

ORIGINAL

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 81-2318

TITLE FLORIDA, Petitioner
v.
CONSTANTINO CASAL AND OMAR GARCIA

PLACE Washington, D. C.

DATE February 23, 1983

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IN THE SUPREME COURT OF THE UNITED STATES

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FLORIDA,
Petitioner
v.
CONSTANTINO CASAL AND OMAR
GARCIA
- - - - -x

No. 81-2318

Washington, D.C.

Wednesday, February 23, 1983

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
2:05 p.m.

APPEARANCES:

MS. CAROLYN M. SNURKOWSKI, Assistant Attorney
General of Florida, Tallahassee, Florida; on behalf of
the Petitioner.

ARTHUR F. McCORMICK, Esq., South Miami, Florida; on
behalf of the Respondent.

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1 P R O C E E D I N G S

2 CHIEF JUSTICE BURGER: Ms. Snurkowski, you may
3 proceed whenever you're ready.

4 ORAL ARGUMENT OF CAROLYN M. SNURKOWSKI
5 ON BEHALF OF THE PETITIONER

6 MS. SNURKOWSKI: Mr. Chief Justice, and may it
7 please the Court:

8 The issue before the Court today is whether
9 the search of the San Rafael was authorized pursuant to
10 an exception to the Fourth Amendment warrant requirement
11 of the United States Constitution.

12 The facts in this case are relatively simple.
13 On September 18, 1977, Officer Soli and Officer Walker,
14 both Marine Patrol officers with the Florida Marine
15 Patrol were traveling along near Sugarloaf Key which is
16 close to Key West. They were on their way back. Their
17 tour of duty had almost ended and they were returning to
18 port when they came upon the San Rafael. Within 50 feet
19 of the boat they put their spotlight on the boat, and
20 approaching the boat identified themselves as Marine
21 Patrol officers and asked, at that point, if they could
22 see the registration papers or the registration
23 certificate for the boat which is required pursuant to
24 Florida statutes.

25 At that point, two individuals who had

1 departed the cabin area came to the side of the boat and
2 produced papers. Those papers did not comport with the
3 statute requirement, but rather, were documentation
4 papers of unspecified nature, and tax receipts
5 reflecting the purchase of the boat.

6 QUESTION: May I ask you something right
7 here. Now, does Florida law require every boat to have
8 a registration certificate? Is that clear?

9 MS. SNURKOWSKI: Those boats that travel in
10 the waters and conduct fishing activities in that area,
11 yes.

12 QUESTION: And does the absence of a
13 registration certificate give a right for a valid
14 custodial arrest?

15 MS. SNURKOWSKI: I believe it does. I believe
16 the statute -- if there's a penalty, a second degree
17 penalty for failure to have it aboard and available,
18 upon that showing -- the officers are not really -- even
19 having to board the boat is a matter of standing on
20 their own boat and asking do you have it. It's not a
21 matter of having to board the boat in this instance.
22 And if it's not available they can, in fact, arrest the
23 individuals because those statutes are very clear with
24 regard to --

25 QUESTION: Is that statute part of our --

1 MS. SNURKOWSKI: I believe it is part of the
2 petitioner's reply to the brief in opposition to
3 certiorari. I think he can put that as part of his
4 pleadings.

5 But specifically, the statutes applicable with
6 regard to having the registration onboard is 371.051,
7 Subsection 5. And that's of the 1977 statutes. There
8 has been a modification, and so I do not have the change
9 because I was looking specifically at the applicable
10 statutes.

11 Once there was no response by the defendants
12 for the certification papers, Officer Soli, because of
13 the bobbing of the boats, asked if she could board the
14 boat. At that point, consent was given and she made a
15 statement at the suppression hearing and at trial that
16 the reason she was boarding was to help them find these
17 papers and also, to conduct a search, to do her duty, is
18 what she said.

19 QUESTION: Didn't she also say that really
20 what she was inspecting for was illegal seafood?

21 MS. SNURKOWSKI: That came -- there was a
22 statement to that effect later on, but she was initially
23 going onboard for was for safety inspection and to help
24 them find the papers. They apparently were confused
25 with regard to papers. They said no, they didn't have

1 them, but they were not the owners of the boat, nor did
2 the papers that they did tender have their names on it.

3 QUESTION: Would it make a difference whether
4 the search was made for safety violations or for illegal
5 seafood?

6 MS. SNURKOWSKI: The search, the subsequent
7 search? We have contended that there are three bases
8 upon which the Florida Supreme Court could have
9 legitimatized the search, and that the court missed its
10 mark, actually, when they found that the initial stop
11 was correct. We have contended first of all, that an
12 inspection was lawfully to ensue, and that by not
13 holding that that inspection was valid in this case,
14 they missed their mark.

