

>> NEXT CASE ON THE DOCKET IS WIGGINS VERSUS DEPARTMENT OF MOTOR VEHICLES.

>> TAKE YOUR TIME.

>> MAY IT PLEASE THE COURT, SUSAN COHEN ON BEHALF OF MR. WIGGINS.

THE CASE BEFORE THE COURT TODAY IS ON AN ISSUE REGARDING THE PROPER STANDARD OF REVIEW FOR CIRCUIT COURT ON FIRST WRIT OF CERTIORARI ON A REVIEW OF A LICENSE SUSPENSION BASED ON THE FLORIDA IMPLIED CONSENT LAW. THE DISTRICT COURT IN THIS CASE RENDERED AN OPINION THAT IMPOSED A FAR TOO NARROW VIEW OF WHAT THE COMPETENT, SUBSTANTIAL EVIDENCE PRONG OF THAT REVIEW IS.

IT ARISES FROM HEARINGS THAT ARE DIFFERENT THAN MOST ADMINISTRATIVE HEARINGS.

IT IS A UNIQUE PROCESS, AND THE ONLY FORM OF ANY TYPE OF REVIEW IS THAT FIRST TIER REVIEW IN THE CIRCUIT COURT.

>> WELL, ARE YOU SUGGESTING THAT CHANGES THE STANDARD?

>> NO.

IT'S STILL A COMPETENT EVIDENCE STANDARD.

THE QUESTION IS WHAT IS THAT STANDARD AND WHAT DOES THAT MEAN IN TERMS OF HOW A CIRCUIT COURT REVIEWS THE EVIDENCE.

THE FIRST DISTRICT COURT OF APPEALS SUGGESTED IT'S UP TO THE CIRCUIT COURT TO GO THROUGH EVERY PIECE OF EVIDENCE UNTIL IT FINDS THAT THERE IS SOMETHING THERE THAT WOULD SUPPORT THE ORDER OF THE HEARING OFFICER. THE PROBLEM WITH THE NARROW VIEW SUGGESTED BY THE FIRST DISTRICT COURT OF APPEAL IS THAT WHEN YOU HAVE A SITUATION, AS WE SAW IN THE TREMBLE CASE OUT OF THE FIRST DISTRICT COURT OF APPEAL, WHICH ARE UNDERSTANDABLY JUST

PAPER RECORD, WHERE YOU HAVE THINGS THAT COMPLETELY CONFLICT AND THERE'S NO EXPLANATION FOR WHICH ONE'S RIGHT AND WHICH ONE'S WRONG AND HEARING OFFICERS WILL TAKE THE ONE THAT IS THE LEAST LOGICAL AND UPHOLD THE SUSPENSION AND DISREGARD THE OTHER.

EVEN THAT WOULD BE INCORRECT FOR A CIRCUIT COURT TO LOOK AT THAT AND SAY THIS IS NOT COMPETENT, SUBSTANTIAL EVIDENCE.

>> WHAT MUST BE COMPETENT, SUBSTANTIAL EVIDENCE FOUND BY THE CIRCUIT COURT HERE? THE HEARING OFFICER.

WHAT WAS THE EVIDENCE?

>> THE HEARING OFFICER BASICALLY REITERATED THE FINDINGS OF THE -- THE STATEMENTS OF THE OFFICER.

THE OFFICER STATING THAT THE CAR ALMOST HIT A CURB, DESCRIBING THE SPECIFIC DRIVING PATTERN OF THE VEHICLE.

AND WHAT THE CIRCUIT COURT DID WAS IN REVIEWING THE ENTIRE RECORD, BECAUSE IT'S WELL SETTLED THAT THESE REVIEWS ARE SETTLED.

WHILE THE CIRCUIT COURT CAN'T REWEIGH THE EVIDENCE, PART OF THE REVIEW IS TO LOOK AT WHAT IS IN FRONT OF THE -- THE FULL RECORD OF WHAT'S IN FRONT OF THE HEARING OFFICER.

>> BUT THE OFFICER TESTIFIED OR I GUESS THE REPORT WAS INTRODUCED INTO EVIDENCE?

>> IT WAS BOTH.

THE OFFICER TESTIFIED AND THERE WAS A REPORT.

>> HE TESTIFIED THAT HE OBSERVED THE VEHICLE WEAVING.

>> YES, SIR.

>> ALMOST HIT THE CURB.

>> YES, SIR.

>> HE MENTIONED THE DRIVER HAD BLOODSHOT EYES.

DID HE MENTION THAT THE SPEECH WAS SLURRED?

THAT'S A USUAL THING.

>> YES, THAT IS THE USUAL THING.

>> DID HE SAY THAT?

>> I BELIEVE IN THIS CASE HE DID AS WELL.

BUT THE ISSUE GOES EVEN BEFORE THAT.

ONE OF THE INITIAL ISSUES AS RECORDED BY THIS COURT IN HERNANDEZ IS WAS EVEN THE STOP LAWFUL.

SO IN DETERMINING WHETHER THE STOP WAS LAWFUL, THERE HAS TO BE COMPETENT, SUBSTANTIAL EVIDENCE FOR THE BASIS OF THE STOP.

AND SOME OF THE EXAMPLES THAT WE'VE PROVIDED ARE SITUATIONS WHERE IF THE OFFICER SAYS THAT I OBSERVED THE VEHICLE GOING INSIDE AND OUTSIDE THE LANES AND THERE IS AN VIDEOTAPE WHICH SHOWS THAT THAT NEVER OCCURRED, IS THE OFFICER'S STATEMENT STILL COMPETENT, SUBSTANTIAL?

IT'S THE OFFICER'S VIDEO.

THE FIRST DISTRICT COURT OF APPEAL, RELYING ON WIGGINS, DENIED THE POSITION, SAID IT'S A REWEIGHING.

WHAT HAPPENED IN LANNING WAS THE BREATH TEST OPERATOR SWEARS I OBSERVED THE DRIVER FOR 20 MINUTES, WHICH IS A REQUIREMENT FOR A BREATH TEST.

THE VIDEO SHOWS THE MAN LEAVING THE ROOM SEVERAL TIMES, WASN'T EVEN IN THE ROOM.

SO THE QUESTION IS IS THE CIRCUIT COURT THEN BOUND TO SAY, WELL, BECAUSE HE SAID IT, IT'S COMPETENT, SUBSTANTIAL EVIDENCE EVEN WHEN IT'S CLEAR THAT IT'S NOT REALLY COMPETENT AND IT'S NOT -- AND I USE THE WORD "CREDIBLE" CAREFULLY BECAUSE I KNOW SOME OF THE COMPETENT, SUBSTANTIAL EVIDENCE CASES USE THAT WORD.

AND I DON'T MEAN CREDIBLE IN TERMS OF WEIGHING CREDIBILITY OF ONE WITNESS OVER ANOTHER, BUT IT'S A QUESTION OF WHEN THERE IS CLEAR CONTRADICTION THAT CAN'T BE EXPLAINED, NOT EXPLAINED, THAT IT THEN IT'S COMPETENT, SUBSTANTIAL.

>> JUST SO I UNDERSTAND, I'M TRYING TO GET BACK TO WHAT I'M THINKING, OKAY?

>> YES, SIR.

>> MR. WIGGINS IS BEFORE THE HEARING OFFICER BECAUSE -- IS IT HE OR SHE?

>> HE.

>> BECAUSE HE PRETTY MUCH DECIDED TO NOT CONDUCT THE SOBRIETY TEST.

SO THE LICENSE WAS SUSPENDED AND THEREFORE THAT'S WHY WE'RE BEFORE THE HEARING OFFICER.

>> YES, YOUR HONOR.

>> HANG ON.

I'M JUST TRYING TO GET THERE. JUST STAY WITH ME.

