'RE GOING TO JAIL?

>> CORRECT.

WHEN SOMEONE WOULD HAVE BEEN CONFRONTED WITH DO YOU HAVE DRUGS IN THE SITUATION MY CLIENT WAS IN.

THANK YOU.

>> WE'VE USED YOUR TIME. GIVE YOU AN ADDITIONAL MINUTE FOR REBUTTAL.

>> FOR THE RECORD, I HAD NOT BEEN DRINKING THAT NIGHT.

>> I WAS WONDERING.

>> THEY DID SAY IT WAS THE STANDARD QUESTIONS THEY ASK EVERYBODY, FOR THE RECORD.

>> MAY IT PLEASE THE COURT, MICHAEL MURVINE FROM THE ATTORNEY GENERAL'S OFFICE ON BEHALF OF THE STATE OF FLORIDA.

WHEN THE OFFICER ASKED THE PRELIMINARY QUESTIONS FOR THE STOP AFTER RUNNING THE RED LIGHT, THE MIRANDA WARNINGS WEREN'T IMPLICATED BECAUSE A REASONABLE PERSON WOULD NOT FEEL THAT THEIR FREEDOM OF ACTION HAD BEEN LIMITED TO THE EXTENT OF A FORMAL ARREST.

>> DID HE EVER ASK FOR A LICENSE?

DID HE EVER TELL THE DRIVER THAT THERE WAS IN FACT A TRAFFIC VIOLATION AND THAT'S WHY THEY WERE BEING STOPPED?

>> NO, YOUR HONOR.

IT DIDN'T GET TO THAT POINT. HE FIRST APPROACHED THE VEHICLE. HE SAID GOOD MORNING. HE THEN SAID DO YOU HAVE ANY DRUGS?

DO YOU HAVE ANY WEAPONS?

HE TESTIFIED AT THE SUPPRESSION HEARING THAT THOSE WERE STANDARD QUESTIONS THAT HE ALWAYS ASKED AND THEY WERE DONE FOR SAFETY.

>> BUT HERE'S MY PROBLEM WITH IT AND, AGAIN, I GUESS SOME OF US HAVE BEEN STOPPED AT DIFFERENT TIMES IN OUR LIFE FOR TRAFFIC STOPS, WHICH IS FIRST OF ALL, IT'S ALWAYS IT'S ALWAYS INTIMIDATING NO MATTER HOW LAWABIDING YOU ARE WHEN YOU GET PULLED OVER.

SHE'S GOT COPS ON BOTH SIDES. AND THEY'RE STOPPING HER, AGAIN, WE HAVE TO LOOK OBJECTIVELY. WE NOW KNOW THAT THEY HAD THE BOLO AND SO THE ISSUE OF OFFICER SAFETY, SHE'S PULLED OVER, SHE'S NOT ASKED COULD THEY HAVE ASKED HER TO GET OUT OF THE CAR?

>> OFFICERS CAN ASK PEOPLE TO GET OUT OF THE CAR.

>> SO THEY COULD SAY, MA'AM, I'D LIKE YOU TO PLEASE GET OUT OF THE CAR.

AT THAT POINT THE QUESTION IS WHY IS IT RELEVANT WEAPONS ON YOU, DO YOU HAVE ANY WEAPONS ON YOU, WHAT'S RELEVANT ABOUT DO YOU HAVE ANY DRUGS IN YOUR VEHICLE IF THE PURPOSE THE STOP THERE WAS NOTHING TO PUT THEM ALERT THEM THAT MAYBE THE PERSON WAS UNDER THE INFLUENCE.

AGAIN, I UNDERSTAND THE WEAPON ISSUE AND THERE'S LIMITED PATDOWNS UNDER CERTAIN SITUATIONS.

BUT THIS IDEA THAT AN ORDINARY, LAWABIDING CITIZEN CAN BE STOPPED BY POLICE, SURROUNDED AND THEN ASKED AND I'D LIKE TO KNOW, DO YOU HAVE ANY DRUGS OR WEAPONS IN YOUR VEHICLE, THAT SEEMS PRETTY INTIMIDATING.

