

>> SUPREME COURT OF FLORIDA IS  
NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEA,  
DRAW NEAR, GIVE ATTENTION.  
YOU SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,  
THE GREAT STATE OF FLORIDA AND  
THIS HONORABLE COURT.

>> LADIES AND GENTLEMEN, THE  
SUPREME COURT OF FLORIDA.  
PLEASE BE SEATED.

>> WELCOME TO THE FLORIDA  
SUPREME COURT.

OUR CASE FOR THE DAY IS T.S.  
VERSUS STATE OF FLORIDA.  
YOU MAY PROCEED.

>> GOOD MORNING.

BRIAN OLSON HERE ON BEHALF OF  
THE JUVENILE, T.S.

THE ISSUE BEFORE THIS COURT IS  
WHETHER THE OFFICER HAD  
REASONABLE SUSPICION TO SEIZE  
THE JUVENILE BASED SOLELY ON  
THE WORD OF AN UNIDENTIFIED  
PERSON.

>> WE CERTAINLY HAVE LOOKED AT  
ALL THESE CASES, AND AS YOU  
LOOK AT THE ELEMENTS AND THE  
LAW, THIS ONE'S PRETTY CLOSE  
TO THE MIDDLE OF IT.

WHAT IS IT ABOUT THIS CASE  
THAT THROWS IT INTO THE  
ANONYMOUS TIPSTER CATEGORY  
THAT WOULD CAUSE US TO RULE IN  
FAVOR OF THE JUVENILE IN THIS  
CASE?

>> IN JUST ABOUT EVERY  
FACETOFACE TIPSTER CASE THAT  
WERE IN THE BRIEFS THAT WERE  
BEFORE THIS COURT, THE PERSON  
WAS ONLY FOUND RELIABLE WHERE  
THERE WAS SOME ADDITIONAL  
CIRCUMSTANCE THAT ENHANCES  
RELIABILITY.

IN EVERY CASE WHERE THE  
FACETOFACE PERSON WAS HELD  
NOT TO BE RELIABLE, YOU HAD A  
SITUATION WHERE THE IDENTITY  
COULDN'T BE ASCERTAINED AND  
THERE WERE NO ADDITIONAL

CIRCUMSTANCES.

IN THIS CASE, ALL WE HAVE IS ONE PERSON.

IT'S PRETTY MUCH CONCEDED I THINK THAT HIS IDENTITY COULDN'T BE ASCERTAINED BASED OFF OF WHAT HE TOLD THE OFFICER, AND THE OFFICER TESTIFIED WHEN HE CAME UPON THE PERSON THAT MATCHED THE DESCRIPTION, THERE WERE NO CORROBORATING FACTS, THERE WAS NOTHING THAT INDICATED THAT CRIMINAL ACTIVITY HAD HAPPENED, HE WASN'T IN A HIGHCRIME AREA, HE DIDN'T ACT SUSPICIOUS.

HE WAS SIMPLY A JUVENILE WALKING DOWN THE STREET. THERE HAS TO BE SOMETHING ADDITIONAL THAT ENHANCES HIS CREDIBILITY.

THERE HAS TO BE A REASON THAT THE OFFICER HAS A BASIS TO TRUST WHAT HE'S HEARD.

AND THIS OFFICER

>> WELL, DO YOU THINK PERHAPS BECAUSE HE'S ON THE 911 CALL THAT THAT MIGHT HAVE SUPPLIED SOME BASIS FOR RELIABILITY?

>> I DON'T THINK IT DOES, YOUR HONOR, BECAUSE WE KNOW IN THIS CASE THE PERSON APPROACHED THE OFFICER IN PERSON.

HE WAS ALSO MAKING A PHONE CALL, BUT THE PHONE CALL DOESN'T ADD ANYTHING BECAUSE EVERYTHING HE DID IN THE PHONE CALL HE ALREADY DID IN PERSON. THE OFFICER HEARD I WAS IN A McDONALD'S, A PERSON PULLED A GUN ON ME, THIS IS WHAT HE LOOKED LIKE, THIS IS WHAT HE WENT.

EVERYTHING HE TOLD THE OFFICER HE ALREADY SAID IN THE PHONE CALL.

>> BUT INITIAL REACTION WAS ARE YOU KIDDING?

THEN WHEN HE WAS TALKING WITH

THE 911 OPERATOR HE APPARENTLY GAVE MORE CREDENCE TO WHAT HE WAS REPORTING.

>> THE OFFICER'S TESTIMONY WAS VERY PRECISE.

HE SAYS AT THE MOMENT THAT HE ENCOUNTERED THIS PERSON, AT FIRST I THOUGHT IT WAS A JOKE. I SAID ARE YOU JOKING? LET ME SEE WHO YOU'RE TALKING TO?

HE THEN SPEAKS TO DISPATCH. HE HEARS THE SAME EXACT THING THAT HE HAD JUST HEARD FROM THE PERSON IN FRONT OF HIM. DISPATCH IS ONLY REPEATING WHAT HE ALREADY KNEW, WHAT HE JUST HEARD.

>> YOU MENTIONED EARLY THAT ONE OF THE PROBLEMS YOU'RE HAVING WITH THIS CASE IS THE IDENTIFICATION OF THE INFORMANT COULD NOT BE ASCERTAINED.

WHAT IS YOUR POSITION BASED ON THESE FACTS AS TO WHY IT COULD NOT BE ASCERTAINED?

>> WELL, FIRST OF ALL, YOUR HONOR, THE OFFICER TOLD US SO.

>> WELL, HE SAID HE WAS AGITATED.

WOULD THAT COUNT INTO THE EQUATION?

>> THE OFFICER TESTIFIED HE SEEMED A LITTLE AGITATED, EXCITED.

THAT COULD HAVE BEEN Demeanor EVIDENCE EXCEPT THE OFFICER NEVER SAID I FOUND HIM RELIABLE BASED OFF HIS Demeanor AND THE FACT THAT HE WAS EXCITED.

>> THERE WAS NOTHING IN THE FACTS FROM WHAT I SAW THAT THE INFORMANT ACTUALLY MADE AN EFFORT TO CONCEAL HIS IDENTITY.

IT JUST SEEMED THAT HE WAS AGITATED TRYING TO EXPLAIN TO THE OFFICER WHAT HAPPENED,

TRYING TO CALL THE POLICE  
DEPARTMENT.

I THINK PERHAPS AT THAT  
JUNCTURE THE LEAST OF HIS  
WORRIES WAS TELLING THE  
OFFICER WHO HE WAS RATHER THAN  
TELLING HIM WHAT HAPPENED.

>> IT'S TRUE THAT HE NEVER  
MADE ANY EFFORT TO CONCEAL HIS  
IDENTITY, BUT RECOGNIZE, YOUR  
HONOR, THAT HE NEVER HAD TO  
BECAUSE NO ONE EVER ACTUALLY  
ASKED HIM FOR HIS IDENTITY.

>> BUT HIS IDENTITY HE  
PRESENTED HIS FACE TO THE  
OFFICER.

HE IS IDENTIFIABLE BY THE  
OFFICER.

THE OFFICER CAN SUBSEQUENTLY  
SEE HIM WALKING DOWN THE  
STREET, SAY THAT'S THE GUY,  
AND HE'S GOT TO BE CONCERNED  
IF HE'S SUBMITTING A FALSE  
REPORT TO AN OFFICER THAT THE  
OFFICER WILL BE ABLE TO COME  
FIND HIM.

IT'S NOT LIKE SOMEBODY WHO  
CALLS UP ON A PHONE THAT CAN'T  
BE IDENTIFIED AND GIVES A  
REPORT, WHERE THEY CAN'T BE  
TRACKED DOWN.

THIS GUY COULD BE TRACKED  
DOWN.

AND HE'S GOING TO KNOW THAT.  
AND THE OFFICER IS GOING TO  
KNOW THAT HE'S GOING TO KNOW  
THAT.

AND THIS BUSINESS ABOUT WHAT  
THE OFFICER SAID ABOUT WHETHER  
HE FOUND IT TO BE RELIABLE OR  
NOT, I MEAN, WE CAN INFER THAT  
HE ULTIMATELY FOUND HIM TO BE  
RELIABLE, CAN'T WE, BECAUSE HE  
ACTED ON THE INFORMATION HE  
WAS GIVEN IN CARRYING OUT HIS  
DUTIES.

SO WHY AM I WRONG IN POINTING  
OUT THOSE THINGS?

>> I AGREE WITH YOUR HONOR TO  
THE EXTENT THAT WE CAN ASSUME

A FACETOFACE ACCUSER ON A SCALE OF RELIABILITY IS MORE RELIABLE THAN A TELEPHONE CALLER.

THE ARGUMENT IS THAT THAT STILL FALLS SHORT OF REASONABLE SUSPICION AND SCENARIO WHERE THERE'S NOTHING IN THE CASE, NO FACTS OR CIRCUMSTANCES THAT WOULD GIVE AN OFFICER REASONABLE LEAVE THAT HE'S TELLING THE TRUTH.

>> WELL, WHAT COULD OFFICER COULD HAVE DONE TO MEET THAT STANDARD?

>> AT THE VERY MINIMUM, YOUR HONOR, THE OFFICER COULD HAVE SAID WHAT IS YOUR NAME?

AT THAT POINT EITHER THE OFFICER CAN GIVE A NAME, WHICH COULD BE VERIFIED AND EVERYONE WOULD KNOW.

HE WOULD BE ON THE HOOK FOR THE INFORMATION HE'S GIVEN.