>> YES, SIR.

>> SO WE GET THERE BEFORE THE HEARING OFFICER, AND THEN THE PURPOSE OF THE HEARING IS WHAT, TO SEE WHETHER OR NOT THERE WAS SUFFICIENT PROBABLE CAUSE FOR THE OFFICER TO STOP HIM TO BEGIN WITH OR WHETHER THERE WAS SUFFICIENT, COMPETENT EVIDENCE TO SUPPORT THE FINDING OF THE OFFICER?

>> AT THE LEVEL OF THE HEARING OFFICER, THE ROLE OF THE OFFICER IS TO DETERMINE WHETHER THE PERSON WAS LAWFULLY ARRESTED AS FOUND BY THIS COURT IN HERNANDEZ BECAUSE THE IMPLIED CONSENT LAW REQUIRES THAT YOU BE LAWFULLY ARRESTED BEFORE YOU CAN BE REQUESTED TO TAKE A BREATH TEST. THAT INCLUDES REASONABLE SUSPICION OR REASONABLE CAUSE FOR A STOP.

THE HEARING OFFICER ALSO MUST

DETERMINE IF IT'S A REFUSAL
WHETHER YOU WERE WARNED IF YOU
REFUSE WHAT THE CONSEQUENCES
WOULD BE AND THEN IF IT WAS A
REFUSAL OR IF IT'S AN UNLAWFUL
BREATH ALCOHOL LEVEL, THEY HAVE
A FEW DIFFERENT THINGS THEY HAVE
TO CONSIDER.

HOWEVER, THE PROBLEM ARISES, AND
WHAT MAKES THESE HEARINGS
DIFFERENT -- SO NOT THAT IT'S A
DIFFERENT STANDARD, BUT THE
INTERPRETATION STANDARD IS
UNLIKE A LOT OF THE HEARINGS ON
COMPETENT, SUBSTANTIAL EVIDENCE,
THERE ARE NO POLICY DECISIONS
HERE.

IF THERE'S POLICY DECISIONS,
THEN WE HAVE A PROBLEM BECAUSE
IT'S REALLY LARGELY SEARCH AND
SEIZURE ISSUES AND COMPLIANCE
WITH THE LAW ISSUES.

SO YOU HAVE THESE HEARINGS IN
FRONT OF HEARING OFFICERS THAT
ARE NOT LAWYERS OR JUDGES AND
THEY'RE EMPLOYED BY THE
DEPARTMENT.

AND I RECOGNIZE AND ACKNOWLEDGE
THAT THE PROCESS HAS BEEN DEEMED
TO BE CONSTITUTIONAL.

HOWEVER, A BASIC PREMISE OF ANY
CONSTITUTIONAL DUE PROCESS RIGHT
IS A FAIR AND IMPARTIAL HEARING
OFFICER.

>> LET'S CUT RIGHT THROUGH ALL
THE GOING OVER AND OVER.

I MEAN, WE KNOW WHAT THE FACTS
ARE.

IT SEEMS TO ME IS THAT WE HAVE
TO COME TO GRIPS WITH WHAT DOES
IT MEAN, COMPETENT, SUBSTANTIAL
EVIDENCE, IN THIS CONTEXT.

>> EXACTLY.

>> I MEAN, WE KNOW WE DO BAR
CASES, AND IF THERE'S ANY
EVIDENCE TO SUPPORT A FINDING OF
DISCIPLINE, EVEN THOUGH THERE
MAY BE CONTRARY EVIDENCE, WE ARE
REQUIRED BY OUR STANDARDS TO
UPHOLD IT.

NOW, HERE WE'RE MOVING INTO AN AGE OF VIDEO CAMERAS ON CARS, AND, I MEAN, I CAN THINK OF ANY NUMBER OF CIRCUMSTANCES WHERE A VIDEOTAPE WOULD JUST ABSOLUTELY DISPROVE EVERYTHING THAT A REFEREE HAS SAID EXCEPT SOME OF THE CONVERSATIONS THAT ARE NOT RECORDED.

>> YES, SIR.

>> THOSE CONVERSATIONS COULD BE USED AS COMPETENT, SUBSTANTIAL EVIDENCE IF IT'S NOT REFUTED BY THE VIDEO THAT'S SHOWN.

AND WE HAVE THAT HERE.

WE HAVE THAT HERE IN CONNECTION WITH WATERY EYES, WITH SLURRED SPEECH, WITH THOSE KINDS OF THINGS.

>> YES, SIR.

>> SO THAT'S WHAT I'M TROUBLED ABOUT, BECAUSE WE'VE GOT CASE LAW THAT SAYS IF THE EVIDENCE IS IN CONFLICT, THEN THAT'S NOT COMPETENT, SUBSTANTIAL EVIDENCE. HOW MUCH CONFLICT DO YOU NEED?

IS THIS A UNIQUE AREA THAT WE SHOULD DO SOMETHING DIFFERENT WITH THIS?

BUT THAT'S WHAT THIS CASE IS ABOUT.

>> I HAVE MULTIPLE ANSWERS TO THAT.

>> WELL, GOOD.

I ASKED YOU MULTIPLE QUESTIONS.

>> IT IS A UNIQUE AREA.

IT IS COMPLETELY WITHIN THE CONTROL OF THE DEPARTMENT OF MOTOR VEHICLES.

THEY'RE HEARING OFFICERS.

THEY ARE NOT WITHIN THE ADMINISTRATIVE PROCEDURES ACT.

THEY WRITE THEIR OWN RULES.

YOU CANNOT SUBPOENA WITNESSES UNLESS THE HEARING OFFICER DEEMS THAT SOMEBODY IS APPROPRIATE, ISSUES A SUBPOENA.

SO IT'S TOTALLY WITHIN THEIR CONTROL.

THERE COULD BE A PROPENSITY TO

NOT BE AS FAIR AND IMPARTIAL AS YOU TRY TO BE.

AND THEY DO TRY TO BE.

BUT YOU'RE ANSWERING TO PEOPLE -- IF YOU'RE ANSWERING TO THE DEPARTMENT IN A CASE WHERE THE DEPARTMENT ISN'T A PARTY AND SO --

>> YOU'RE MAKING A DECISION IN THE CASE.

>> YES, SIR.

AND WE INCLUDED A MEMO AND ARGUED IT TO THE FIRST DISTRICT COURT OF APPEAL WHERE THEY DID CALL A HEARING OFFICER, NOT TELL US WHAT DECISIONS YOU'RE GOING TO MAKE, IF YOU'RE GOING TO VALIDATE A SUSPENSION, YOU HAVE TO CLEAR IT WITH US.

COMPETENT, SUBSTANTIAL EVIDENCE. FIRST QUESTION.

WAS HE LAWFULLY STOPPED?

SO ALL OF THE OBSERVATIONS REGARDING THE EYES, THE SPEECH, DOES NOT GO TO THE LAWFULNESS OF THE STOP BECAUSE IF THE STOP WAS NOT LAWFUL, NONE OF THAT MATTERS.

>> SO YOUR POINT WOULD BE THAT IT'S BEEN A MISAPPLICATION OF THE PROBABLE CAUSE STANDARD, LEGAL STANDARD, OR REASONABLE SUSPICION STANDARD, THAT IT IS TOTALLY REMOVED IN THIS CASE, SO THEREFORE THE INCORRECT LAW WAS APPLIED, NOT A QUESTION OF COMPETENT EVIDENCE.

IS THAT CORRECT?

>> I DON'T THINK YOU CAN SEPARATE THE TWO WHEN YOU'RE DEALING WITH REASONABLE SUSPICION AND PROBABLE CAUSE. IT'S WHAT-- THE EVIDENTIARY PORTION HAS TO BE INTERTWINED WITH THE LEGAL DETERMINATION. AND I THINK THAT'S CORRECT. I THINK THIS CASE SHOWS BOTH OF THOSE ASPECTS.