AND SO THE FACT IT'S STANDARD DOESN'T MAKE IT NOT MAKE IT RIGHT OR NONCUSTODIAL.

SO WHAT IS I JUST HAVE NEVER THE OTHER CASES, THEY START WITH THE LICENSE, REGISTRATION, AND USUALLY THEY'LL SAY GET OUT



OF THE CAR AND DO YOU HAVE ANY DRUGS I MEAN DO YOU HAVE ANY WEAPONS ON YOU OR THEY DO THE PATDOWN.

SO WHAT ISN'T THAT MATERIAL A MATERIAL DISTINCTION, THAT THIS IS NOT AN ORDINARY TRAFFIC STOP?

>> IT IS A DISTINCTION, YOUR HONOR, BUT I DON'T BELIEVE THAT IT TRANSFORMS IT INTO CUSTODY FOR PURPOSES OF INTERROGATION. THE UNITED STATES SUPREME COURT IN PENNSYLVANIA VERSUS STATED THAT THESE TRAFFIC STOPS ARE INHERENTLY DANGEROUS FOR THE POLICE. THEY WERE ASKING THESE QUESTIONS

>> BUT UNFORTUNATELY PEOPLE THAT REALLY HAVE THE WEAPON THAT ARE GOING TO DO IT, OH, YEAH, I'VE GOT A WEAPON.

I MEAN, THE IDEA IS THEY'RE INHERENTLY DANGEROUS IF THEY BUT SO IF THEY'RE ASKING THEM TO GET OUT OF THE CAR.

BUT WHAT ABOUT THE DRUG PART? AGAIN, WEAPONS, DO YOU HAVE ANY WEAPONS OR DRUGS, WHAT MAKES THE DRUG PART OF THESE YOU KNOW, THESE ARE CONCERNS FOR POLICE OFFICERS, IN THE CAR DRUGS IN THE CAR.

>> PEOPLE WHO POSSESS DRUGS OFTEN TAKE DRUGS AND PEOPLE WHO ARE ON DRUGS ARE OFTEN VOLATILE, THEY'RE OFTEN IRRATIONAL

>> SO ARE THEY ALLOWED SO ISN'T THE ISSUE THEN NOT DO YOU HAVE DRUGS IN YOUR CAR, BUT ISN'T THE ISSUE OF YOU JUST RAN A RED LIGHT.

ARE YOU ON ARE YOU TAKING ANY ARE YOU ON DRUGS, ALCOHOL, WHATEVER AS FAR AS EXPLAINING WHAT MIGHT HAVE HAPPENED. AND THEN IT'S NOT IT'S A DIFFERENT YOU KNOW YOU'RE BEING ASKED IT BECAUSE NOW

THEY'RE CONCERNED ABOUT MAYBE  
THE TRAFFIC VIOLATION.  
BUT ASKING DO YOU HAVE DRUGS IN  
THE VEHICLE ISN'T THE SAME AS  
SAYING AND ARE YOU DOING DRUGS  
RIGHT NOW.  
YOU KNOW, THEY SEE PEOPLE THAT  
ARE GLASSYEYED.  
THEY THEN ASSUME SOMETHING'S  
GOING ON.  
SO IT'S A GENERAL QUESTION.  
YOU'RE TELLING ME THAT THE  
REASON THEY ASK ARE THEY ON  
DRUGS IS BECAUSE THOSE I MEAN  
THEY HAVE DRUGS IN THEIR VEHICLE  
BECAUSE THOSE ARE GOING TO BE  
PEOPLE THAT WILL BE MORE LIKELY  
TO BE CONFRONTATIONAL?  
>> YES.