THAT MAKES HIM MORE ACCOUNTABLE.

>> BUT YOU ARE THEN SAYING AS A BRIGHT LINE RULE OF LAW THAT LAW ENFORCEMENT MUST OBTAIN THE NAME OF THE PERSON PROVIDING THE INFORMATION BEFORE REASONABLE SUSPICION CAN BE CREATED THEN, ARE YOU NOT?

>> NO, YOUR HONOR.

I'M NOT ADVOCATING A BRIGHT LINE RULE.

>> YOU'RE SAYING YOU HAVE TO HAVE THE NAME.

THAT SEEMS TO BE A PRETTY BRIGHT LINE.

>> I'M SAYING IT WOULD BE SUFFICIENT, BUT NOT REQUIRED. AND I WOULD SAY WHERE THE OFFICER CAN ASCERTAIN THE IDENTITY OR THE PERSON REFUSES TO BE IDENTIFIED, THE COURT SHOULD THEN LOOK TO ARE THERE OTHER CIRCUMSTANCES THAT WOULD GIVE THE OFFICER REASON TO

BELIEVE THEY'RE TELLING THE TRUTH.

IF THIS COURT LOOKS TO THE 11TH CIRCUIT COURT OPINION WHERE THEY SAID A PERSON APPEAR NOTICE PERSON, WE CAN FIND HIM FOR RELIABLE.

IN THAT CASE IT WASN'T JUST THAT THE PERSON SHOWED THEIR FACE.

THE OFFICER COULD SEE THERE WAS A RELATIONSHIP BETWEEN THE PERSON GIVING THE TIP AND THE DEFENDANT.

>> COULD YOU GO BACK TO THE BEGINNING, WHICH IS STANDARD OF REVIEW?

MY CONCERN WITH THE 3rd DISTRICT'S OPINION IS THAT THE TRIAL COURT, WHO HEARD THE POLICE OFFICER, WAS THE ONLY POLICE OFFICER TO TESTIFY, SUPPRESSED THE SEARCH.

NOW WE'RE HERE SAYING SEEMS RELIABLE TO ME, YOU KNOW.

I'M LOOKING AND THINKING HOW IS THIS DEFENDANT I MEAN THE VICTIM RELIABLE WHEN HE WAS A VICTIM OF A CRIME AND HE DOESN'T STICK AROUND TO AS HE WAS TOLD TO STICK AROUND. HIS MOTIVE COULD HAVE BEEN THAT HE WAS A DRUG DEALER AND, YOU KNOW, AND HE WANTED TO GET THESE TWO OTHER PEOPLE, JUST LIKE IN THE J.L. CASE.

SO WHERE DOES IT COME THAT WHAT THE TRIAL JUDGE WE HAVE A MIXED QUESTION OF LAW AND FACT.

WHEN THE TRIAL JUDGE, HAVING OBSERVED THE Demeanor, SUPPRESSES THE EVIDENCE.

AND I DIDN'T REALLY SEE THAT ADDRESSED ANYWHERE BY OTHER THAN SORT OF RECITING WHAT THE STANDARD REVIEW IS.

IS THIS A QUESTION OF LAW?

A QUESTION OF FACT?

MIXED QUESTION OF LAW AND

FACT?

DO WE DEFER TO THE TRIAL JUDGE  
AT ALL?

HOW DOES THAT GO?

>> THE SPECIFIC FACTUAL  
FINDINGS OF THE TRIAL JUDGE,  
WHICH WERE BASED ENTIRELY ON  
THE OFFICER'S TESTIMONY, WERE  
WE HAVE NO IDEA WHO THIS  
PERSON IS, HE WAS COMPLETELY  
ANONYMOUS, IDENTITY COULDN'T  
BE ASCERTAINED, THERE WAS NO  
OTHER EVIDENCE IN THE RECORD  
THAT THE PERSON WAS IN SHOCK  
WHEN HE APPROACHED THE  
OFFICER.

THERE IS NO EVEN ARGUMENT THAT  
THE TIP WAS CORROBORATED WHEN  
THE OFFICER APPROACHED THE  
JUVENILE BECAUSE HE MATCHED  
DESCRIPTION.

SO THE TRIAL JUDGE'S FACTUAL  
FINDINGS I THINK ARE AFFORDED  
GREAT DEFERENCE.

THE TRIAL JUDGE FOUND THIS  
PERSON DID NOT HAVE AN  
IDENTITY THAT COULD BE  
ASCERTAINED.

ALSO HEARD THE OFFICER'S  
TESTIMONY, WHO TOLD THE JUDGE  
I HAVE NO IDEA WHAT'S  
MOTIVATING HIM.

HE CAN'T BE HELD ACCOUNTABLE.  
NO ONE IN THE MIAMIDADE  
POLICE DEPARTMENT KNOWS WHO  
THIS PERSON IS.

THE OFFICER ALSO TESTIFIED  
WHEN HE INITIALLY CAME ACROSS  
THIS PERSON, HE DIDN'T BASED  
OFF OF HIS DEMEANOR FIND HIM  
RELIABLE?

THE OFFICER THOUGHT THE PERSON  
WAS PLAYING A JOKE.

HE SAID I ONLY WENT TO  
INVESTIGATE BECAUSE I SAW HE  
WAS TALKING TO DISPATCH.

I SAW HE WAS MAKING A  
TELEPHONE CALL.

>> WHETHER THIS WAS AN  
ANONYMOUS TIPSTER OR WHETHER

IT WAS A CITIZEN INFORMANT,  
WHAT COULD THE OFFICER  
LEGITIMATELY DO WITH THE  
INFORMATION?

THE OFFICER COULD IN FACT  
APPROACH THESE PEOPLE,  
CORRECT?

>> THAT'S RIGHT.

>> AND TRY TO SEE IF THE  
FACTORS THAT THE INFORMANT  
GAVE THEM WERE CORRECT AND  
WHETHER OR NOT HE COULD  
ASCERTAIN IF THE PERSON HAD A  
GUN ON HIM.

OKAY.

SO DOES THE FACT THAT THE  
DEFENDANT WOULD NOT RESPOND  
WHEN THE OFFICER QUESTIONED  
HIM, ASKED HIM TO STOP OR  
WHATEVER THE OFFICER SAID,  
DOES THAT FACTOR INTO WHETHER  
OR NOT THERE WAS REASONABLE  
SUSPICION OR THE OFFICER  
PULL HIS GUN AT THE TIME HE  
ASKED HIM TO STOP?

>> THE OFFICER DREW HIS GUN  
FIRST AND THEN GAVE DIRECTIVES  
AFTERWARDS.

>> AND WHAT DID HE SAY WHEN HE  
DREW HIS GUN?

>> THE OFFICER DREW HIS GUN,  
SAID PUT UP YOUR HANDS.

THE JUVENILE RESPONDED BY  
REMAINING SILENT AND SORT OF  
SWAYING HIS BODY.

THEN THE OFFICER SAID PUT UP  
YOUR HANDS OR I'M GOING TO  
BLOW YOUR HEAD OFF.

THE OFFICER TESTIFIED THERE  
WAS NO BOLDNESS ON THE  
JUVENILE.

HE MATCHED THE DESCRIPTION.  
HE WAS WALKING DOWN THE STREET  
IN BROAD DAYLIGHT.

I APPROACHED AND FOR MY OWN  
SAFETY I DREW MY WEAPON.

>> BUT HE COULD HAVE  
APPROACHED HIM.

WE CAN GET THAT FAR.

>> I AGREE.



>> WHAT COULD HE HAVE DONE  
ONCE HE APPROACHED THEM?  
>> THE COURTS MAKE IT VERY  
CLEAR IN A CONSENSUAL  
ENCOUNTER THE OFFICER CAN  
OBSERVE, INVESTIGATE, APPROACH  
TO ASK QUESTIONS OR DO NOTHING  
AT ALL WHEN HE SEES THAT THE  
JUVENILE ISN'T VIOLATING ANY  
CRIME WHATSOEVER.  
BEFORE HE WENT TO INVESTIGATE,  
THE OFFICER COULD HAVE AT  
LEAST TAKEN A MOMENT TO ASK  
THE PERSON HIS NAME, ASK WHERE  
HE LIVED, SOME OTHER FACTS  
THAT WOULD HELP HIM ASCERTAIN  
WHO THIS PERSON WAS OR HAVE A  
WAY TO HOLD HIM ACCOUNTABLE  
FOR THE INFORMATION HE WAS  
GIVEN.

>> LET ME ASK YOU ABOUT THAT.  
JUST CHANGE THIS A LITTLE BIT,  
THE FACT SITUATION HERE.  
SAY THAT THIS COMPLAINING  
INDIVIDUAL INSTEAD OF  
COMPLAINING ABOUT A GUN BEING  
PULLED ON HIM, IT WAS IN THE  
BATHROOM IN THE RESTAURANT,  
SAID INSTEAD OF INFORMING  
THE OFFICER A MAN'S RUNNING  
DOWN THE STREET WHO JUST SHOT  
AT ME.

WHAT'S THE OFFICER SUPPOSED TO  
DO IN THOSE CIRCUMSTANCES?  
IS HE SUPPOSED TO SAY LET ME  
LOOK AT YOUR DRIVER'S LICENSE  
AND GET YOUR IDENTIFYING  
INFORMATION BEFORE HE GOES  
AFTER THE MAN WHEN HE'S  
RECEIVED A REPORT THAT THE  
SHOT HAD JUST BEEN FIRED?