15 But secondly, we said that as the
16 circumstances developed in this case, and that is where
17 Officer Soli followed the respondents to the cabin area
18 of the boat, she asked if she could look into the ice
19 chest there, and they gave consent for that. This is
20 part of her inspection. She opens it up, finds no ice
21 and finds that there are some bits of food that have
22 been rotting in there.

23 Now, this triggered --

24 QUESTION: I thought it was putrefying fish or
25 something like that.

1 MS. SNURKOWSKI: I don't remember it being
2 putrefying fish. All I remember is rotten food. But if
3 that was what the record --

4 QUESTION: It smells the same.

5 MS. SNURKOWSKI: Yes, I think it stinks. The
6 point being --

7 QUESTION: Suppose actually she was inspecting
8 only for illegal seafood, nothing to do with a safety
9 violation. She hadn't any authority to do that, did she?

10 MS. SNURKOWSKI: She has authority -- that's
11 part of the scope of their authority, once they're
12 lawfully aboard the boat.

13 QUESTION: To inspect for illegal seafood?

14 MS. SNURKOWSKI: Pardon me?

15 QUESTION: To inspect for illegal seafood?

16 MS. SNURKOWSKI: Part of their function, part
17 of the Marine Patrol function in Florida is to maintain
18 boating safety and to maintain the maritime, the
19 fisheries and control or regulate fishing in the area.
20 As a matter of fact, that is perhaps the majority of
21 their work. They look for individuals who sell
22 shorttails --

23 QUESTION: Does the state statute cover all of
24 this?

25 MS. SNURKOWSKI: Yes.

1 QUESTION: No matter what the purpose of the
2 inspection is?

3 MS. SNURKOWSKI: The statute is very clear as
4 to the regulatory responsibilities and the duties of the
5 Marine Patrol with regard to investigating all
6 activities concerning marine life and boating.

7 As a matter of fact, they also have a general
8 proviso in their authority that they have the right to
9 investigate and arrest for all violations of law of
10 Florida.

11 QUESTION: As I understand it, there's a state
12 statutory probable cause requirement, whether it's for
13 illegal fishing or for safety violations, is an act?

14 MS. SNURKOWSKI: I'm sorry, I didn't hear.

15 QUESTION: Isn't there a state statutory
16 probable cause requirement?

17 MS. SNURKOWSKI: There's a state statutory
18 requirement to board the boat; 371.58 says --

19 QUESTION: Does that require probable cause?

20 MS. SNURKOWSKI: It requires either consent or
21 probable cause to board the boat for a safety
22 inspection. The state would contend that the officers
23 in this case had both the probable cause and consent to
24 board the boat for the safety inspection when the papers
25 were not produced. There was something awry with this

1 boat, and that was sufficient probable cause to board.

2 But more importantly, the record reflects, and
3 of course --

4 QUESTION: I know, but if the holding is that
5 there was a probable cause requirement as required by
6 state statute, why doesn't this case turn on an adequate
7 state ground; why do we have to get into it?

8 MS. SNURKOWSKI: Because the probable cause
9 that the Florida Supreme Court found the search to be in
10 violation of was a Fourth Amendment probable cause
11 finding as opposed to the state statute. I think the
12 state statute is limited to boarding the boat for
13 inspection. The state statute is very clear; it says
14 that you have to have consent of the owner or probable
15 cause for the officer, so he may board the boat to
16 conduct an inspection, to check safety equipment.

17 That is not the probable cause that the
18 Florida Supreme Court found to be the culprit in this
19 particular case with regard to the searching of the ice
20 hold which came subsequent to this.

21 QUESTION: Suppose -- if we read what the
22 Florida Supreme Court says, that they turned this on the
23 statutory probable cause requirement, because that's the
24 basis of it, --

25 MS. SNURKOWSKI: Well, they cite to two

1 cases. They cite to Hill and they cite to Tingley
2 versus Brown.

3 QUESTION: Well, I know, but both of those
4 were state cases, weren't they?

5 MS. SNURKOWSKI: They are, but they are not
6 squarely on what we're suggesting is the probable cause.

7 QUESTION: I'm asking you if we don't read it
8 the way you suggest we should and we find that it did
9 rest on that state probable cause requirement, isn't
10 that the end of the case as far as we're concerned?