>> LET ME ASK YOU THIS.  
LET ME CHANGE THE FACTS AROUND A  
LITTLE BIT.  
LET'S ASSUME THAT MISS HINMAN  
WAS ACTUALLY INVOLVED IN A DRUG  
DEAL.  
SHE LEFT THE HOME WHERE THE DRUG  
DEAL WAS CONDUCTED, SO SHE'S  
AWARE THAT SHE HAD JUST BROKE  
THE LAW.  
AND TWO INTERSECTIONS LATER  
SHE'S PULLED OVER AND THESE  
FACTS OCCUR.  
WOULD THAT BE A CUSTODIAL?  
WHERE A POLICE OFFICER COME  
OVER, TWO OF THEM, DRIVER'S  
LICENSE, REGISTRATION, DO YOU  
HAVE ANY DRUGS ON YOU, WEAPONS?  
WOULD THAT BE  
>> NO, YOUR HONOR, BECAUSE IT'S  
THE OBJECTIVE, REASONABLE PERSON  
STANDARD.  
THE SUBJECTIVE THOUGHTS OF THE  
SUSPECT, AS WELL AS THE OFFICER,  
DON'T PLAY A PART IN THE ROLE.  
>> WAIT A MINUTE.  
WHAT DO YOU MEAN THAT THE  
THOUGHTS OF THE PERSON DON'T  
PLAY A ROLE?

I THOUGHT THAT WAS THE KEY DETERMINATION.

>> NO.

IN FACT

>> IT'S NOT WHAT THE PERSON BELIEVES, WHETHER THEY'RE UNDER MIRANDA, WHETHER THAT PERSON BELIEVES THEY'RE IN CUSTODY AND ARE NOT FREE TO LEAVE?

>> NO.

>> THAT'S NOT THAT'S NOT IN MIRANDA?

>> MY UNDERSTANDING, THAT IT'S THE REASONABLE PERSON'S TEST.

>> RIGHT.

THE REASONABLE PERSON BELIEVES WHAT?

>> IT'S WHETHER A REASONABLE PERSON UNDER THE CIRCUMSTANCES WOULD BELIEVE THAT THEIR FREEDOM OF ACTION HAS BEEN RESTRICTED TO A LEVEL EQUAL TO A FORMAL ARREST.

>> FORMAL ARREST.

YOU THINK THAT HAS TO BE BEFORE MIRANDA APPLIES?

>> YES, THE EQUIVALENT OF IT.

>> OKAY.

>> THAT'S STATED IN BOTH BERKEMER AS WELL AS THIS COURT'S

>> FORMAL ARREST.

I NEVER UNDERSTOOD THAT A PERSON HAD TO BELIEVE THAT THEY WERE FORMALLY ARRESTED BEFORE MIRANDA WOULD COME INTO PLAY.

>> IT'S NOT WHAT THAT PERSON WOULD BELIEVE.

IT'S WHAT A REASONABLE PERSON WOULD BELIEVE.

>> THAT'S WHAT I'M SAYING, THE REASONABLE PERSON WOULD BELIEVE THAT THEIR MOVEMENT IS RESTRICTED AND THEY'RE NOT FREE TO GO.

AND YOU KEEP ADDING FORMAL ARREST AND I'M NOT SURE I EVER READ A CASE THAT SAYS THEY HAVE TO BELIEVE THAT THEY'RE FORMALLY ARRESTED.

A REASONABLE PERSON WOULD BELIEVE THAT.

>> IT'S MY UNDERSTANDING THAT THAT WAS THE HOLDING IN BERKEMER AS WELL AS THIS COURT'S CASE.

>> DID PRESIDENT 3rd DISTRICT'S DECISION TURN ON THE FACT THAT SHE WAS NOT AWARE OF THE FACT THAT THE OFFICERS KNEW THAT THERE WAS A BOLO OUT FOR HER CAR?

HAD SHE KNOWN THAT, THEN WE MAY NOT BE HERE TODAY.

>> THE COURT'S DECISION WAS BASED UPON A REASONABLE, OBJECTIVE STANDARD, SO THEY DIDN'T TAKE INTO ACCOUNT HER SUBJECTIVE THOUGHTS OR HER SUBJECTIVE ACTIONS IMMEDIATELY PRIOR TO THE STOP.

SO THE COURT JUST FOCUSED WHAT A REASONABLE PERSON WOULD BELIEVE, AND THE COURT RELIED ON THE SUPREME COURT'S DECISION.

>> BUT DON'T YOU HAVE TO LOOK AT THE SUBJECTIVE THOUGHTS OF THE PERSON, WHAT THE PERSON BELIEVED AT THE MOMENT, WHETHER SHE WAS IN CUSTODY OR NOT?