>> IF THE PERSON TELLS THE  
OFFICER THE PERSON JUST SHOT  
ME, HE'S RUNNING DOWN THAT  
WAY, I AGREE THE OFFICER WOULD  
HAVE A DUTY TO GO INVESTIGATE.  
BUT

>> IF YOU HAVE REASONABLE  
SUSPICION, BARRELED ON THAT  
SCENARIO, WOULD THE OFFICER

HAVE REASONABLE SUSPICION TO  
GO DO A TERRY STOP.

>> ONLY IF HE SAW SOME FACT  
THAT CORROBORATED THE CRIMINAL  
ALLEGATION.

>> IF THIS VICTIM HAD REMAINED  
WHERE HE WAS SUPPOSED TO  
REMAIN, AT McDONALD'S, HE WAS  
JUST SUPPOSEDLY ASSAULTED,  
THIS CASE COULD HAVE BEEN  
PROSECUTED AS AN ATTEMPTED  
ROBBERY.

I MEAN, THAT'S WHAT I'M NOT  
FIGURING OUT HERE IS THAT THE  
VICTIM OF A CRIME I MEAN,  
IF YOU'VE JUST BEEN SHOT AT,  
I'VE JUST BEEN SHOT AT, BUT  
THEN I LEAVE AND NO ONE CAN  
FIND ME, SO THAT THE  
PROBLEM REALLY ISN'T THAT WE  
GOT THE GUN OF THIS PERSON.  
THE QUESTION IS IS HE SUPPOSED  
TO BE PROSECUTED FOR THIS  
CRIME WHERE THE COMPLAINING  
WITNESS HAS DISAPPEARED.

TO ME AND, AGAIN, THIS IS  
WHAT I WANT TO HEAR FROM THE  
STATE THE SAME JOBS OF J.L.  
COME, THAT SOMEBODY THIS  
GUY, THE ANONYMOUS PERSON,  
COULD HAVE BEEN PART OF A  
CRIME AND DECIDED HE'S GOING  
TO SET UP THESE OTHER TWO.  
WE DON'T KNOW HIS MOTIVATION.

>> AND THAT WAS THE THEORY OF  
THE DEFENSE AT THE SUPPRESSION  
HEARING.

WE HAVE NO IDEA WHO THIS  
PERSON IS.

WE DON'T KNOW IF HE'S  
MOTIVATED TO IMPLICATE THE  
JUVENILE BECAUSE HE WANTS TO  
GET HIM IN TROUBLE, THEY'RE  
MORTAL ENEMIES, HE WANTS TO  
HAVE AN OFFICER SEIZE HIM AT  
GUN POINT.

THE FACT THAT HE DIDN'T STICK  
AROUND, I'M NOT SURE THAT GOES  
INTO WHETHER HE'S RELIABLE.

>> WELL, IT MAKES HIM NOT

ANONYMOUS.

IF HE STICKS AROUND AGAIN,  
MAYBE THEN ARE YOU SAYING  
THAT BEFORE SOMEBODY GOES TO  
INVESTIGATE, THAT THEY  
SAYING STAY HERE IS NOT  
ENOUGH?

IF HE HAD COME BACK, HE COULD  
HAVE GOTTEN THE COMPLAINING  
WITNESS'S NAME AND IT WOULD  
HAVE BEEN AN UNREASONABLE  
SEARCH?

>> I THINK AT THE VERY LEAST  
HE HAS TO OBTAIN SOME DEGREE  
OF IDENTIFYING INFORMATION,  
WHETHER THAT'S A NAME

>> BUT IF THE GUY HAD STAYED  
THERE, WE WOULDN'T HAVE A  
PROBLEM.

>> THAT'S TRUE, BUT THE  
OFFICER, ASSUMING THIS PERSON  
GAVE A BAD TIP AND HE INTENDED  
TO RUN AWAY THE WHOLE TIME,  
THE OFFICER DOESN'T KNOW IT AT  
THE TIME.

SO HE SAYS STAY THERE.  
THE OFFICER HAS NO REASON TO  
BELIEVE THAT HE WILL STAY  
THERE.

HE HAS NO IDEA WHO HE IS OR  
WHAT HE WANTS.

THE OFFICER TOLD US THAT.

>> SOMEONE'S THE VICTIM OF A  
CRIME, THE REASONABLE IDEA IS  
THEY'RE GOING TO STAY WHERE  
THEY'RE SUPPOSED TO.

THEY JUST WERE I DON'T KNOW  
WHAT IT IS OUT IN THAT WORLD,  
BUT IN THE WORLD OF MOST  
REASONABLE PEOPLE, THAT'S WHAT  
YOU WOULD ASSUME.

DO WE KNOW HOW OLD THE VICTIM  
WAS?

WE KNOW ANYTHING ABOUT

>> THE PERSON GIVING THE TIP,  
WE DON'T KNOW HOW OLD HE WAS.  
THE OFFICER DESCRIBES HIM AS A  
YOUNG LATIN MALE.

>> SO HE WAS LATIN AND THE TWO  
HE IDENTIFIED TWO BLACK

MALES.

>> THAT'S CORRECT.

>> SO AGAIN WE DON'T KNOW IF THERE WAS SOME KIND OF THING GOING ON.

>> I THINK WHAT IT COMES DOWN TO IS WHAT THE OFFICER KNEW ABOUT THIS PERSON AT THE TIME HE LEFT TO GO INVESTIGATE THE TIP.

>> SO IS IT THEN CORRECT THAT ALL THIS TALK ABOUT WHETHER THE GUY LEFT AND IF HE HAD STAYED THERE WOULDN'T BE A PROBLEM, THAT IS TOTALLY IRRELEVANT, ISN'T IT, TO THE 4TH AMENDMENT ANALYSIS IN THIS CASE.

THE QUESTION IS WHAT THE OFFICER KNEW AT THE TIME HE ACTED AND NOT WHAT HE FOUND OUT LATER.

>> I THINK UNDER BAPTISE, THAT'S CORRECT.

THE STOP HAS TO BE JUSTIFIED AT ITS INCEPTION.

>> THAT'S A WHOLE 4TH AMENDMENT ANALYSIS.

THAT'S THE BASIC FRAMEWORK, ISN'T IT?

>> THAT'S RIGHT.

BUT EVEN UNDER THE FACTS OF THIS CASE THE OFFICER TOLD US, TOLD THE TRIAL JUDGE, WHO HEARD ALL THE EVIDENCE IN THIS CASE, DIDN'T KNOW WHO HE WAS, DIDN'T BOTHER ASKING HIS NAME, HAD NO IDENTIFYING INFORMATION

>> BUT UNDER THE FACTS OF THE CASE IF THIS PARTICULAR INDIVIDUAL HAD WANTED TO REMAIN ANONYMOUS, COULDN'T HE HAVE SIMPLY STAYED ON THE PHONE CALL OF 911 AND NOT ENGAGED THE POLICE OFFICER AT ALL?

>> I'M NOT SURE I UNDERSTAND THE QUESTION.

>> WELL, IF HE WANTED TO

REPORT THIS AND HAD A BAD MOTIVE AS OPPOSED TO REALLY REPORTING A TRUE CRIME, HE JUST WANTED TO SET THEM UP SOMEHOW, WHY NOT REPORT ANONYMOUSLY ON A 911 CALL? HE DIDN'T HAVE TO ENGAGE THE POLICE OFFICER AT ALL. HE COULD HAVE WALKED AWAY, REPORTED IT ON THE PHONE AND NOT ENGAGED THE POLICE OFFICER AT ALL.

>> BECAUSE IF HE HAD SOME KIND OF NEFARIOUS INTENT, HE COULD HAVE APPEARED IN PERSON DOING IT.

I'M NOT SAYING HE DOESN'T BECOME MORE RELIABLE COMING FACETOFACE.

JUST BECAUSE HE COMES FACETOFACE DOESN'T MEAN THERE'S REASONABLE SUSPICION. THE FACETOFACE PERSON CERTAINLY IS MORE RELIABLE THAN THE ANONYMOUS CALLER. BUT ON THE FACTS OF THIS CASE THERE ARE NO CIRCUMSTANCES THAT WOULD ACTUALLY ADD TO HIS RELIABILITY.

WE DON'T HAVE Demeanor TESTIMONY.

>> LET ME ASK YOU THIS QUESTION.

WHAT IF THESE, AS OFTEN HAPPENS IN METRO DADE COUNTY, HAD A PARTNER RIDING WITH HIM AND ONE OFFICER REMAINED AT THE McDONALD'S AND THE OTHER OFFICER RECEIVED THE SAME INFORMATION, THAT THE ONE OFFICER WENT TO SEARCH FOR THE SUSPECT BY HIMSELF.

SO THERE'S NO CHANGE IN INFORMATION.

YOU'RE NOT CHANGING ANYTHING.

WHAT WOULD HAVE BEEN THE CIRCUMSTANCES THERE?

WOULD THAT HAVE BEEN A CITIZEN INFORMANT?

>> I THINK IT WOULD BE, YOUR

HONOR, BECAUSE IF AN OFFICER IS STAYING WITH HIM ON THE SCENE WHILE ANOTHER GOES TO INVESTIGATE, THE CRUCIAL DIFFERENCE IS THAT THE PERSON IS ON THE HOOK FOR WHAT HE SAID AT THAT POINT. HE'S NOT FREE TO JUST WALK AWAY.

>> WELL, THE INFORMATION HASN'T CHANGED, THOUGH. AND YOU DO AGREE THAT THE OFFICER INSTRUCTED THE VICTIM TO STAY IN THAT LOCATION.