BUT THAT'S WHERE THE PROBLEM COMES IN.

WHEN YOU HAVE A VIDEO IN FRONT OF A CIRCUIT COURT THAT IS SUPPOSED TO DETERMINE WHAT IS COMPETENT, SUBSTANTIAL EVIDENCE, AS IN THE TREMBLE CASE AND THE CALLING CASE.

IN CALLING THE HEARING OFFICER HAD TWO DOCUMENTS.

THE QUESTION WAS WAS THE BREATH TEST BELOW A .2.

THE TWO BLOWS WERE CLEARLY VERY FAR APART.

ONE WAS A .517 AND A .02, CLEARING MAKING SENSE.

LOGICAL.

BUT IF IT WAS THE SECOND ONE, THE SUSPICION WOULD HAVE TO BE INVALIDATED.

THE HEARING OFFICER UPHELD THE SUSPENSION AND SAID I'M GOING TO RELY ON THE .517 AND .02.

THE QUESTION NOW IS DOES THAT MEAN THAT THE CIRCUIT COURT HAS TO SAY, WELL, THERE'S SOMETHING THERE.

AND I THINK THE JUDGE IN HIS DISSENT EXPLAINED IT VERY WELL, THAT JUST BECAUSE THERE IS SOMETHING IN THE RECORD, MAYBE THERE IS EVIDENCE, THE QUESTION IS IS IT COMPETENT, SUBSTANTIAL. AND THAT'S WHAT THE CIRCUIT COURT DID IN THIS CASE, LOOKED TO DETERMINE IF IT MET THE REQUIREMENTS OF COMPETENT, SUBSTANTIAL EVIDENCE TO ESTABLISH REASONABLE SUSPICION OF PROBABLE CAUSE FOR THE STOP.

>> BUT YOU AGREE THAT THERE IS CASE LAW IN THIS CONTEXT THAT DOES NOT TAKE JUDGE VAN NORTWICK'S VIEW AND TAKES THE VIEW THAT IF THERE'S SOME EVIDENCE THAT'S IN THE RECORD, THEN THAT'S SUFFICIENT TO MEET THAT STANDARD.

THERE ARE CASES, YOU AGREE, THAT SAY THAT?

>> THERE ARE CASES BUT THEY'VE NEVER REALLY APPROACHED IT FROM

THE ANGLE OF WHAT THESE CASES
WHERE IT'S REALLY PURE FACT,
PURE LAW.

MOST OF THOSE CASES YOU'RE
TALKING ABOUT ZONING CASES.
YOU GET A LOT OF CONVERSATION
AND DISCUSSION ABOUT POLICY
DECISIONS AND THE CIRCUIT COURT
MAY HAVE THIS EVIDENCE AND THAT
EVIDENCE, BUT IT'S NOT UP TO THE
CIRCUIT COURT TO WEIGH THE
POLICY ASPECTS OF IT.

THESE ARE SEARCH AND SEIZURE
ISSUES MORE AKIN TO REVIEWS OF
MOTIONS TO SUPPRESS WHERE A
CIRCUIT COURT HAS TO LOOK FOR
COMPETENT, SUBSTANTIAL EVIDENCE.
IF THE OFFICER SAYS I ADVISED
HIM OF HIS RIGHTS UNDER MIRANDA
AND THE VIDEO SHOWS HE DID NOT,
IF THE COUNTY COURT SAYS HE
ADVISED HIM OF HIS RIGHTS UNDER
MIRANDA, THE CIRCUIT COURT CAN
FIND NO COMPETENT, SUBSTANTIAL
EVIDENCE SUPPORTS THAT.

IT'S MORE OF WHAT DOES
CONSTITUTE COMPETENT,
SUBSTANTIAL EVIDENCE.
WHAT IS THAT REVIEW.

IT IS DIFFERENT THAN A
REWEIGHING.

WE ARE GOING TO HAVE MORE AND
MORE CIRCUMSTANCES WHERE YOU
HAVE BLACK AND WHITE ON A VIDEO
AND UNFORTUNATELY THERE ARE
TIMES WHERE AN OFFICER WILL
TESTIFY -- WE'VE HAD CASES,
OFFICER SAYS HE MESSED UP ON HIS
ALPHABET AND YOU PLAY THE VIDEO
FIVE TIMES.

DIDN'T MISS A LETTER.

>> IN OTHER WORDS, THIS IS A
CASE WHERE YOU DON'T BELIEVE
YOUR LYING EYES.

>> ACTUALLY, THAT'S KIND OF HOW
IT WAS ARGUED IN THAT PARTICULAR
CASE.

BUT I SEE I'M INTO MY REBUTTAL
TIME.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, JASON HELFANT ON BEHALF OF THE STATE OF FLORIDA.

>> COUNSEL, LET ME GET YOU JUST A HYPOTHETICAL, THAT WE HAVE A SUSPENSION, SIMILAR CIRCUMSTANCES HERE, BUT IT'S ONE IN WHICH THE POLICE OFFICER COMES IN AND TESTIFIES THAT THE DRIVER BLEW A STOP SIGN AT MONROE AND FIRST STREET, BLEW ANOTHER STOP SIGN AT MONROE AND SECOND STREET AND SO THEREFORE PULLED HIM OVER AND ARRESTED HIM AND WE DID EVERYTHING ELSE. THEY COME IN AND THE VIDEO SHOWS NOT ONLY DID HE NOT BLOW THE STOP AT THOSE TWO INTERSECTIONS, BUT VERY CLEARLY SHOWS THAT THERE WAS A CLEAR, FOUR-WHEEL STOP, NO ROLLING.

SAY IT WAS A CLEAR STOP. CHECKING, YOU CAN SEE THE DRIVER LOOKING IN ALL DIRECTIONS, PROCEEDING THROUGH BOTH OF THOSE STOPS.

WHAT WOULD THAT PRODUCE IN THIS CONTEXT?

>> THERE'S NO QUESTION AND DEPARTMENT'S NOT ARGUING THAT THE CIRCUIT COURT WAS NOT ABLE TO VIEW THE RECORD AND DETERMINE AND SUBTRACT FOR THE ENTIRE CIRCUMSTANCES EVIDENCE THAT IS CLEARLY AND UNEQUIVOCALLY CONTRADICTED BY THE VIDEO.

>> OKAY, SO THAT'S THE WAY YOU WOULD DESCRIBE IT, IS THAT IT SHOULD BE THEN SUBTRACTED FROM THE EVIDENCE THAT YOU'RE LOOKING AT AND THEN YOU LOOK AND SEE IF THERE'S ENOUGH LEFT.

>> EXACTLY. AND WHAT THE DEFENSE -- I'M SORRY, WHAT THE PETITIONER IS ARGUING AND THE DISSENT IN WIGGINS IS ARGUING THAT HE RAN -- HE DIDN'T RUN THE STOP SIGN TWICE, BUT HE ALSO DIDN'T SPEED

BEFORE THAT EITHER.
WE HAVE A MULTIFACETED PROBABLE
CAUSE DETERMINATION THAT WAS
BEING MADE BY THIS OFFICER AS
HE'S VIEWING THIS CAR DRIVING
FOR SEVERAL MILES AND THERE'S
CERTAIN SMALL MANEUVERS IN WHICH
HIS HUMAN EYE WAS ABLE TO
CAPTURE.

>> THAT THE CAMERA DID NOT?

>> THAT THE CAMERA PROBABLY DID
NOT.

>> YOU'RE GOING TO HAVE A HARD
TIME SELLING THAT ONE.

>> WELL --

>> WOULD YOU TELL US, USING YOUR
OWN STANDARD, WHAT SHOULD BE
SUBTRACTED FROM WHAT THE POLICE
OFFICER TOLD THE HEARING
OFFICER?