>> NO.

AND THAT'S QUITE CLEAR FROM MY UNDERSTANDING OF THE CASE LAW. IT'S A REASONABLE, OBJECTIVE STANDARD.

>> WELL, LET'S THE CASE THAT YOU RELY ON, HUWETT FROM THE 5TH DISTRICT, HERE IT IS, THEY STOPPED HIM.

THEY WERE PART OF THE UNIFORM DRUG PATROL UNIT.

THEY STOPPED HIM FOR A TRAFFIC VIOLATION, FAILURE TO STOP.

FIRST THE CAR AND THEY FIRST ASKED YOU HER DRIVER'S LICENSE, RIGHT?

WHAT'S THE FIRST QUESTION?

SHE DIDN'T STOP.

SHE STATED THAT SHE WAS AN UNLICENSED DRIVER.

SHE NEVER OBTAINED A LICENSE.

NOW YOU'RE DEALING WITH THIS PERSON ISN'T GOING TO BE ALLOWED NO MATTER WHAT THEY WERE THINKING AT THE TIME, THEY CAN'T DRIVE ANYMORE BECAUSE THEY DON'T HAVE A LICENSE.

THEY ASKED HER TO STEP OUT OF THE CAR AND THEN WHICH SHE DID, BECAUSE, AGAIN, YOU'RE NOT GOING TO ALLOW THIS PERSON FOR DRIVE.

AND THEN FOR OFFICER SAFETY REASONS THEY ASKED HER IF SHE HAD A GUN, KNIVES OR DRUGS ON HER PERSON.

HUWETT, ANOTHER WOMAN HERE, SHE STARTED CRYING, SAID SHE HAD SOME WEED ON HER.

BUT TO ME THAT IS AND I THINK THAT'S WHAT COUNSEL HAS BEEN ARGUING.

THAT'S WHAT YOU WOULD THINK ABOUT THE NORMAL SEQUENCE OF A TRAFFIC STOP.

YOU'RE PULLED OVER.

THE FIRST THING YOU'RE ASKED IS FOR LICENSE AND REGISTRATION. IF YOU ARE NAIVE, I MEAN, IF YOU THINK YOU WERE SPEEDING, YOU KNOW, OFFICER, WHAT DID I DO, RIGHT?

I'M NOT I MEAN, NORMALLY THEY WOULD SAY DID YOU KNOW YOU WERE TRAVELING IN EXCESS OF THE SPEED LIMIT.

THAT'S WHAT I HEAR FROM PEOPLE THAT HAVE BEEN PULLED OVER.

AND BUT THIS IS THIS IDEA OF PULL OVER, DO YOU HAVE ANY WEAPONS OR DRUGS ON YOU?

I MEAN IN YOUR VEHICLE?

THAT JUST DOESN'T SEEM LIKE A AND THAT'S NOT HUWETT, EITHER, IS IT?

>> NO.

IN HUWETT THE CAR WAS APPROACHED BY FOUR OR FIVE OFFICERS, WHICH IN SOME WAYS MAY BE MORE COERCIVE, AND THEN THE FACTS FOLLOWED AS YOUR HONOR

DESCRIBED.

>> THE REASON OFFICERS DO THAT, BECAUSE IN MANY INSTANCES THE PERSON USUALLY SAYS YES, I GOT DRUGS, THINKING THAT IF THEY FESS UP, OKAY, YOU CONFESS, GIVE THEM TO ME AND I'LL THROW IT AWAY AND THAT'S THE END OF IT. THAT'S WHAT USUALLY HAPPENS. PEOPLE USUALLY FESS UP. AND THAT'S WHY THEY ASK THAT QUESTION.

>> REALLY?

>> YOU DIDN'T KNOW THAT, DID YOU?

LEARN SOMETHING NEW EVERY DAY.

>> AND GETTING BACK TO THE REASONABLE PERSON STANDARD, THE 5TH DISTRICT DEFINED A REASONABLE PERSON AS NOT GUILTY OF CRIMINAL CONDUCT, SO THAT PERSON IS NOT OVERLY SENSITIVE TO THE INTERACTION WITH THE POLICE, NOR ARE THEY OBLIVIOUS TO THE SERIOUSNESS OF THE EVENT. SO THAT REASONABLE PERSON WHO'S DRIVING THEIR VEHICLE PROBABLY KNOWS THAT THEY RAN THE RED LIGHT PURSUANT TO BERKEMER WOULDN'T BELIEVE THEY WERE IN CUSTODY.