>> THAT'S RIGHT.

>> WELL, ISN'T THAT A CRIME? IS HE NOT ENTITLED TO ASSUME THAT THE CITIZEN WILL FOLLOW A LAWFUL INSTRUCTION?

AND ISN'T IT A CRIME TO DISREGARD AND FAIL TO OBEY A LAWFUL ORDER OF A POLICE OFFICER?

>> IT WOULDN'T HAVE BEEN A LAWFUL ORDER

>> WOULD NOT HAVE BEEN A LAWFUL ORDER?

>> IT WOULD NOT HAVE BEEN, YOUR HONOR.

>> WHY IS THAT?

YOU MADE A REPORT.

YOU HAVE MADE A REPORT OF A CRIME, AND I'M ORDERING YOU TO WAIT HERE.

>> THE OFFICER DIDN'T

>> THAT'S NOT A LAWFUL ORDER.

>> FIRST OF ALL, YOUR HONOR, THE OFFICER DIDN'T SAY HOW LONG TO REMAIN THERE.

>> I UNDERSTAND ALL THAT.

>> AND IF THE PERSON WASN'T GIVING A VALID TIP, IF HE WASN'T THE VICTIM OF A CRIME, THAT PERSON WOULD HAVE HAD EVERY INTENT TO LEAVE, WHICH IS EXACTLY WHAT HAPPENED.

THE OFFICER HAD NO REASON TO THINK ANY DIFFERENTLY BECAUSE AS HE TOLD US

>> THE VICTIM MAY HAVE THOUGHT

THAT HE COULDN'T FIND HIM  
BECAUSE WE HAVE, WHAT, A ONE  
OR TWOMINUTE ENCOUNTER TO  
GIVE THE INFORMATION, BUT THEN  
THE OFFICER IS GONE FROM THAT  
LOCATION FOR OVER A HALF HOUR  
OR SO, WASN'T HE?

>> RIGHT.

THE OFFICER TESTIFIED HE CAME  
BACK ABOUT 30 TO 35 MINUTES  
LATER.

>> 35 MINUTES LATER.

THE VICTIM REMAINS AT THE  
SCENE 25 MINUTES AND OFFICER  
NEVER COMES BACK, SO I GO ON  
MY WAY.

>> RIGHT.

OR THE PERSON

>> THAT DOESN'T CHANGE WHAT  
THAT OFFICER KNEW IN  
ENCOUNTERING THE SUSPECT, DOES  
IT?

>> EXCEPT HE DOESN'T KNOW  
ANYTHING, YOUR HONOR.

HE HAS NO REASON TO THINK THIS  
IS A VALID TIP.

HE HAS NO REASON TO THINK THE  
PERSON WILL REMAIN AFTER HE'S  
TOLD HIM TO.

IF THE OFFICER COULD ASSUME HE  
WOULD REMAIN, IF HE HAD ENOUGH  
FACTS TO SUPPORT THAT  
ASSUMPTION, HE WOULD ALSO HAVE  
ENOUGH FACTS

>> IT'S A QUESTION OF  
ACCOUNTABILITY.

>> EXACTLY.

AND AS THE OFFICER SAID, THE  
WAY IT TURNED OUT, THIS PERSON  
COULDN'T BE HELD ACCOUNTABLE.  
HE WAS NEVER PUT ON THE HOOK  
FOR THE INFORMATION.

>> BUT THAT ONLY OCCURRED  
AFTER THE TRANSMISSION OF THE  
INFORMATION.

>> RIGHT, BUT I'M SAYING AT  
THE POINT THE OFFICER LEFT, HE  
HAD NO REASON TO THINK THE TIP  
WAS VALID, THAT THE PERSON  
WOULD REMAIN.

>> WHY NOT?  
I HAVE THE VICTIM.  
THE VICTIM I HAVE ORDERED TO  
STAY THERE.  
HE MAY BE TEN YARDS DOWN THE  
SIDEWALK, TURNED OUT HE WAS  
200 YARDS DOWN THE SIDEWALK.  
THAT'S THE SAME INFORMATION.  
I HAVE ACCOUNTABILITY HERE  
BECAUSE THE PERSON IS THERE.  
>> BUT YOU DON'T HAVE  
ACCOUNTABILITY BECAUSE THE  
PERSON CAN LEAVE, WHICH  
EXACTLY WHAT HAPPENED.  
IN ALL THE CASES WHERE SOMEONE  
HAS LEFT, THE PERSON WHO GAVE  
THE TIP LEFT.  
THEY WERE FREE TO GO ON THEIR  
MERRY WAY AND THERE WERE NO  
REPERCUSSIONS AT ALL.  
IN ALL OF THOSE CASES THE  
COURT SAID IF THE IDENTITY OF  
THE PERSON CAN'T BE  
ASCERTAINED THERE ARE NO  
OUTSIDE CIRCUMSTANCES THAT  
MAKE THEM MORE RELIABLE, IT IS  
NOT REASONABLE SUSPICION.  
ALL THE CASES THAT FIND  
FACETOFACE TIPSTER IS  
RELIABLE, THERE'S SOMETHING  
MORE THAN WHAT WE HAVE HERE.  
EITHER THE CRIME IS HAPPENING,  
THE PERSON IS POINTING OUT THE  
CRIME, THE PERSON IS GETTING  
AWAY.  
AT THAT POINT THE PERSON IS  
MAKING THE ACCUSATION IN THE  
PRESENCE OF THE DEFENDANT  
MAKING HIM SUBJECT TO  
REPRISALS.  
THE PERSON COULD BE IN SHOCK  
THEY ARE GIVING THE  
INFORMATION.  
I'M GOING TO GO INVESTIGATE  
IMMEDIATELY.  
YOU DON'T HAVE ANYTHING LIKE  
THAT IN THIS CASE.  
THE OFFICER DIDN'T SEE THE  
PERSON GIVING THE TIP IN ANY  
KIND OF RELATIONSHIP WITH THE



DEFENDANT.

HE HAS NO REASON TO THINK  
>> ON THAT POINT, DID HE NOT  
SAY THAT HE SEEMED AGITATED?

>> THE OFFICER TESTIFIED WHEN  
I FIRST ENCOUNTERED HIM, HE  
SEEMED A LITTLE AGITATED,  
EXCITED.

THE OFFICER IS THEN ASKED WHY  
DID YOU GO INVESTIGATE?  
HE DOESN'T SAY IT'S BECAUSE  
HE'S AGITATED.

>> THIS WHOLE BUSINESS ABOUT  
THE OFFICER'S SUBJECTIVE  
MOTIVES AND WHAT THE OFFICER  
IS THINKING AND HOW HE  
EXPLAINS IT, DOES THAT REALLY  
BEAR ON THE ANALYSIS HERE?  
ISN'T THE ANALYSIS DETERMINED  
BY WHAT A REASONABLE OFFICER  
WOULD CONCLUDE BASED ON THE  
CIRCUMSTANCES WITH WHICH HE IS  
CONFRONTED?

ISN'T THAT THE ANALYSIS?

>> I THINK THAT'S RIGHT, BUT  
THE OFFICER

>> THEN ALL THIS TALK ABOUT  
WHAT THE OFFICER THOUGHT IS  
BESIDE THE POINT.

>> BECAUSE THE OFFICER WAS  
BEING REASONABLE WHEN HE SAID  
WE HAVE NO IDEA WHO THIS  
PERSON IS.

WE DON'T KNOW WHAT THEY  
WANTED.

THOSE ARE FACTS.

THOSE AREN'T HIS SUBJECTIVE  
BELIEF.

THOSE ARE FACTS THE TRIAL  
JUDGE HEARD.

THE TRIAL JUDGE BASED THE  
RULING ON THE FACT THAT WE  
HAVE NO IDEA WHO THIS PERSON  
IS.

WE KNOW THEY'RE NOT  
ACCOUNTABLE.

JUST BECAUSE THEY APPEAR IN  
PERSON, SO WHAT.

ALL THE REASONS YOU HOLD A  
CITIZEN ENCOUNTER TO BE

RELIABLE, THEY'RE ACCOUNTABLE,  
THEY'RE SUBJECT TO REPRISALS,  
ONE POINT AFTER ANOTHER.  
NONE OF THEM ARE HERE IN A  
CASE WHERE YOU DON'T KNOW  
THEIR IDENTITY AND THERE ARE  
NO OUTSIDE CORROBORATING  
FACTS.

>> WELL, I THOUGHT THAT IN  
FACT WHEN HE FIRST ENCOUNTERS  
HIM HE SAYS IT'S AGITATED.  
HE THOUGHT IT WAS A JOKE.  
>> HE THOUGHT A JOKE WAS BEING  
PLAYED.

SO IF THERE'S ANY Demeanor  
EVIDENCE WHATSOEVER, THAT  
ACTUALLY MILITATES IN FAVOR OF  
THE DEFENSE.

THE OFFICER SAID I WENT TO  
INVESTIGATE NOT BECAUSE HE  
SEEMED LIKE A RELIABLE,  
TRUSTWORTHY INDIVIDUAL.  
HE SAID THE PERSON WAS CALLING  
DISPATCH.

I WENT TO INVESTIGATE BECAUSE  
HE CALLED DISPATCH.

THIS COURT HELD AN ANONYMOUS  
CALL TO DISPATCH IS NOT  
REASONABLE FOR REASONABLE  
SUSPICION.