>> WELL, IT MIGHT BE --

>> IN OUR VIEW.

>> NONE OF IT BECAUSE THE VIDEO
DOES NOT BASICALLY AT ALL --

>> PLEASE, PLEASE, PLEASE,
PLEASE DON'T INSULT OUR
INTELLIGENCE WITH THIS BECAUSE
IT'S VERY CLEAR THAT THEY SAID
THAT IT DOES NOT SHOW THE DRIVER
GOING FROM SIDE TO SIDE, DOES
NOT SHOW THAT THERE'S A WIDE
TURN.

YOU KNOW, LET'S -- YOU NEED TO
HELP US DECIDE THIS, NOT BY
MAKING OUTLANDISH CLAIMS, BUT
YOU'VE GIVEN US A STANDARD AND I
THINK YOU OWE IT TO THE COURT,
IF THAT'S THE STANDARD, TO
PROPERLY APPLY IT HERE.

>> AND THAT IS THE STANDARD.

IT'S CLEAR AND UNEQUIVOCAL.
THE HEARING OFFICER DID NOT FIND
THAT.

EVEN IF HE AGREED TOTALLY WITH
THE CIRCUIT COURT AND REMOVED
SPECIFIC THINGS HE FOUND WAS
REFUTED CLEARLY BY THAT VIDEO,
THERE WAS STILL OTHER SPECIFIC
THINGS --

>> I'M ASKING, WHAT ARE THEY?

>> HIS SPEED.
HE WAS GOING TOO SLOW.
HIS CERTAIN DISTANCES THAT HE
WAS STARTING TO BRAKE BEFORE THE
INTERSECTION.
>> BUT WHAT WAS THE SPEED?
WAS HE GOING IN THE 30s?
>> 30 TO 45.
>> SO THAT'S A REASON TO STOP
SOMEBODY?
>> IT'S THE TOTALITY OF THE
CIRCUMSTANCES FOR THIS DUI.
>> I'M TALKING ABOUT THE ARREST.
WHY DOES HE STOP HIM?
BECAUSE OF THE SPEED?
>> NO.
IT'S PARTIALLY THE SPEED.
IT'S PARTIALLY THE WEAVING.
>> YOU SAY PARTIALLY THE SPEED.
TELL ME WHAT PART OF THE SPEED
YOU'RE TALKING ABOUT.
>> HE WAS GOING TOO SLOW.
>> HE WAS GOING TOO SLOW.
>> IN A 45 MILE ZONE?
>> YEAH.
THE MANEUVER, THE TIME OF DAY,
THE HOUR, THE SMALL MANEUVERS
THAT HE'S MAKING IN HIS CAR THAT
ONLY AN EXPERIENCED OFFICER
COULD DETERMINE.
>> AND THE CAMERA CAN'T SEE IT?
HIS VIDEO CAMERA DOESN'T SEE IT.
>> I THINK THE VIDEO CAMERA
SHOWS HIM MAKING CHANGES WITHIN
HIS LANE AND WEAVING.
I'VE SEEN THE VIDEO.
>> BUT THE COURTS DIDN'T AGREE
WITH THAT.
>> I MEAN, THE STATEMENT SO FAR,
SEEMS AS THOUGH TWO COURTS HAVE
AGREED THAT THIS VIDEO DOES NOT
SHOW WHAT THE OFFICER SAID
HAPPENED.
BUT THAT THERE'S STILL SOMETHING
ELSE THAT'S STILL SUFFICIENT.
SEE, ISN'T THAT WHERE WE ARE
RIGHT NOW?
ISN'T THAT ALL THAT THE DCA HAS
HELD SO FAR?
>> WELL, YES.

THE DCA IS SAYING THAT A WHOLE REJECTION BASED ON -- I BELIEVE THAT THE CIRCUIT COURT REALLY IS APPLYING A STANDARD WHERE FALSE IN PART IS FALSE IN WHOLE, WHICH -- SO A SMALL FACTUAL DISCREPANCY IS MADE BY THIS OFFICER, THAT HE IS NOW LYING AND THE REST OF IT IS INTENTIONAL MISLEADING OF THE COURT.

THAT IS NOT WHAT HAPPENED IN THIS CASE.

IT'S A PROBABLE CAUSE DETERMINATION.

>> I MEAN, LET'S FACE IT, I MEAN, THAT'S WHAT THESE SUSPENSION KIND OF CASES TURN ON, ON WHETHER THEY'VE BEEN PROPERLY ARRESTED TO SUBJECT THEM TO THE BREATHALYZER, RIGHT?

>> EXACTLY.

>> OKAY.

SO WE'VE GOT A NON -- A PERSON WHO'S NOT TRAINED IN NOR EVER TESTED WITH REGARD TO THE LAW OR LEGAL CONCEPTS RENDERING JUDGMENTS ON PROBABLE CAUSE, YET THERE CAN BE NO REVIEW BY A JUDICIAL OFFICER IN A CERTIORARI CONTEXT OF THE EVIDENCE AS CAPTURED ON A VIDEO THAT NIGHT TO APPLY THE PROBABLE CAUSE LAW.

>> NO.

THAT'S NOT TRUE.

AND THE HEARING OFFICER IS A TRAINED INDIVIDUAL, SPECIALIZING IN REVIEWING THESE VIDEOS.

>> ARE THEY LAWYERS?

I DIDN'T REALIZE THAT.

>> I'M NOT SURE THIS HEARING OFFICER IS A LAWYER.

THAT'S NOT PART OF THE RECORD. BUT THEY ARE SPECIALISTS TRAINED TO REVIEW THESE CASES ON A DAILY BASIS.

THE CIRCUIT COURT IS APPLYING A VERY NARROW STANDARD IN THIS CASE, SITTING IN THE SAME POSITION AT THE HEARING OFFICER.

>> HAVE WE HELD THAT HEARING OFFICERS FOR THE DEPARTMENT OF MOTOR VEHICLES -- SOMETIMES WE HAVE LIKE AGENCIES.

WE GIVE DEFERENCE TO THEIR INTERPRETATION OF THE STATUTE BECAUSE THEY HAVE EXPERTISE. HAVE WE EVER HELD AND ARE YOU ADVOCATING THAT THE HEARING OFFICERS HAVE MORE EXPERTISE AS A FACT-FINDER OF THESE ISSUES THAN IF THE FIRST REVIEW HAD BEEN A CIRCUIT COURT JUDGE? DO THEY ACTUALLY HAVE MORE EXPERTISE?

>> I BELIEVE THEY DO BECAUSE ALL THEY DO IS THESE HEARINGS.

>> SO THEREFORE, IF YOU'RE SAYING THAT, THEN SHOULD WE BE CONCERNED AND APPLY THIS QUESTION THAT THEY ARE ACTUALLY EMPLOYED BY THE VERY DEPARTMENT THAT IS MOTIVATED TO SUSPEND THE DRIVER'S LICENSE AND THAT THERE'S AN ALLEGATION THAT ACTUALLY IF THEY GO AGAINST SUSPENSION, THAT THAT'S GOING TO BE A BLACK MARK ON THEIR RECORD. SO YOU'RE SAYING THEY'RE ENTITLED TO SUPER DEFERENCE, BUT YET WE'RE ALSO HEARING THAT THESE ARE NOT -- THEY DON'T COME THROUGH DOA AND THEY'RE NOT NEUTRAL.

IT'S DISCONCERTING.

>> WELL, I BELIEVE THAT THEY ARE NEUTRAL AND THEY ARE NOT EMPLOYED BY THE CITY OF JACKSONVILLE BEACH, WHO ACTUALLY GAVE THIS TICKET OUT.