AND THE BERKEMER CASE, WHEN THEY WERE DOING THE ANALYSIS, THEY SAID THAT A TRAFFIC STOP IS THE EQUIVALENT OF A TERRY STOP AND MIRANDA IS NOT NECESSARY BECAUSE OF THE BREVITY OF THE STOP, BECAUSE OF THE EXPECTATION OF THE DRIVER AND BECAUSE OF THE FACT THAT IT'S IN THE POINT OF IT BEING IN PUBLIC IS THE FACTS ARE DIFFERENT THAN THE TRADITIONAL TERRY OR THE TRADITIONAL MIRANDA WARNINGS, WHERE YOU'RE IN THE BACK OF A POLICE STATION, YOU'RE WITH EVERYBODY ELSE.

>> I GUESS THE REAL ARGUMENT IS HOW DOES A PERSON KNOW THAT IT

REALLY IS A TRAFFIC STOP IF YOU'RE NEVER ASKED ANY QUESTION ABOUT YOUR LICENSE OR REGISTRATION OR WHAT HOW DO YOU KNOW IT'S A TERRY STOP? HOW DO YOU KNOW THAT IT ISN'T BECAUSE THEY KNOW YOU JUST MURDERED SOMEBODY, YOU KNOW, COUPLE OF BLOCKS AWAY? SO HOW DO YOU ANSWER THAT? THAT UNLESS THE POLICE FIRST GIVES YOU THE INDICATION THAT THIS IS A TRAFFIC STOP, HOW DO YOU KNOW THAT?

>> WELL, I WOULD SUBMIT, WHETHER CORRECTLY OR NOT, THAT A REASONABLE PERSON WOULD PROBABLY BE AWARE THAT THEY HAD RUN THE RED LIGHT, AND IF NOT, THEY WOULD HAVE LEARNED VERY QUICKLY

I MEAN, THIS WAS THE SECOND STATEMENT OF THE OFFICER WHO APPROACHED.

IT WASN'T AS IF IT WAS A LONG, DRAWNOUT CONVERSATION WHERE IT WAS A MYSTERY AS TO WHY THEY WERE THERE.

IT WAS THE SECOND SENTENCE THEY SAID

>> AND WHAT DID THEY SAY AFTER THAT?

BUT SHE THEN FESSED UP.

DID THEY EVER SAY, YOU KNOW, YOU WERE STOPPED BECAUSE YOU RAN A RED LIGHT?

>> ACCORDING TO THE RECORD IT DIDN'T GET TO THAT POINT.

>> RIGHT.

BECAUSE AT THAT POINT THEY GOT WHAT THEY WANTED, WHICH WAS THE BOLO HAD MATCHED, SHE ADMITTED IT, AND NOW WHAT'S THE OFFENSE THAT SHE WAS CONVICTED OF?

>> SHE HAVEN'T BEEN CONVICTED. SHE WAS CHARGED WITH TRAFFICKING IN HYDROCODONE.

AND WHY DISAGREE THAT THEY WERE AFTER HER.

THESE OFFICERS WEREN'T AWARE OF ANY SPECIFIC CRIMINAL CONDUCT

DONE ON HER BEHALF.

>> BUT THEY HAD THE BOLO.  
THEY HAD A DESCRIPTION OF A CAR  
WITH A FEMALE, AND THIS PERSON  
MATCHED THAT DESCRIPTION AND THE  
BOLO.

SO THEY MAY NOT HAVE BEEN  
PERSONALLY AFTER HER, BUT THEY  
CERTAINLY WERE AWARE OF THE  
BOLO, CORRECT?

>> YES.

>> WHAT WOULD HAVE HAPPENED

>> ISN'T THAT TOTALLY  
IRRELEVANT?