I DIDN'T FIND HIM RELIABLE  
BECAUSE I COULD SEE HIM.  
HE WAS AN ANONYMOUS TIPSTER.  
TO THAT EXTENT I BELIEVE A  
SUBJECTIVE BELIEF DIDN'T  
MATTER.

AS A MATTER OF LAW HE WAS  
BASING HIS REASON TO FIND HIM  
RELIABLE ON A SITUATION THAT  
AS A MATTER OF LAW IS  
INSUFFICIENT FOR THIS PERSON  
TO BE HELD RELIABLE.

>> YOU WELL EXCEEDED YOUR  
TIME.

I'LL GIVE YOU AN ADDITIONAL  
ONE MINUTE ON REBUTTAL.

>> THANK YOU.

>> MICHAEL MURVINE ON BEHALF  
OF THE STATE FROM THE ATTORNEY  
GENERAL'S OFFICE.

IN THIS CASE THE OFFICER WAS DRIVING HIS MARKED VEHICLE. HE WAS OFF DUTY WHEN THE INFORMANT JUMPED IN FRONT OF HIS CAR, AGITATED, EXCITED, ON THE TELEPHONE IN WITH 911. HE LEARNED HE WAS THE VICTIM OF AN AGGRAVATED ASSAULT WITH A FIREARM.

>> THAT IS FACTS MOST FAVORABLE TO THE STATE. THE STATE, THOUGH, LOST BEFORE THE TRIAL COURT, SO I DON'T UNDERSTAND HOW WE GO AS FAR AS THE FACTS AND WHAT THE OFFICER FIRST THOUGHT AND TURN IT TO WE'VE GOT TO LOOK AT THE FACTS MOST FAVORABLE TO THE STATE AS OPPOSED TO THAT THE TRIAL COURT FOUND THAT DIFFERENT FACTS.

SO I AGREE THAT YOU COULD SPIN IT THAT WAY, BUT YOU CAN ALSO SPIN IT THE OTHER WAY.

AND DOESN'T THE STATE HAVE THE BURDEN TO PROVE THAT THERE WAS REASONABLE SUSPICION BASED ON A REASONABLE INFORMANT OR TIP OR VICTIM?

>> IT DOES, YOUR HONOR. IT DOES.

>> SO, AGAIN, SO TELL ME WHY WE DON'T DEFER TO THE TRIAL JUDGE, WHO HEARD THE POLICE OFFICER AS TO WHAT HE THOUGHT ABOUT THIS PERSON WHO HE DID NOT BELIEVE INITIALLY THAT HE WAS A VICTIM OF A CRIME. HE THOUGHT HE WAS JOKING.

>> WHEN YOU REVIEW THE TRIAL COURT'S ORDER GRANTING THE MOTION TO SUPPRESS, THE COURT MISAPPLIED THE LAW BECAUSE WHAT THE COURT DID WAS EVALUATE THE TIPSTER. AND ONE OF THE FACTORS UPON WHICH THE COURT'S CONCLUSION THAT THE TIPSTER WAS UNRELIABLE WAS THE FACT THAT THE TIPSTER DID NOT REMAIN AT

McDONALD'S.

AS THIS COURT HAS INDICATED,  
THE SUPREME COURT HAS  
INDICATED IN J.L., THIS COURT  
INDICATED IN BAPIVITY V STATE,  
THE REASONABLENESS MIGHT BE  
BASED ON WHAT THE OFFICER KNEW  
AT THE TIME OF THE STOP.  
ALL THIS INFORMATION ABOUT THE  
INFORMANT NOT REMAINING THERE  
ALL OCCURRED AFTER THE  
SEIZURE.

>> SO ARE YOU TELLING US THAT  
ALL OF THE CASES WHERE IF THE  
INFORMANT IS NOT THERE ANYMORE  
WERE INCORRECTLY DECIDED?  
BECAUSE IF HE SHOWED HIS FACE  
AT THE BEGINNING, THAT'S  
SUFFICIENT.

>> NO, YOUR HONOR.

>> IS THAT WHAT YOU'RE TELLING  
US?

>> NO, YOUR HONOR.

WELL, FIRST I'LL SAY THAT ALL  
OF THOSE CASES CITED BY THE  
DEFENSE, WHICH WERE SUPPOSEDLY  
IN DIRECT CONFLICT WITH THIS  
CASE, T.S., ARE FACTUALLY  
DISTINGUISHABLE BECAUSE ALL OF  
THOSE CASES THE INFORMANT  
EITHER SAID BY WORD OR ACTION  
THAT THEY WANTED TO REMAIN  
ANONYMOUS.

THEY SAID I WANT TO REMAIN  
ANONYMOUS OR THEY LEFT THE  
SCENE PRIOR TO THE OFFICER  
CONDUCTING THE SEIZURE.

>> THIS ONE LEFT THE SCENE, SO  
CAN WE ASSUME THEN THAT HE  
WANTED TO REMAIN ANONYMOUS?

>> NO.

THE OFFICER DIDN'T KNOW THAT  
AT THE TIME OF THE SEIZURE.  
AT THE TIME OF THE SEIZURE  
WHAT THE OFFICER KNEW WAS HE  
ENGAGED WITH THIS PERSON WHO  
HE CONCLUDED WAS CREDIBLE, HE  
TOLD HIM TO REMAIN THERE.  
THE PERSON DIDN'T TRY TO  
DISGUISE THEIR IDENTITY IN

THEY WAY.

THEY DIDN'T SAY, NO, I'M NOT GOING TO REMAIN HERE.

AND FOR THOSE REASONS THE OFFICER AT THE TIME OF THIS SEIZURE BELIEVED THAT PERSON WOULD REMAIN AND WOULD BE ACCOUNTABLE.

>> BUT THE PROBLEM IS HE CANNOT IDENTIFY HIM, NOR CAN HE ASCERTAIN HIS IDENTITY. NOW, IF HE WAS ON A 911 CALL, WHY COULDN'T HIS IDENTITY BE ASCERTAINED THROUGH A TELEPHONE NUMBER?

WAS THAT KIND OF EVIDENCE SUBMITTED TO THE TRIAL COURT?

>> UNFORTUNATELY THAT WASN'T DEVELOPED IN THE SUPPRESSION HEARING, YOUR HONOR.

HOWEVER, THE FACT THAT HE WAS ON THE 911 CALL WHILE SPEAKING WITH A POLICE OFFICER I WOULD SUBMIT TO THE COURT GOES TO THE FACT THAT THE OFFICER MIGHT HAVE REASONABLY BELIEVED THAT THAT 911 DISPATCHER WOULD HAVE OBTAINED THAT INFORMATION.

>> HOW MUCH TIME ELAPSED FROM THE TIME THAT THE OFFICER OBTAINED THE INFORMATION AND WENT AFTER THE TWO INDIVIDUALS AND APPREHENDED THEM AND CAME BACK TO THE McDONALD'S AGAIN?

>> APPROXIMATELY 30 TO 35 MINUTES.

THIS OFFICER WAS OFF DUTY. HE WAS DRIVING AN OFFICIAL, MARKED PATROL VEHICLE.

HOWEVER, HE HAD TO APPREHEND THIS PERSON.

HE HAD TO SAY THREE TIMES ARE YOU THE PERSON I'M SOMEONE HAS ALLEGED THAT YOU HAVE A GUN.

HE SAID THIS THREE TIMES TO T.S.

T.S. IGNORED HIM ALL THREE TIMES.

>> GOING BACK TO MY QUESTION,  
SO FOR ALL WE KNOW AND  
THERE'S NO RECORD EVIDENCE OF  
THIS THE VICTIM IN THIS  
CASE OR THE ALLEGED VICTIM IN  
THIS CASE COULD HAVE REMAINED  
AT THE McDONALD'S FOR 30  
MINUTES WAITING FOR THE  
OFFICER TO GET BACK AND  
FINALLY JUST GAVE UP.

>> EXACTLY.

AND THIS McDONALD'S WAS THE  
SAME PLACE WHERE HE WAS THE  
VICTIM OF AN AGGRAVATED  
ASSAULT WITH A FIREARM.

>> IS THIS AREA OF MIAMI  
REGARDED TO BE A HIGHCRIME  
AREA?

>> THAT WASN'T DEVELOPED IN  
THE RECORD, YOUR HONOR.

>> THE WHOLE THING ABOUT HE  
COULD HAVE WAITED 30 MINUTES  
OR LEFT IMMEDIATELY, BUT WHAT  
YOU'RE SAYING, THE FACT THAT  
HE DOES NOT REMAIN IS DO WE  
DOES THAT FACTOR IN AT ALL?  
I'M TRYING TO SEE WHETHER I  
WOULD CERTAINLY SEE THIS  
DIFFERENTLY AS A TRIAL JUDGE  
BY LOOKING AT TOTALITY OF  
CIRCUMSTANCES THAT IT WOULD  
BUTTRESS RELIABILITY THAT HE  
STAYED.

NOW, THE DEFENSE IS SAYING,  
NO, WHETHER HE STAYED OR NOT  
HAS NOTHING TO DO WITH WHETHER  
HE WAS RELIABLE AT THE TIME.  
SO WHERE DOES THAT FACTOR IN?  
YOU KNOW, YOU SAID THE JUDGE  
MISAPPLIED THE LAW BY LOOKING  
AT WHETHER HE LEFT OR NOT.  
HE COULD HAVE LEFT AFTER A  
SECOND OR HE COULD HAVE STAYED  
FOR 30 MINUTES.