WE ARE REQUIRED UNDER STATUTE TO USE THEIR SUSPENSION, THEIR ROADSIDE SUSPENSION, AND PLACE IT ON MR. WIGGINS' RECORD. IF HE REQUESTS A REVIEW, IT COMES TO US.

THAT POLICE OFFICER DOES NOT WORK FOR OUR DEPARTMENT. WE OWE NO DEFERENCE TO EITHER PARTY AT THAT POINT.

WE'RE AN INDIVIDUAL ARBITER IN THIS CASE.

>> SO THE DEPARTMENT HAS NO PARTICULAR INTEREST IN UPHOLDING A SUSPENSION THAT HAS BEEN HELD -- THAT HAS BEEN INITIATED BY A PARTICULAR POLICE DEPARTMENT?

>> OF COURSE NOT.

IN FACT, IT'S BEEN HELD BY DISTRICT COURTS WHERE IT IS A FLORIDA PATROL OFFICER, WHO IS EMPLOYED BY THE STATE, AS ARE HEARING OFFICERS, THAT THERE'S NO LACK OF IMPARTIALITY.

>> BUT WHAT DO WE HAVE IN THE RECORD TO SAY THAT THEY'RE DUE -- THAT INSTEAD IF THERE WAS DOA OFFICERS THAT WERE REVIEWING THIS, THAT THEIR ABILITY TO LOOK AT VIDEOS AND COMPARE IT TO TESTIMONY OF THE OFFICER IS ACTUALLY -- THEY'RE A BETTER FACT-FINDER THAN A CIRCUIT OR COUNTY COURT JUDGE.

>> I WOULD DISAGREE.

>> WITH WHAT?

>> THAT THEY WOULD BE A BETTER ARBITER.

>> NO.

YOU'RE SAYING THAT YOU WOULD WANT US TO HOLD THAT THESE HEARING OFFICERS ARE ACTUALLY MORE -- ENTITLED TO MORE DEFERENCE THAN IF THIS CAME UP UNDER ANY SORT OF REVIEW.

>> THEY SHOULD BE GIVEN THE SAME DEFERENCE.

WE DO HAVE SIMPLE COMMISSIONERS WHO ARE NOT LAWYERS EITHER WHO ARE MAKING RULINGS ON EVIDENTIARY HEARINGS AND THIS COURT HAS FOUND THAT BY BEING A COMMISSIONER THEY HAVE THE RIGHT TO DETERMINE WHAT KIND OF [INAUDIBLE] IS BEING USED. THERE'S NOT PROPERTY INTEREST IN THESE HEARINGS AT ALL.

>> BUT YOUR OPPONENT SAYS THOSE ARE POLICY GOVERNANCE KIND OF ISSUES.

AND WHEN YOU'RE LOOKING HERE
IT'S A QUESTION ALMOST OF
APPLYING WHAT IS ESSENTIALLY
PART OF THE CRIMINAL CODE, THE
CRIMINAL STATUTES, AND WE'VE
HOOKED IN NOW DRIVER'S LICENSE
TO ALL KINDS OF VIOLATIONS, BUT
IT COMES DOWN TO -- AND YOU DO
AGREE THAT THEY HAVE TO
ESTABLISH THE BASIS FOR THE STOP
AND THE ARREST.

>> THAT IS PART OF THE ISSUE,
YES, YOUR HONOR.

>> OKAY.

SO THAT'S WHAT THESE CASES ARE
REALLY GOING TO TURN ON, OR THE
EQUIVALENT.

BUT THAT -- SO WE SHOULD UPHOLD
IT NO MATTER IF THERE IS A
DISCREPANCY BETWEEN THE VIDEO
AND WHAT AN OFFICER SAYS.

>> I AGREE THAT WE SHOULD UPHOLD
IT IF THERE IS SUFFICIENT
EVIDENCE SUPPORTING A HEARING
OFFICER'S FINDINGS.

>> AGAIN, I'M ASKING YOU TO
ASSUME THAT THE VIDEO IS IN
CONFLICT WITH WHAT AN OFFICER
HAS SAID TO THE POINT OF THE
ARREST.

AFTER THAT WE DON'T HAVE ANY
AUDIO OF WHAT WENT ON AFTER
THAT.

BUT WE HAVE VIDEO THAT SHOWS
THAT WHOEVER THIS PERSON WAS HAD
NOT VIOLATED THE MOTOR VEHICLE
LAWS, TRAFFIC LAWS OF THE STATE
OF FLORIDA, BUT WAS NONETHELESS
STOPPED.

SO WHAT WOULD WE DO WITH THAT?
WE HAVE TO AFFIRM IT BECAUSE
AFTERWARDS THE POLICE OFFICER
SAID HIS EYES WERE WATERY OR
WHATEVER?

>> NO.

THAT'S NOT THE QUESTION FOR THIS
COURT.

SHOULD THE CIRCUIT COURT BE ABLE
TO REJECT EVERYTHING THAT IS IN
A RECORD SIMPLY BECAUSE A FEW

FACTUAL MISTAKES WERE MADE BY THIS OFFICER.

>> I'M ASKING YOU TO HUMOR ME AND ASSUME THAT THE VIDEO NEGATES THE OFFICER'S BASIS FOR STOPPING THIS MOTORIST.

WHAT WOULD HAPPEN UNDER THAT CIRCUMSTANCE, IF WE ASSUME THAT THE VIDEO NEGATES THIS IMPROPER DRIVING?

>> IT WOULD HAVE BEEN INVALIDATED BY THE HEARING OFFICER.

>> SO YOU AGREE THAT THEN THAT WOULD HAVE BEEN SUFFICIENT EVIDENCE THAT THE CIRCUIT COURT COULD USE AS A BASIS TO OVERTURN THE SUSPENSION.

IS THAT WHAT YOU'RE SAYING?

>> NOT AT THAT POINT.

IF THE HEARING OFFICER --

>> I'M TRYING TO UNDERSTAND.

IF THE HEARING OFFICER THEN SUSPENDS -- OR UPHOLDS THE SUSPENSION, WHAT WOULD HAPPEN AT THE CIRCUIT COURT?

CAN A CIRCUIT COURT RELY ON THAT, AGAIN, ASSUMING THAT IT NEGATES AN IMPROPER OPERATION OF A MOTOR VEHICLE.

WHAT COULD A CIRCUIT COURT DO? ARE THEY REQUIRED TO AFFIRM IT?

>> THE CIRCUIT COURT IS OBLIGATED TO REVIEW THE ENTIRE RECORD, DETERMINE IF ANY EVIDENCE SUPPORTS COMPETENT -- EVIDENCE SUPPORTS THE HEARING OFFICER'S CONCLUSION.

>> I'M ASKING YOU NOT TO USE THE TALKY TALK WORDS.

THAT'S WHAT GETS US INTO THESE PROBLEMS.

WHAT IF, AGAIN, THE VIDEO NEGATES THE POLICE OFFICER'S TESTIMONY AS TO THE VIOLATION OF THE TRAFFIC LAWS THAT WERE USED AS THE BASIS FOR THE STOP AND ARREST?

>> IF EVERY SINGLE ELEMENT OF THE OFFICER'S REASONS TO STOP

THIS DRIVER IS COMPLETELY,
UNEQUIVOCALLY REFUTED BY THE
VIDEO, IN THAT CASE, YES, IT
WOULD BE A CASE IN WHICH THE
CIRCUIT COURT --

>> THAT'S ONE.

WHAT WE'RE TRYING TO DO IS
DECIDE HERE TODAY IS WHERE IS
THAT LINE CROSSED?