>> IT IS, BECAUSE ACCORDING TO  
WREN VERSUS UNITED STATES  
OFFICERS CAN STOP VEHICLES AS  
LONG AS THEY HAVE AN OBJECTIVE  
REASON TO DO SO DESPITE ANY  
ULTERIOR MOTIVES THEY MIGHT  
HAVE.

>> AND I THINK THAT'S CORRECT.  
IF THEY HADN'T ASKED IF THEY  
PULLED HER OVER AND SAID YOU RAN  
A RED LIGHT, LICENSE,  
REGISTRATION, AT THAT POINT  
AND THEY NEVER THERE WAS  
DID THEY HAVE ENOUGH TO ARREST  
HER FOR THE DRUG ISSUE BASED ON  
THE BOLO TO HAVE STARTED  
QUESTIONING HER ABOUT, YOU KNOW,  
THERE WAS A BOLO, YOUR VEHICLE  
MATCHES THIS AND START TO ASK  
HER QUESTIONS WITHOUT GIVING HER  
MIRANDA?

>> NO, THEY DIDN'T.

AT THAT POINT THEY WOULD HAVE  
WRITTEN THE CITATION, GIVEN IT  
TO HER AND THAT WOULD HAVE BEEN  
THE END OF IT.

>> THEY WOULDN'T HAVE HAD THE  
RIGHT TO SEARCH HER VEHICLE?

>> NO, MA'AM.

NO, JUSTICE.

NO, JUSTICE.

FURTHERMORE, THE TERM THE  
ISSUE OF HOW MANY OFFICERS  
APPROACHED THE VEHICLE ACTUALLY  
IS IN THE FAVOR OF THE STATE.  
THE BERKEMER OPINION INDICATED



ONE OF THE REASONS WHY MIRANDA IS NOT NEEDED, BECAUSE ONLY ONE OR TWO OFFICERS WOULD APPROACH A VEHICLE.

SO THE FACT THAT THERE WERE TWO OFFICERS THERE ACTUALLY ISN'T FAVOR

>> I DON'T KNOW.

I MEAN, I HAVE BEEN STOPPED A FEW TIMES.

ANOTHER CONFESSION.

BUT I DON'T RECALL MORE THAN ONE OFFICER APPROACHING THE BENCH MY CAR.

IS THAT A NORMAL FOR BOTH OFFICERS TO APPROACH SOMEONE'S CAR?

>> I DON'T KNOW PERSONALLY, YOUR HONOR.

[ LAUGHTER ]

>> YOU'VE NEVER BEEN STOPPED, RIGHT?

>> THAT'S WHAT THE SUPREME COURT'S OPINION STATES, THAT THAT'S A REASON WHY IT'S NOT

>> I KNOW.

BUT, AGAIN, SERIOUSLY, WHEN YOU THINK ABOUT WE CREATE CERTAIN FICTIONS ABOUT WHAT HAPPENS WHEN POLICE CONFRONT ESPECIALLY YOUNG PEOPLE OR WELL, ANYBODY.

IT'S INTIMIDATING.

IT'S INHERENTLY INTIMIDATING.

AND THE MORE POLICE, THE MORE INTIMIDATING.

WHY AM I GETTING SURROUNDED HERE WHEN ALL I DID WAS I DON'T EVEN KNOW WHAT I DID.

SO WE DO CREATE SOME 4TH OR FIFTH AMENDMENT FICTIONS TO GET THERE, WHICH IS WE FOLLOW THE U.S. SUPREME COURT ON IT, BUT IT DOES SEEM THE REALITY IS SOMEWHAT DIFFERENT THAN WHAT THE CASE LAW SAYS ABOUT WHAT REASONABLE PEOPLE REALLY THINK WHEN THEY'RE STOPPED, THAT

THEY'RE NOT FREE TO GO, THAT THEY, YOU KNOW, ARE GOING TO BE LICENSE GOING TO BE RUN THROUGH, THAT THEY MAY HAVE TO GET OUT OF THE CAR AND IN CERTAIN SITUATIONS THEY MAY BE PATTED DOWN.