HE COULD HAVE LEFT HIS  
INFORMATION WITH McDONALD'S  
OR, YOU KNOW, COULD HAVE, ONCE  
THE PERSON WAS ARRESTED, HE  
COULD HAVE COME FORWARD AND

SAY, OH, GOODNESS, YOU GOT THE PERSON THAT ASSAULTED ME. I MEAN, BUT THIS IS ALL SPECULATION.

>> WELL, THIS COURT IN BAPTISE V STATE ANALYZED FACTS WHICH MIGHT BE ANALOGOUS TO THIS SITUATION.

IN THAT CASE A PERSON COMPLAINED THAT A MAN WAS BEFORE A SUPERMARKET WAIVING A GUN.

THE POLICE ARRIVE, STOP HIM AT GUN POINT, DISCOVER THAT THERE IS A FIREARM ON THIS PERSON.

>> HE WASN'T WAVING A GUN AT THAT TIME BECAUSE THEN THAT WOULD HAVE BEEN A DIFFERENT CASE.

WHAT WAS IT ABOUT THAT PERSON IN BAPTISE THAT MADE THEM THINK THAT'S THE PERSON THAT'S THE SUBJECT OF THE ANONYMOUS TIP?

>> THERE WAS A PHYSICAL DESCRIPTION.

>> WASN'T IT LIKE BLUE JEANS AND A WHITE TSHIRT?

>> I BELIEVE SO.

>> WHICH IS, AGAIN, DESCRIPTION HERE OF THESE TWO PEOPLE ARE IT'S A BLACK HOODIE AND SOME RED SHORTS AND BLUE JEANS AND A WHITE TSHIRT, WHICH PROBABLY COULD DESCRIBE, YOU KNOW, HALF OF YOUNG PEOPLE IN THE STATE OF FLORIDA, BLACK OR WHITE.

I MEAN, AND THAT'S ANOTHER THING ABOUT THE VAGUENESS OF WHAT HE SAID IN IDENTIFYING THESE TWO INDIVIDUALS, RIGHT? HE COULD HAVE JUST PICKED THEM OUT OF TO SAY I'M GOING TO GO AFTER THOSE TWO PEOPLE.

>> WELL, THEY WERE WITHIN 200 FEET OF THE McDONALD'S.

>> WHAT WERE THEY DOING? WERE THEY RUNNING?

>> NO.

I BELIEVE THEY WERE WALKING AND THEY WERE WALKING IN THE DIRECTION THE INFORMANT HAD INDICATED.

IF I COULD RETURN TO THE BAPTISE, AFTER THE SEIZURE THE PERSON APPROACHED THE POLICE AND SAID I'M THE PERSON WHO MADE THE CALL.

THIS COURT RULED THAT THE FACT THAT THAT PERSON APPROACHED POLICE AFTER THE SEIZURE DOESN'T MATTER BECAUSE AT THAT POINT THE OFFICER'S DECISION TO STOP THE PERSON HAD ALREADY BEEN MADE ASSOCIATION THAT DOESN'T PLAY A ROLE.

AS ONE OF YOUR HONORS INDICATED, THERE ARE SEVERAL FACTORS HERE WHICH GO TO THE MOTIVATION OF THE INFORMANT AND WHY THAT SHOULD BE RELIED UPON.

ONE, IF THIS PERSON TRULY WAS JUST TRYING TO BE TRYING TO MAKE MISCHIEF OR JUST WANTED TO HARASS THE PERSON, THEY COULD HAVE LEFT IT AT THE TELEPHONE CALL.

>> EXCEPT FOR WHAT WAS SAID, WHICH IS THAT IF YOU'RE REALLY TRYING TO GET THEM I MEAN, I DON'T THINK IT'S THAT YOU LOOK AT THIS AS IF THERE COULDN'T BE A GANGRELATED ISSUE OR THEY COULDN'T HAVE BEEN PARTICIPATING IN A DRUG DEAL AND THIS GUY DECIDES I'M GOING TO GET THESE TWO.

IT'S NOT MORE LOGICAL THAT HE WAS A VICTIM OF A CRIME BASED ON BUT IF HE WANTED TO GET THEM, HE WOULD WANT TO TELL THAT POLICE OFFICER RIGHT THEN AND THERE.

>> HE HAD NO IDEA WHETHER THE OFFICER WAS GOING TO ASK FOR HIS INFORMATION, WHETHER THAT OFFICER WAS ON DUTY AND WOULD CALL BACKUP.



IN DOING SO HE'S PLACING HIS OWN LIBERTY IN JEOPARDY BECAUSE HE WOULD BE COMMITTING A CRIME IF HE WERE GIVING A FALSE REPORT ABOUT ANOTHER PERSON.

>> I GUESS WHAT WE'RE DOING HERE IS SUPPLYING FACTS THAT ARE GOES TO MY INITIAL QUESTION.

YOU SAID THE REASON WE SHOULDN'T DEFER TO THE TRIAL COURT IS BECAUSE THE TRIAL COURT MISAPPLIED LAW.

IS THAT THE YOUR ARGUMENT?

>> YES, YOUR HONOR.

>> OKAY.

BUT THE TRIAL COURT ALSO MADE A DECISION THAT THE NATURE OF THE WAY THIS TIP WAS MADE WAS NOT RELIABLE.

I MEAN, BECAUSE ALL THIS POLICE IF IT WAS A TRUE VICTIM OF A CRIME, THE POLICE OFFICER SAYS, MY GOODNESS, SOMEBODY WHO HAD JUST BEEN SHOT AT COMES TO ME, LOOKS LIKE HE IS WHATEVER AND I WENT OFF TO FIND THE TWO THAT HAD JUST ROBBED THIS PERSON.

BUT THAT'S NOT WHAT THIS POLICE OFFICER SAID.

HE SAID HE THOUGHT IT WAS A JOKE.

I MEAN, I THINK THAT'S WHAT THE TRIAL COURT IF I'M THE TRIAL COURT, THAT INFLUENCES ME WHETHER I THINK THIS POLICE OFFICER ACTUALLY THOUGHT THE TIPSTER WAS RELIABLE.

>> WELL, A CLOSE EXAMINATION OF THE POLICE OFFICER'S TESTIMONY WAS INITIALLY HE THOUGHT IT WAS A HOAX. AGAIN, SOMEBODY JUMPS IN FRONT OF HIS MARKED PATROL VEHICLE ON A TELEPHONE.

HE SPOKE WITH HIM TWO MINUTES. DURING THAT TWO MINUTES HE SPOKE WITH A 911 OPERATOR,

WHICH CORROBORATED WHAT THIS  
INFORMANT HAD TOLD HIM.

AND AT THAT POINT

>> I DIDN'T REALIZE THAT  
ENCOUNTER WITH THE PERSON WAS  
TWO MINUTES.

>> YES.

>> SO ARE WE NOW SAYING THAT  
IN TWO MINUTES THE GUY'S ON  
THE CELL PHONE, HE COULDN'T  
HAVE SAID AND PLEASE LEAVE  
YOUR LET ME GET YOUR  
INFORMATION.

IN OTHER WORDS, I DIDN'T  
REALIZE IT WAS SO HE WAITED  
TWO MINUTES AS OPPOSED TO  
RUNNING OFF TO FIND THE PERSON  
THAT HAD JUST ASSAULTED THIS  
GUY.

SO WHY WOULDN'T WHY IS THAT  
NOT REASONABLE THE POLICE  
OFFICER WOULDN'T SAY I NEED  
YOUR YOU KNOW, GIVE THE  
DISPATCHER YOUR NAME AND PHONE  
NUMBER IN CASE I DON'T COME  
BACK FOR A WHILE.

>> WELL, IN PERFECT HINDSIGHT  
THAT WOULD HAVE BEEN A SMART  
THING TO DO.

HOWEVER, HE WAS DEALING WITH  
SOMEONE WHO WAS SHAKEN,  
AGITATED.

HE WAS TRYING TO GET  
INFORMATION AS TO WHERE THIS  
PERSON WAS GOING, A  
DESCRIPTION, WHICH HE  
OBTAINED.

AND SOMEONE WAS DESCRIBING AN  
ULTERIOR FACT SCENARIO AND ONE  
WHICH REALLY MAKES THE  
CONTRAST BETWEEN THE DEFENSE  
AND STATE POSITION WOULD BE IF  
SOMEONE UNDER THE SAME  
CIRCUMSTANCES REPORTED TO A  
POLICE OFFICER I JUST SAW  
SOMEONE BEING DRAGGED INTO A  
CAR AND THE CAR IS DRIVING  
AWAY.

IF THE OFFICER FOUND THAT  
PERSON TO BE BELIEVABLE, IF

THEY CONCLUDED THAT THIS WAS A  
CITIZEN INFORMANT, WOULD THE  
TERRY STOP THEREFORE BE  
NEGATED BECAUSE SOMEONE DIDN'T  
FILL OUT A VICTIM WITNESS  
STATEMENT, DIDN'T GET THE  
NAME?

BECAUSE UNFORTUNATELY IN A  
SITUATION LIKE THIS, PUTTING  
ONE'S FEET IN THE SHOES OF THE  
POLICE, YOU KNOW, IT'S A  
QUICKLY UNFOLDING SITUATION.

>> IT'S REALLY NOT CRITICIZING  
THE YOU KNOW, I THINK WE  
GET TO THESE THINGS AND TRY TO  
DO THE BALANCE, BECAUSE IF YOU  
LOOK AT J.L., THEY GET THE  
GUN, YOU KNOW.