>> THE LINE IS CROSSED WHEN
THERE IS ADDITIONAL FACTS,
THERE'S ADDITIONAL THINGS THAT
TOOK PLACE DURING THIS STOP THAT
IS ALSO REJECTED SIMPLY BY
CONCLUDING THAT THIS OFFICER
MUST HAVE BEEN MISLEADING
THROUGH HIS ENTIRE TESTIMONY.

>> SO LET'S ASSUME THEN THAT THE
STOP WAS INVALID.

EVERYTHING UP TO THAT POINT WAS
BAD.

YET DURING THE EXCHANGE BETWEEN
THEM, FACTORS CAME UP THAT MADE
THE OFFICER CONCERNED THAT THERE
WAS A DUI.

IS THAT WHAT YOU'RE SAYING IS
THE COMPETENT, SUBSTANTIAL
EVIDENCE IN THIS CASE?

>> NO, YOUR HONOR.

>> WHY NOT?

>> THE STOP ITSELF IS STILL --
THERE'S STILL VISUALS,
ASSESSMENTS ARE MADE BY THE
OFFICER OF THIS CAR, THAT THIS
CIRCUIT COURT HAD NO ERROR WITH.

>> THEN YOU'RE SAYING YOU LOSE
IF WE FIND THAT THE VIDEO
REFUTES WHAT THE OFFICER SAID UP
TO THAT STOP.

YOU WOULD SAY YOU LOSE.

>> PROBABLY.

BUT THAT DIDN'T HAPPEN IN THIS
CASE.

IN THIS CASE WE HAVE AN OFFICER
WHO SAW MANY ELEMENTS THAT THE
CIRCUIT COURT HAD NO PROBLEM
WITH.

>> APPARENT SPEEDS OF THE
VEHICLE, THINGS THAT THE OFFICER
WILL KNOW.

HE'LL KNOW HOW FAST HE'S GOING.
HE'LL KNOW HOW FAST THE CAR HE'S
FOLLOWING IS GOING.

THAT'S NOT GOING TO BE APPARENT
FROM THE VIDEO.

ISN'T THAT CORRECT?

>> EXACTLY, YOUR HONOR.

>> THAT'S PART OF THE WHOLE
CONTEXT HERE.

AND IN THIS CASE ALSO THERE'S AN
INDICATION THAT THE OFFICER SAW
THINGS AT A DISTANCE THAT WERE
NOT DISCERNIBLE IN THE VIDEO.

IS THAT CORRECT?

>> THAT'S CORRECT, YOUR HONOR.

>> WHICH STARTED OFF HIS
INTEREST IN THIS VEHICLE AND
WHAT HAPPENED AFTERWARDS.

>> YES.

>> CORRECT?

>> THAT'S CORRECT.

AND THAT WAS ALSO REJECTED BY
THE CIRCUIT COURT FOR NO REASON.

>> AND ISN'T IT ALSO THE CASE
THAT IN ORDER FOR THE STOP TO BE
REASONABLE, THERE DOESN'T HAVE
TO BE A SPECIFIC TRAFFIC
INFRACTION THAT TRIGGERS THE
STOP.

BECAUSE THE STOP HERE IS NOT
BASED ON TRAFFIC INFRACTIONS.
IT'S BASED ON THE BEHAVIOR OF
THE DRIVER OF THE VEHICLE WHICH
POINTS TO THE REASONABLE
SUSPICION THAT THIS PERSON IS
IMPAIRED, CORRECT?

>> CORRECT.

IT WAS THE TOTALITY OF THE
CIRCUMSTANCES WHICH LED TO THIS
STOP.

>> AND THE VIDEO SHOWS THAT IT
DOES NOT CREATE A REASONABLE
SUSPICION, THERE'S NO BASIS FOR
THE STOP.

>> PERHAPS.

>> JUST SO I'M CLEAR ON WHAT
YOU'RE SAYING, ASSUME FOR A
SECOND THAT -- LET ME JUST ASK
YOU THIS.

THE CAMERA IN THIS PARTICULAR

CASE WAS ON THE DASHBOARD OF THE PATROL UNIT?

>> I BELIEVE SO.

>> SO IT WAS BACK IN THE POLICE CAR.

IT WASN'T ON THE OFFICER. SO LET'S ASSUME FOR A SECOND THAT THE VIDEO NEGATES EVERYTHING THE OFFICER SAYS ABOUT WEAVING AND ABOUT TO HIT A CURB AND ALL THOSE THINGS, NEGATES ALL THAT.

BUT IT DOESN'T CAPTURE THE FACT THAT THE OFFICER WALKED TO THE WINDOW OF THE VEHICLE AND WAS ABLE TO OBSERVE, BASICALLY SEE THE BLOODSHOT EYES, THE RED EYES, AND WAS ABLE TO DETECT A SLURRED SPEECH AND SMELLED A STRONG ODOR OF ALCOHOL EMANATING FROM THE DRIVER.

OBVIOUSLY THAT WOULD NOT BE CAPTURED FROM THE CAMERA WAY BACK THERE.

WOULD THAT BE SUBSTANTIAL EVIDENCE?

WOULD THAT BE ENOUGH THAT THE CIRCUIT COURT WOULD HAVE TO AFFIRM?

>> WELL, I THINK THAT IT MAY NOT BE NECESSARILY, IN ALL HONESTY, BECAUSE WE NEED A REASON TO STOP THE DRIVER, ALSO.

AND TO GET TO THAT POINT, WE'D HAVE TO HAVE A VALID STOP.

BUT IN TOTALITY OF THE CIRCUMSTANCES FOR THE PROBABLE CAUSE TO ARREST, I WOULD AGREE THAT THAT IS ELEMENTS FOR THE ARREST THAT IS NECESSARY, THE ISSUE OF IMPAIRMENT, WHICH WAS IN THIS CASE.

HOWEVER, BUT TO PUT SO MUCH EMPHASIS ON AN IMPERFECT AND RUDIMENTARY VIDEO GIVES SO MUCH WEIGHT TO THIS VIDEO THAT IT MAKES AN AFFIDAVIT, LIVE TESTIMONY ALMOST UNNECESSARY AND A HEARING UNNECESSARY.

>> SO WHO WRITES THE AFFIDAVIT?

THE OFFICER?

>> YES, YOUR HONOR.

>> EVERYTHING HE WRITES IS REFUTED BY THE VIDEO AND WE SHOULD TAKE THE AFFIDAVIT OVER THE VIDEO.

IS THAT WHAT YOU'RE TELLING ME? WHY HAVE THE VIDEO?

>> WELL, THE VIDEO IS THERE TO ASSIST THE OFFICER AND TO ASSIST A JUDGE AND EVENTUALLY TO VIEW THIS CASE.

BUT UNDER WHAT'S BEING ARGUED BY THE CIRCUIT COURT IS THAT THIS VIDEO SHOULD BE GIVEN SUCH GREAT WEIGHT THAT THE HEARING BECOMES MEANINGLESS.

THAT'S NOT THE CASE.

THAT'S NOT WHAT THE LAW HOLDS IN THIS STATE, THAT WE GIVE EQUAL WEIGHT, AND THE HEARING OFFICER UNDER IRVINE IS THE ONE WHO GIVES WEIGHT TO THIS CASE, NOT THE CIRCUIT COURT JUDGE.

>> DOES EVIDENCE HAVE TO BE TRUE TO BE SUBSTANTIAL AND COMPETENT?

>> YES.

>> IS FALSE EVIDENCE COMPETENT, SUBSTANTIAL EVIDENCE?

>> NO.

>> OKAY.

>> BUT --

>> SO IF THIS BELIES EVERYTHING THE OFFICER SAID, SO WE SHOULD ACCEPT WHAT THE OFFICER SAID ANYWAY JUST BECAUSE HE SAID IT AND DON'T BELIEVE THE VIDEO.

>> NO.

THAT'S NOT WHAT WE'RE SAYING. WE'RE SAYING THE VIDEO HAS TO BE CLEAR AND UNEQUIVOCAL.