THAT'S A PRETTY INTIMIDATING SITUATION, BUT

>> AND THAT WOULD BE ONE OF MANY FACTORS, EVEN THOUGH THE COURTS DID SAY THAT THE NUMBER OF OFFICERS WOULD BE AMONG THE VARIOUS FACTORS, WHICH ALL OF THE FIFTH AMENDMENT CASE LAW HAVE CONSIDERED.

THEY HAVE, ALTHOUGH THEY DON'T PUT IT IN THIS PARLANCE, IT IS A TOTALITY OF THE CIRCUMSTANCES AS TO WHAT

>> SO WHAT IF THE OFFICERS DREW THEIR WEAPONS AS THEY APPROACHED THE CAR?

WOULD THAT HAVE MADE A DIFFERENCE?

>> I BELIEVE THAT WOULD BE A FACTOR IN THAT TOTALITY OF THE CIRCUMSTANCE ANALYSIS.

I BELIEVE THEY WOULD BE PERMITTED TO DO THAT, BUT IT WOULD AFFECT WHETHER A REASONABLE PERSON WOULD BELIEVE THAT THEIR FREEDOM OF ACTION HAD BEEN RESTRICTED TO THE EQUIVALENT OF ARREST.

OTHER FACTORS IN THIS CASE WHICH GO TO IT NOT BEING A STOP OR CUSTODY FOR PURPOSES OF MIRANDA, SHE WASN'T ACCUSED OF ANY CRIMINAL ACTIVITY, THE STOP WAS NOT UNDULY PROLONGED BY THIS ONE SENTENCE AND ALSO, AS ALLUDED TO BY OTHER PEOPLE, THE DEFENDANT HAD IN FACT RUN A RED LIGHT AS OPPOSED TO JUST HAVING A HEADLIGHT OUT OR SOMETHING TO THAT EXTENT, WHERE SOMEONE MIGHT NOT NECESSARILY BE COGNIZANT OF WHY THEY WERE BEING STOPPED. FINALLY, NOTWITHSTANDING ANY

FAILURE TO GIVE MIRANDA, THE STATE ARGUES THAT PURSUANT TO U.S.†V PANTANE, THE PHYSICAL EVIDENCE SHOULD STILL BE PERMITTED INTO EVIDENCE SHOULD THIS CASE GO TO TRIAL AND THAT IS BECAUSE THEY WERE THE FRUIT OF A VOLUNTARY STATEMENT, WHICH IS A NONCOERCED STATEMENT BY SOMEONE WHO'S ACTING WITH IRRATIONAL MIND.

THE SUPREME COURT'S DECISION IN 2009, I BELIEVE, HELD THAT ANY VIOLATION OF THE SELF-INCRIMINATION CLAUSE IS CURED BY THE SUPPRESSION OF THE STATEMENTS AND THEREFORE ANY PHYSICAL EVIDENCE WHICH IS A RESULT OF THOSE

>> WHAT WAS IT THAT WAS FOUND IN THE CAR?

WAS IT COCAINE?

>> IN THIS CASE IT WAS PILLS, AND IT WASN'T NECESSARILY FOUND IN THE CAR.

THEY SAID DO YOU HAVE ANY DRUGS ON YOU, AT WHICH POINT SHE SAID YES.

>> SEE?

I TOLD YOU.

FESS UP.

THAT'S WHY THEY ASK THE QUESTION.

>> DID SHE HAND A BAG OR SOMETHING TO THE OFFICER?

>> WHEN SHE MADE THAT ADMISSION, SHE ASKED HER TO EXIT THE VEHICLE, AT WHICH POINT SHE DID. THEN SHE RETRIEVED A BAG OF PILLS FROM HER POCKET AND PLACED THEM ON THE CONTROL VEHICLE.

SHE WASN'T PATTED DOWN OR SEARCHED IN ANY WAY.

>> HAD SHE SAID NO, THAT WOULD HAVE BEEN THE END OF IT, RIGHT?

>> THAT'S TRUE.

>> YEAH.

>> THAT IS TRUE.

THANK YOU VERY MUCH.

>> THANK YOU.

REBUTTAL?