THE MINOR OF COURSE THE  
MINOR NOW HAS I GUESS WHAT  
IS THE STATUS OF THIS CASE?  
HAS HE NOT BEEN PROSECUTED?

>> NO.

THE SUPPRESSION ORDER WAS  
GRANTED.

HE APPEALED TO THE 3rd  
DISTRICT COURT OF APPEAL.  
THEY REVERSED.

HOWEVER, I DON'T BELIEVE IT'S  
BEEN REMANDED FOR TRIAL.

>> I SEE.

OKAY.

BUT HE'S THE CONSEQUENCE IS  
HIS GUN IS THIS GUN IS  
TAKEN AWAY.

SO NO ONE'S SAYING THAT THE  
ISSUE JUST IS WHETHER THE  
PERSON ALSO SHOULD BE  
PROSECUTED FOR THE FRUITS OF  
THIS CRIME.

AND I GUESS MY POINT EARLY  
EARLIER IS IF THE VICTIM HAD  
STAYED ON THE SCENE TO SAY  
THAT'S THE PERSON THAT  
ASSAULTED ME, THERE STILL  
COULD HAVE BEEN A PROSECUTION  
FOR AGGRAVATED ASSAULT AND HIS  
INITIAL COMMENT TO THE POLICE  
OFFICER MAYBE COULD HAVE COME  
IN AS AN EXCITED UTTERANCE.

SO YOU WOULDN'T HAVE NEEDED  
THE SEARCH TO BE ABLE TO  
PROSECUTE THIS DEFENDANT,  
RIGHT?

IF THE VICTIM HAD STAYED OR  
COME FORTH AND IDENTIFIED  
HIMSELF AND BEEN ABLE TO SAY  
AND IDENTIFY WHO THAT  
THOSE WERE THE PEOPLE THAT  
ASSAULTED HIM.

>> IF HE WERE TO HAVE BEEN  
ABLE TO IDENTIFY THEM IN SOME  
WAY AND IF HE DESCRIBED THE  
FACTUAL SCENARIO HE DID AND IF  
HE WERE TO HAVE BEEN KNOWN BY  
THE POLICE, THEN THE STATE  
COULD HAVE PROCEEDED WITH A  
PROSECUTION BASED UPON THAT  
EVIDENCE.

>> AND THE PROBLEM THAT WE ALL  
HAVE, BECAUSE WE SEE SOMEBODY  
AND THEY END UP WITH THE GUN,  
RIGHT?

THEY HAVE THE GUN, SO WE GO,  
OKAY.

BUT THE SAME FACTUAL SCENARIO  
COULD BE APPLIED TO SOMEONE  
WALKING DOWN THE STREET IN AN  
AREA THAT IS NOT A HIGHCRIME  
AREA AND ALL OF A SUDDEN NEXT  
THING THEY KNOW A GUN IS BEING  
DRAWN ON THEM.

AND SO THAT'S WHERE WE KIND OF  
TRY HAVE TO STRIKE THE  
BALANCE BETWEEN WHETHER IT'S  
THE FRUIT YOU KNOW, THE  
SUPPRESSION IS APPROPRIATE  
BECAUSE THERE'S BEEN A  
VIOLATION OF THE 4TH  
AMENDMENT, NOT NECESSARILY  
CRITICIZING THE POLICE OFFICER  
FOR WHAT HE DID IN THAT  
30MINUTE TIME PERIOD.

>> CORRECT.

AND IF MY IF MY QUESTION  
IMPLIED THAT ANYONE WAS  
CRITICIZING THE POLICE, I  
APOLOGIZE.

THAT WASN'T MY INTENTION.

>> WOULD YOU GO BACK AND

RESPOND TO MY INITIAL QUESTION  
TO YOUR TO THE DEFENDER IN  
THIS CASE AND THAT IS  
RECOGNIZING THAT THIS IS NOT  
CLEARLY IN THE FIT OF BAPTISE  
AND J.L., WHAT IS IT ABOUT  
THIS CASE?

WHICH FACTOR, FACT, FACTS,  
MULTIPLES, WOULD DIRECT US  
THAT THE LAW, 4TH AMENDMENT  
LAW, IS IN FAVOR OF THE STATE  
IN ALLOWING THIS TYPE OF  
ENCOUNTER?

>> YOUR HONOR, UNDER THIS  
COURT'S DECISION IN BAPTISE,  
UNDER THE FEDERAL SUPREME  
COURT'S DECISION IN ILLINOIS V  
GATES, THE COURT MUST LOOK AT  
THE TOTALITY OF THE  
CIRCUMSTANCES.

>> RIGHT.

>> SO I WOULDN'T ARGUE THAT  
ONE FACT IN PARTICULAR  
JUSTIFIES

>> WELL, SOMETHING MUST TIP  
THE SCALE ONE SIDE OR THE  
OTHER.

WE HAVE THESE COMPETING  
INTERESTS.

>> TRUE.

>> AND THIS DOESN'T FIT NEATLY  
INTO ANY OF THOSE CASES, DOES  
IT?

>> THERE'S A CASE FROM THE 5TH  
DCS WHERE AN OFFICER WAS  
WORKING IN A DEPARTMENT STORE.  
HE WAS APPROACHED BY AN  
OFFICER.

THE CUSTOMER SAID

>> BUT IN THAT CASE THE  
OFFICER COULD SEE WHAT WAS  
GOING ON WHILE HE WAS TALKING  
WITH THE CITIZEN INFORMANT.

>> HE WALKED OUTSIDE AND  
POINTED TO HIM, RIGHT?

>> TRUE.

>> RESPECTFULLY, I THINK  
THAT'S SORT OF STRETCHING IT  
TO SAY THAT THAT'S RIGHT ON  
POINT.

>> WELL

>> ISN'T MCCALVIN I'M  
READING FROM PAGE 405 OF  
MCKELLANN.

THE INDICIA OF RELIABLE DO NOT  
EXIST IN THE PRESENT CASE  
WHERE THE POLICE HAVE NO  
CONTACT INFORMATION FOR THE  
INFORMANT AND NO WAY TO LOCATE  
HIM, HER OTHERWISE.

FURTHER, IN THE INSTANT CASE  
THE OFFICERS DID NOT KNOW THE  
MOTIVE OF THE INFORMANT.  
THEY COULD HAVE BEEN  
PROVIDING THE INFORMATION FOR  
THEIR OWN GAIN, MAY HAVE BEEN  
FALLING OUT WITH THE DEFENDANT  
OR MAY HAVE BEEN ACTING ON  
BEHALF OF A COMPETING DRUG  
DEALER.

DID I READ THAT OUT OF  
CONTEXT?

DOES THAT NOT SEEM TO SUPPORT  
EXACTLY THE FACTS OF THIS  
CASE?

YET THE 3rd DISTRICT REACHES A  
DIFFERENT CONCLUSION?

>> NO, YOUR HONOR, BECAUSE IN  
THAT CASE THE INFORMANT SAID  
THAT HE OR SHE WANTED TO  
REMAIN ANONYMOUS.

THE OFFICER KNEW THAT.  
THE OFFICER KNEW THE  
INFORMANT'S POSITION PRIOR TO  
THE STOP.

THAT IS NOT THE CASE HERE.  
THE CASE HERE IS THE OFFICER  
AT THE TIME OF THE STOP  
BELIEVED THAT THIS INFORMANT  
WOULD BE AT McDONALD'S 30  
MINUTES LATER.

>> BUT THAT'S AN ADDITIONAL  
FACT.

BUT IN WHAT THE 4TH DISTRICT  
SAID, THEY SAID THE IMPORTANCE  
WAS IS THAT THERE WAS NO  
CONTACT INFORMATION AND NO WAY  
TO ASCERTAIN THE IDENTITY OF  
THE DEFENDANT.

ALL THIS OFFICER HAD TO DO WAS

JUST SAY, YOU KNOW, WAIT HERE.  
LET ME HAVE YOUR NAME AND YOUR  
CONTACT INFORMATION OR GIVE  
THAT TO THE DISPATCHER.

>> TRUE.

AND THE DISTINCTION BETWEEN  
THE CASES IS THAT IN MCCALVIN  
AS WELL AS ALL THE OTHER CASES  
THE OFFICERS KNEW THAT THEY  
WOULD NEVER GET THAT  
INFORMATION PRIOR TO THE STOP.  
THAT IS NOT THE CASE HERE.  
HE DID BELIEVE THAT HE WOULD  
GET T. AND BACK TO JUSTICE  
LEWIS'S QUESTION, THERE ARE  
THREE FACTORS: MOTIVATION,  
ACCOUNTABILITY AND  
CREDIBILITY.

>> DID THE OFFICER SAY HE  
THOUGHT HE WOULD GET THAT  
INFORMATION?

>> YES, HE DID.

>> SO HE BELIEVED THAT THE  
DEFENDANT, DESPITE EVERYTHING  
I MEAN NOT THE DEFENDANT,  
THE VICTIM.

HE BELIEVED THAT THE VICTIM  
WAS GOING TO STAY AT THE  
SCENE.

>> YES.

I DID NOT TAKE THE WITNESS'S  
INFORMATION BECAUSE OF THE  
TIME LAMBS.

I WAS WORRIED THAT I WOULDN'T  
CATCH THE SUSPECTS.

SO I IMMEDIATELY LEFT.

I FIGURED THAT I WOULD BE ABLE  
TO GET THE INFORMATION AND  
THAT HE WOULD STAY AT  
McDONALD'S BECAUSE I TOLD HIM  
TO BE THERE.