ALL WE HAVE HERE IS AN OPINION BY THE CIRCUIT COURT JUDGE WHEN HE WEIGHED THIS EVIDENCE.

BUT IT'S GOT TO BE SO CLEAR --

>> HE REJECTED EVIDENCE THAT WASN'T COMPETENT.

>> AND WE'RE NOT SAYING THAT THIS JUDGE CANNOT REJECT EVIDENCE THAT IS NOT COMPETENT

OR SUBSTANTIAL.

WE'RE JUST SAYING HE CAN'T
REJECT EVERYTHING BASED ON THAT.
HE'S OBLIGATED TO CONTINUE TO
REVIEW THE RECORD FOR ADDITIONAL
EVIDENCE SUPPORTING THE HEARING
OFFICER'S FINDINGS.

>> IT'S THE STOP.

WE'RE TALKING ABOUT THE STOP
NOW.

EVERYTHING AFTER THAT, I MEAN, I
WOULD THINK THAT WOULD BE
COMPETENT, SUBSTANTIAL EVIDENCE,
BUT FOR THE ILLEGAL STOP.

>> WELL, THAT'S NOT WHAT THE
HEARING OFFICER FOUND.

THAT'S NOT WHAT THE VIDEO SHOWS.
THIS COURT GOES OUT OF ITS WAY
TO BE VERY DETAILED AND EXPLAIN
SPECIFIC THINGS HE FOUND
HAPPENED.

BUT THAT'S NOT THE WHOLE RECORD
BEFORE THE HEARING OFFICER AND
THE REASON THIS OFFICER GAVE TO
STOP THIS DRIVER.

THE COURT DID NOT FIND EVERY
SINGLE THING HE DID WAS
INCORRECT.

HE PICKED AND CHOOSED THINGS AND
USED THAT AS --

>> SO THERE ARE TEN THINGS AND
EIGHT OF THEM ARE INCORRECT.
SO THAT MAKES THIS OFFICER
CREDIBLE.

>> I BELIEVE SO.

HE STILL HAS -- HE STILL HAS
SHOWN THAT THERE'S OTHER REASONS
WHY HE GAVE THAT STOP.

IT'S A SIMPLE METHOD OF USING A
VIDEO THAT IS NOT PERFECT.
WASN'T DESIGNED FOR THIS
PURPOSE.

TO REFUTE SWORN OFFICER.
HE SAW THIS AT A HEARING.
HE TESTIFIED TO EVERYTHING HE
SEES BEFORE THE HEARING OFFICER
AND RETRACTS ONE STATEMENT.
DURING CROSS-EXAMINATION HE
NEVER RETRACTED EVERYTHING.
I WAS WRONG.

I WAS WRONG.
HE NEVER SAID.
THERE WAS ONE TIME WHEN
MR. WIGGINS' CAR CHANGED LANES
BEFORE THIS OFFICER DID.
SO THIS OFFICER AT THE HEARING
AGAIN AGREED WITH EVERYTHING HE
SAID FROM MONTHS PRIOR AND THE
HEARING OFFICER HAD THAT
EVIDENCE BEFORE HER.
WHY WOULD THE HEARING OFFICER
INVALIDATE THE SUSPENSION WHEN
THERE IS NO OTHER EVIDENCE AT
THAT TIME TO SAY THAT THIS
DRIVER WAS NOT STOPPED LAWFULLY?
THE HEARING OFFICER DID NOT HAVE
ANY EVIDENCE BEFORE IT.
MR. WIGGINS HIMSELF DID NOT
TESTIFY.
THERE WAS NO WITNESSES ON BEHALF
OF MR. WIGGINS.
IT WAS JUST THE HEARING OFFICER,
WITHOUT A PROSECUTOR, WHO IS
VIEWING THIS EVIDENCE, HEARING
THIS EVIDENCE, HEARING ARGUMENTS
OF COUNSEL AND SHE GOT IT RIGHT,
BECAUSE THIS DRIVER WAS DUI AND
THERE WAS NO REASON FOR THIS
HEARING OFFICER TO REVERSE.
CIRCUIT COURT TOOK IT UPON
ITSELF TO WEIGH THE EVIDENCE.
UNDER JULIAN, I CAN CONDUCT A
REVIEW AND MAKES A NEW FINDING
OF COURT WHEN THIS COURT HAD NO
AUTHORITY TO DO THAT.
>> YOU'RE OUT OF TIME.
>> THANK YOU.
WE'RE ASKING THIS COURT TO
AFFIRM THE FIRST DISTRICT COURT.
>> THANK YOU.
>> THANK, SIR.
>> FIRST I'D LIKE TO ADDRESS ONE
QUESTION THAT JUSTICE PARIENTE
ASKED ABOUT THE DEPARTMENT'S
ROLE IN THE SUSPENSIONS.
SECTION 322.265, WHICH IS THE
STATUTE THAT PROVIDES, A LAW
ENFORCEMENT OFFICER OR
CORRECTIONAL OFFICER SHALL, ON
BEHALF OF THE DEPARTMENT,

SUSPEND THE DRIVING PRIVILEGE OF A PERSON WHO IS DRIVING OR UNDER ACTUAL PHYSICAL CONTROL.

IT IS THE DEPARTMENT WHO IS THE OTHER PARTY IN THESE HEARINGS AND IT IS THE DEPARTMENT THAT ACTUALLY DOES THE SUSPENSION.

THE PROSECUTORS BY STATUTE HAVE TO BE NOTIFIED OF ANY HEARING WHERE YOU SUBPOENA A WITNESS, BUT THEY'RE NOT PARTIES AND IN MOST CASES THEY DON'T COME.

THE DEPARTMENT DOESN'T SEND ATTORNEYS, BUT THAT'S BY CHOICE AND UNDER THE LAW THEY'RE NOT REQUIRED TO.

BUT THE BOTTOM LINE IS IT IS -- THE PARTIES ARE THE DEPARTMENT AND THE DRIVER AND THE HEARING OFFICER IS SUPPOSED TO BE NEUTRAL.

>> ARE YOU CHALLENGING THIS LAW?

>> NO.

THAT'S WHAT I'M SAYING BECAUSE THE QUESTION WAS ASKED WHETHER THE DEPARTMENT WAS A PARTY.

>> ALL OF THIS HAS NOTHING TO DO WITH THE ACTUAL ISSUES IN THIS CASE.

>> WELL, IT DOES BECAUSE THE QUESTION IS WHAT IS COMPETENT, SUBSTANTIAL EVIDENCE.

AND I THINK THAT'S WHAT HAPPENED.

ALL THE CASES TALK ABOUT IT AS THAT TERM.

BUT WHAT DOES IT REALLY MEAN. BUT THE ONLY REASON I BRING THAT UP IS BECAUSE OF THE RESPONSE.

>> I DON'T SEE HOW THE MAKEUP OF THE TRIBUNAL DETERMINES WHAT IS COMPETENT AND SUBSTANTIAL EVIDENCE OR HAS ANY BEARING ON THAT.

WHETHER THE HEARING OFFICER IS A LAWYER OR NOT A LAWYER HAS NO IMPACT ON WHAT IS COMPETENT, SUBSTANTIAL EVIDENCE, DOES IT?

>> IT WOULD IN TERMS OF IN THE CASES --

>> IT WOULD.

>> WELL, IF I MAY FINISH THE REST OF THAT ANSWER, IT WOULD IN TERMS OF -- AND IN MANY CASES IN DETERMINING WHAT IS COMPETENT, SUBSTANTIAL EVIDENCE IT IS LOOKING AT ISSUES RELATING TO POLICY DECISIONS.