>> AS TO THE ISSUE, THE STATE NEVER RAISED THAT. WE ARGUED THAT THIS BELOW UNDER ANY CIRCUMSTANCE WAS MERE ACQUIESCENCE TO APPARENT AUTHORITY. THE FIRST TIME THIS ARGUMENT WAS MADE WAS IN THE BRIEF TODAY. IF THE DEFENDANT WAS IN CUSTODY, THE FACT THAT SHE'S ORDERED OUT OF THE CAR AND HANDS THE DRUGS OVER TO THE POLICE IS NOT A VOLUNTARY RELINQUISHMENT. THAT ISSUE WAS NEVER LITIGATED BECAUSE THE STATE WAIVED IT. AS TO THE ISSUE THIS COURT HAS TO DECIDE, THE U.S. SUPREME COURT RECOGNIZED THAT THERE IS A FICTION, BUT THE U.S. SUPREME COURT DID RECOGNIZE THAT WHEN A CAR GETS PULLED OVER, IT IS EXTREMELY INTIMIDATED. THE COURT THEN WENT ON TO SAY BUT WE ARE NOT GOING TO MAKE A BRIGHT LINE RULE THAT TRAFFIC STOPS MEAN NO MIRANDA. OTHERWISE THIS CASE WOULDN'T BE HERE. EVERY TRAFFIC STOP YOU DON'T NEED MIRANDA BECAUSE IT IS NOT CUSTODY. U.S. SUPREME COURT REFUSED TO DO THAT. WHAT THEY SAID, YOU NEED TO LOOK AT THE CIRCUMSTANCES. THE CIRCUMSTANCES THAT MAKE IT NOT CUSTODY ARE THAT SOMEBODY WOULD BELIEVE IT WAS A BRIEF ENCOUNTER. NOTHING IN THIS CASE WOULD HAVE LED ANYBODY TO BELIEVE THIS WAS A BRIEF ENCOUNTER BASED ON WHAT, OTHER THAN AN ACCUSATION, DO YOU HAVE DRUGS. THE OTHER FACTOR IS WOULD THE PERSON FEEL THAT THEY ARE IN CONTROL OF THE POLICE?

TWO POLICE OFFICERS COME TO BOTH SIDES OF YOUR POLICE CAR, PREVENT YOU FROM EXITING THE CAR.

IT IS OUR CONTENTION THAT A REASONABLE PERSON IN MY CLIENT'S WOULD HAVE COME TO ONE CONCLUSION AND ONE CONCLUSION ONLY.

SHE WAS IN CUSTODY AND SHE WAS ENTITLED TO MIRANDA.

>> HOW DID SHE EXIT THE CAR?

>> AFTER SHE MADE HER STATEMENT, THE POLICE OFFICER ORDER HER OUT OF THE CAR.

SO THE INTERROGATION TOOK PLACE INSIDE THE CAR.

SHE'S IN A SMALL ROOM SHE'S IN A SMALL CAR, NO WAY TO GET OUT THE RIGHT, NO WAY TO GET OUT THE LEFT.

SHE WAS INTIMIDATED.

>> WELL, IT'S TRUE THAT THE QUESTION HERE IS WHETHER THIS WAS A CUSTODIAL INTERROGATION, RIGHT?

>> YES.

>> IT'S NOT MUCH OF AN INTERROGATION.

IT'S ONE QUESTION.

THERE ARE SOME QUESTIONS THAT MIGHT TRANSFORM SOMETHING THAT WAS NOT CUSTODIAL, THE VERY QUESTION ITSELF, AND THE THING STATED IN THE QUESTION, COULD TRANSFORM IT INTO CUSTODIAL.

BUT THIS SEEMS TO BE A

>> I WOULD DISAGREE.

DO YOU HAVE DRUGS IS ABOUT AS ACCUSATORY AS YOU CAN GET.

ONE QUESTION, DO YOU HAVE DRUGS, IF YOU SAY YES, YOU'RE GOING TO PRISON.

YOU DON'T NEED ANY MORE ACCUSATORY QUESTION THAN DO YOU HAVE DRUGS?

THIS WOMAN WAS COMPELLED TO ANSWER THE QUESTION.

SHE WAS ENTITLED TO HER MIRANDA. THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.  
COURT IS ADJOURNED.  
>> ALL RISE.