I'M PARAPHRASING, BUT IT'S ON  
PAGE 17 OF THE TRANSCRIPT.  
RETURNING TO THOSE THREE  
FACTORS, IN MY LAST MINUTE,  
MOTIVATION, AGAIN, THE  
INFORMANT IN THIS CASE PUT HIS  
OWN FREEDOM IN JEOPARDY BY  
PLACING HIMSELF IN POSSIBLE

>> AND HOW DID HE DO THAT?  
HE PLACED HIMSELF IN JEOPARDY  
BY WHAT?  
>> IF IT WERE FALSE, BY MAKING

>> FACETOFACE.  
>> BY MAKING A FALSE TIP.  
WHEN HE MADE THAT FALSE TIP IN  
PERSON, HE HAD NO WAY OF  
KNOWING THAT THE OFFICER  
WOULDN'T SAY, HEY, COME WITH  
ME WHILE I GET HIM.  
HE HAD NO WAY OF KNOWING THAT  
THE OFFICER WOULD SAY I'M  
GOING TO CALL MY BACKUP SO  
THEY CAN GET YOUR INFORMATION.  
>> SO THAT'S THINGS THAT MAY  
HAVE HAPPENED, BUT WE DON'T  
KNOW.

>> THE VICTIM DIDN'T ASK FOR  
ANY FAVORS.  
HE DIDN'T ASK FOR ANY MONEY.  
AGAIN, WE'RE GOING BACK TO THE  
MOTIVATION.  
THERE'S NO INDICATION THAT  
THERE WAS ANY BAD RELATIONSHIP  
BETWEEN THESE PEOPLE.  
>> YOU WOULDN'T KNOW THERE WAS  
BECAUSE HE DISAPPEARED.  
I MEAN, YOU KNOW, THE IDEA  
THAT HE'S THE ISSUE IS  
RELIABILITY.  
>> TRUE.  
>> RIGHT?  
ANYWAY, I'M BUT THE  
MOTIVATION IS WE WON'T KNOW IT  
BECAUSE THE DEFENDANT  
VICTIM DIDN'T REMAIN.  
>> THAT IS TRUE.  
>> DID YOU HAVE A QUESTION?  
>> HE ANSWERED.  
HE SAID THAT'S TRUE.  
>> THANK YOU.  
I WOULD ASK THE COURT TO  
AFFIRM THE 3rd DISTRICT COURT  
OF APPEAL.  
THANK YOU.  
>> REBUTTAL?  
>> IN RESPONSE TO YOUR



QUESTION, HERE'S WHAT TIPS THE SCALES IN FAVOR OF THE DEFENSE.

IF OFFICERS ARE GOING TO DO FULLBLOWN TERRY STOPS IN RESPONSE TO A TIP, PULL THEIR WEAPONS BEFORE ASKING ANY FURTHER QUESTIONS, AT MINIMUM THEY NEED TO HAVE RELIABLE INFORMATION THAT THE TIP THAT THEY RECEIVED IS TRUE.

IT'S NOT AN UNDUE BURDEN TO REQUIRE POLICE OFFICERS TO DO THE VERY MINIMUM AT LEAST OF ASKING FOR A NAME OR SOME IDENTIFICATION.

IF THE RULE IS THE OFFICER DOESN'T HAVE TO DO ANYTHING, DOESN'T HAVE TO ASCERTAIN THEIR IDENTITY, FIGURE OUT IF THERE'S ANY CORROBORATION, AS LONG AS THEY GET THE TIP, THEY CAN PULL A WEAPON ON SOMEONE, THAT IS NOT GOOD POLICE PRACTICE OR PUBLIC POLICY.

THE RULE SHOULD BE IF A OFFICER IS GOING TO THREATEN TO BLOW SOMEONE'S HEAD OFF, THEY SHOULD HAVE RELIABLE INFORMATION.

THE OFFICER TOLD US DIDN'T KNOW THE FIRST THING ABOUT HIM, DIDN'T KNOW WHAT HE WAS MOTIVATED BY.

THERE'S NOT EVEN Demeanor TESTIMONY WHICH IS ONE OF THE MAIN REASONS WE FIND FACETOFACE TIPSTERS RELIABLE.

>> LET ME ASK YOU THIS.

4TH AMENDMENT DOESN'T PROHIBIT ALL SEARCHES AND SEIZURES.

IT PROHIBITS ONLY WHAT?

>> UNREASONABLE.

>> EXACTLY.

>> THAT'S RIGHT.

>> WHY IS IT NOT REASONABLE FOR A POLICE OFFICER, AS THIS OFFICER RESPONDED, I ASSUMED THAT THE MAN WAS GOING TO WAIT

THERE, THE PEOPLE ARE GETTING AWAY.

I WENT AFTER THE BAD GUY.  
I HAD NO REASON TO SUSPECT THAT HE'S GOING TO LEAVE.  
HE'S ON THE PHONE WITH HEADQUARTERS.

AND MY JOB IS TO APPREHEND.  
WHY IS IT UNREASONABLE OPERATING ON I THOUGHT THAT HE'S GOING TO BE THERE?  
BECAUSE HE WAS THERE WHEN HE GAVE ME THE INFORMATION.  
WHY IS THAT AN UNREASONABLE SEIZURE?

>> BECAUSE I THINK THE ANALYSIS FOR WHETHER THE OFFICER WAS REASONABLE IN THINKING HE WOULD STAY THERE IS THE SAME FOR WHETHER HE THOUGHT THE TIP WAS RELIABLE.  
BUT THE OFFICER TOLD US HE HAD NO REASON TO THINK THE TIP WAS RELIABLE BECAUSE HE DIDN'T KNOW WHAT THIS PERSON WAS THERE FOR, WHAT HE WAS DOING, WHO HE WAS, KNEW THE PERSON COULDN'T BE HELD ACCOUNTABLE.  
SO IF HE CAN'T BE ACCOUNTABLE FOR THE TIP HE GAVE, WHY WOULD HE BE ACCOUNTABLE FOR LEAVING THE SCENE OF THE CRIME?  
THE OFFICER TOLD US I DON'T KNOW.

THE REASON IS THE OFFICERS DIDN'T DO THE BAER MINIMUM OF FIGURING OUT WHO THIS PERSON WAS OR WHAT HE WANTED.  
FOR US TO NOW BE IN THE POSITION WHERE WE HAVE TO SPECULATE ABOUT WHAT WOULD HAVE HAPPENED IF THE OFFICER HAD ASKED

>> THIS IS WHAT BOTHERS ME, AND I'VE DONE A LOT OF THESE MOTIONS.

WE HAVE A TENDENCY TO DISSECT WHAT HAPPENED THERE, KIND OF THE WAY WE LOOK AT THE FILM IN THE KENNEDY ASSASSINATION, ONE

FRAME AT A TIME.  
THIS IS HAPPENING VERY  
RAPIDLY.  
WHAT MORE DOES THE OFFICER  
NEED TO KNOW THAN THE PERSON  
SAY I'M AT McDONALD'S, I WENT  
TO THE BATHROOM AND THESE  
PEOPLE PULLED A GUN ON ME?  
WHAT MORE DOES HE NEED TO KNOW  
FOR IT TO BE REASONABLE?  
YOUR ADDRESS?  
YOUR SOCIAL SECURITY NUMBER?  
YOUR DATE OF BIRTH?  
ALL THOSE THINGS BEFORE IT  
BECOMES REASONABLE?  
>> ANY ADDITIONAL FACT THAT  
WOULD INDICATE THAT IT WAS  
TRUE AND NOT JUST A LIE USED  
TO IMPLICATE THE DEFENDANT.  
AND IN ALL THE FACES WHERE A  
FACETOFACE ENCOUNTER WASN'T  
SUFFICIENT THERE HAVE BEEN  
ADDITIONAL FACTS.  
THE PERSON IS ACTING IN SHOCK.  
THEY'RE SHAKING.  
THE CRIME IS HAPPENING AT THE  
PERSON IS THERE WITH THE  
OFFICER POINTING.  
THIS IS A HIGHCRIME AREA.  
>> HE SAYS HE SEEMS AGITATED.  
HE JUMPS OUT IN FRONT OF THE  
OFFICER'S CAR.  
THE OFFICER IS TRYING TO  
FIGURE OUT WHAT THAT IS.  
BUT THERE ARE OBJECTIVE  
CIRCUMSTANCES HERE TO INDICATE  
THAT THIS GUY IS VERY SERIOUS  
ABOUT TRYING TO REPORT  
SOMETHING TO THE POLICE.  
AND JUMPING IN FRONT OF A  
POLICE CAR, THAT SEEMS TO ME  
TO BE THE KIND OF ADDITIONAL  
FACT THAT YOU'RE LOOKING FOR,  
YOU COULD FIND IT RIGHT THERE.  
>> BUT IT DOESN'T, YOUR HONOR,  
BECAUSE THAT ONLY INDICATES  
THIS PERSON REALLY WANTED TO  
GIVE THIS TIP.  
MAYBE HE REALLY WANTED TO  
IMPLICATE THE JUVENILE.

THE PROBLEM IS AGAIN WE DON'T  
KNOW BECAUSE THE OFFICER  
DIDN'T DO THE FIRST THING TO  
FIGURE OUT IF WHAT THIS PERSON  
SAID WAS TRUE.

>> THANK YOU FOR YOUR  
ARGUMENT.

>> THANK YOU, YOUR HONOR.

>> COURT IS ADJOURNED.

>> ALL RISE.