WHAT IS COMPETENT, SUBSTANTIAL EVIDENCE FOR THIS POLICY DECISION, THAT POLICY DECISION. THIS IS NOT POLICY DECISIONS. THESE ARE ISSUES OF LAW, SEARCH AND SEIZURE LAW, FOURTH AMENDMENT LAW.

SO THE WAY AND MANNER IN WHICH THE CIRCUIT COURT REVIEWS IT AND REVIEWS THE COMPETENT, SUBSTANTIAL EVIDENCE IS VERY DIFFERENT BECAUSE IT HAS TO BE BECAUSE THE LAW IS DIFFERENT IN THOSE AREAS AND YOU'RE LOOKING AT DIFFERENT TYPES OF ISSUES.

BUT THE REASON IT MATTERS HOW IT IS SET UP IS BECAUSE THERE REALLY IS NO REVIEW AND ESSENTIALLY USING THE NARROW REVIEW ARGUED BY THE DEPARTMENT ELIMINATES ANY SORT OF CHECKS AND BALANCES, IF YOU WILL, ON HOW THESE HEARINGS ARE RUN. AND WE RECOGNIZE, IT'S BEEN FOUND CONSTITUTIONAL.

HOWEVER, THE DISTRICT COURTS OF APPEALS AND DEAN, CLAY ALL RECOGNIZE THAT THEY HAVE BEEN SEEING REPEATED INCIDENTS WHERE THE HEARINGS ARE NOT AS FAIR AND IMPARTIAL AS THEY SHOULD BE.

AND WHILE THE PROCESS IS APPROVED, THAT YOU HAVE TO BE EVEN MORE CAREFUL IN TERMS OF HOW THEY ARE HANDLED AND IN TAKING THIS REVIEW, LIKE IN THE LANNING CASE, WHEN THE COURT SAYS WE SEE HE'S NOT IN THE ROOM, BUT YOU CAN'T CONSIDER THAT, THAT DOESN'T MAKE THE EVIDENCE NOT COMPETENT IF AN OFFICER SAYS IT'S COMPETENT AND

YOU CAN'T REVIEW THAT.
AND THAT'S WHAT THIS CASE IS.
YOU CAN'T SEPARATE THE TYPE OF
PROCEEDINGS THESE ARE FROM THE
DETERMINATION OF WHAT'S
COMPETENT, SUBSTANTIAL EVIDENCE,
JUST LIKE IN ZONING ISSUES, FOR
EXAMPLE, THE WAY YOU VIEW
COMPETENT, SUBSTANTIAL EVIDENCE
IS VERY DIFFERENT THAN YOU WOULD
IN A CRIMINAL CASE LOOKING AT
WHAT IS COMPETENT, SUBSTANTIAL
EVIDENCE TO SUPPORT A LAWFUL
STOP OR A LAWFUL WAIVER OF
MIRANDA OR ANY OF THESE OTHER
FOURTH AMENDMENT ISSUES.

SO THE PROCESS IS WHAT IT IS AND
THE PROCESS HAS BEEN UPHELD.
THE QUESTION IS IS THERE ANY WAY
TO MAINTAIN THE NECESSARY CHECKS
AND BALANCES ON THAT PROCESS.
AND THE ONLY WAY TO DO THAT IS
THROUGH THESE APPEALS TO THE
CIRCUIT COURT, WHICH THE STATUTE
PROVIDES FOR.

THE STATUTE PROVIDES THAT A
DRIVER MAY -- AND THEY USE THE
TERM APPEAL, BY PETITION OF WRIT
OF CERTIORARI BECAUSE IT IS AN
ORIGINAL PROCEEDING IN THE COURT
PROCESS.

SO YOU HAVE THIS RIGHT TO
APPEAL.

IT WOULD BE RENDERED MEANINGLESS
IF THE CIRCUIT COURT COULDN'T
LOOK AT THE RECORD FOR
SUBSTANTIAL, COMPETENT EVIDENCE
AND TIE IT TOGETHER WITH THE
LAWFULNESS ACTION AND WHETHER OR
NOT IT DOES CONSTITUTE
REASONABLE SUSPICION OR ISSUES
OF PROBABLE CAUSE.

THIS COURT RECOGNIZED IN DOE
BRAN THAT THAT'S PART OF WHAT
THE CIRCUIT COURT DOES IN
APPLYING THE PROPER STANDARDS TO
REASONABLE SUSPICION AND
PROBABLE CAUSE.

IN HERNANDEZ THAT IT'S A
NECESSARY REQUIREMENT FOR THESE

HEARINGS.

THERE MUST BE AS PART OF A COMPETENT SUBSTANTIAL REVIEW AS THE DEPARTMENT ARGUED REVIEW OF THE ENTIRE RECORD AND IS IT TRUTHFUL OR DOES IT APPEAR TO BE ACCURATE OR NOT, AND THAT IS NOT NECESSARILY WAITING WHEN YOU HAVE SOMETHING BLACK AND WHITE THIS THE FACT OF THIS CASE ARE THE FACTS OF THIS CAN EASILY THE ISSUE BEFORE THIS BOARD IS IN A GENERAL MATTER HOW THE STANDARD IS APPLIED.

FIRST DISTRICT COURT OF APPEAL CAME TO THE DECISION YOU HAVE TO CALL A RECORD.

THEY WENT THROUGH A LENGTHY DISCUSSION AND SAID WE DON'T AGREE WITH HOUSE CIRCUIT COURT DECIDED COMPETENT AND SUBSTANTIAL BUT THAT WAS NOT THEIR ROLE EITHER.

THE QUESTION IS DOES THAT COMPETENT SUBSTANTIAL STANDARD INCLUDE THE ABILITY OF THE CIRCUIT COURT TO LOOK AT TWO THINGS THAT ARE CLEARLY CONTRADICTORY LIKE THE TWO DOCUMENTS.

>> THIS ISSUE OF LOOKING AT THE VIDEO BY THE CIRCUIT COURT JUDGE, IS THE DISTRICT COURT IN A DIFFERENT POSITION WHEN LOOKING AT THAT VIDEO?

AND THE CIRCUIT COURT JUDGE IS FOR THIS COURT IN A DIFFERENT POSITION THAN THE CIRCUIT COURT WOULD BE LOOKING AT THE VIDEO?

>> YOU MAY BE IN THE SAME POSITION BUT YOU HAVE A DIFFERENT STATUS REVIEW, DISTRICT COURT OF APPEAL DOESN'T LOOK FOR SUBSTANTIAL EVIDENCE. THE ISSUE IS DID THE CIRCUIT COURT PROPERLY APPRISED THE BLOCK, NOT DID THEY GET IT RIGHT BUT DID THEY PROPERLY APPLY THE LAW AND SO THAT IS WHAT YOU HAVE TO LOOK AT.

I KNOW THAT PART OF WHAT THE DEPARTMENT ARGUED BEFORE THE FIRST DISTRICT COURT OF APPEAL IS OUR OFFICE IN PARTICULAR HAD NUMEROUS CASES PENDING AT THAT TIME AND THE DISTRICT COURT OF APPEAL VIEWED THAT AS THE FLOOD GATES WITH I CAN ASSURE YOU I APPRECIATE THEIR BELIEF THAT WE ARE THAT PERSUASIVE BUT I DON'T THINK THERE'S THE THREAT THAT THERE IS GOING TO BE AN ONSLAUGHT OF CIRCUIT JUDGES GOING BROKE.

THE QUESTION IS CAN THE -- DOES THE CIRCUIT JUDGE HAVE TO IDLY SIT BY WHEN IT IS CLEAR THAT THE EVIDENCE IS NOT COMPETENT AND JUST SIGN OFF ON IT BECAUSE THEY ARE NOT ALLOWED TO MAKE THAT DETERMINATION?

>> THANK YOU.

NOW THE COURT IS IN RECESS.