11 MS. SNURKOWSKI: Well, sir, I think -- and to
12 answer your question is a yes/no proposition. Yes, if
13 you really push me to the wall, but no because I believe
14 this Court has modified its review of an ambiguous
15 holding by a supreme court. In Delaware versus Prouse
16 you did it, and apparently, and I really must admit --

17 QUESTION: There's no question that the
18 Florida court thought the stop was all right.

19 MS. SNURKOWSKI: Yes.

20 QUESTION: And the boarding.

21 MS. SNURKOWSKI: Pursuant to Delaware v.
22 Prouse, that it just --

23 QUESTION: And the boarding.

24 MS. SNURKOWSKI: And the boarding, yes.

25 QUESTION: So you're legally on the boat.

1 MS. SNURKOWSKI: Oh, yes.

2 QUESTION: And the only argument that --

3 MS. SNURKOWSKI: That we're trying to get --

4 QUESTION: That you and Justice Brennan are
5 discussing is what occurs after that.

6 MS. SNURKOWSKI: Exactly. And I'm suggesting
7 that the probable cause of the statute, 371.58, does not
8 concern the search. That follows straight line Fourth
9 Amendment, which the Florida Supreme Court has always
10 followed. But that initial boarding had to be either
11 probable cause or consent, and that was what the statute
12 was to control.

13 QUESTION: Is it not correct that insofar as
14 the Florida Supreme Court was talking about the boarding
15 and the stopping, it relied on federal cases. And then
16 when it got to the search, it cited the statute, and
17 from that point on in its opinion it cited nothing but
18 Florida cases.

19 MS. SNURKOWSKI: That is true, but I think
20 that is because only of its own practice of citing its
21 own decisions --. There's a problem in this particular
22 case because the Third District Court of Appeals who
23 originally saw this on the appellate level did not even
24 address the search because they cut us off at the pass
25 when they nixed us on the initial stop. So therefore,

1 that particular issue was not developed. It was only
2 developed when we got to the Florida Supreme Court and
3 we had lost.

4 QUESTION: But you're asking us to reverse the
5 portion of the Florida Supreme Court's opinion that
6 cites nothing but Florida authority.

7 MS. SNURKOWSKI: No, I don't believe that's
8 true. The majority cites nothing but Florida
9 authority. The minority, Justice Alderman and Justice
10 McDonald disagree and say how can you apply the Fourth
11 Amendment --

12 QUESTION: I'm talking about the majority
13 opinion, you're right.

14 MS. SNURKOWSKI: They cite to Chimel and they
15 cite to Carroll and they say how could you have done
16 this in this particular case. Because clearly, clearly
17 --

18 QUESTION: I suppose the answer is Florida
19 doesn't have to follow those cases if it doesn't want to.

20 MS. SNURKOWSKI: Well, that is certainly one
21 outcome, but Florida has been -- and there's a host of
22 cases starting with State versus Hetlin that have always
23 -- and I repeat always -- applied Fourth Amendment in
24 the same way Fourth Amendment is to be applied
25 federally. I mean, that is the practice of the state.

1 As a matter of fact, our Article I, Section 12 is in
2 line with that, and as a matter of fact, we have just
3 modified -- this last election year we had a referendum
4 to codify how we are going to interpret it, and that is
5 by seizing upon decisions of this Court in its
6 interpretation of the Fourth Amendment.

7 So as far as search and seizure is concerned,
8 we are following the Fourth Amendment, and if the court
9 is talking about it, I believe their opinion is
10 ambiguous at best, but certainly in the mode of the
11 Fourth Amendment review. And certainly, I would suggest
12 that this court does have jurisdiction in that vein.

13 Once we're on the boat --

14 QUESTION: Is it your view that in all
15 doubtful cases, we should assume there's jurisdiction?

16 MS. SNURKOWSKI: No, Your Honor. I appreciate
17 the problem --

18 QUESTION: You do agree this is a doubtful
19 case? You're saying that presumption should be in favor
20 of federal jurisdiction.

21 MS. SNURKOWSKI: I think this is a close case
22 to Delaware versus Prouse, and that case is the case --
23 you've accepted that, and I appreciate that in
24 yesterday's decision. I haven't had a chance to read
25 it, but there was a problem in that case.

1 QUESTION: It supports you.

2 MS. SNURKOWSKI: Yes.

3 (Laughter.)

4 I haven't had a chance to read it but I
5 thought it might. But the point is that we don't really
6 feel we have that kind of a problem in this particular
7 instance, and the history of the Florida Supreme Court's
8 review of the Fourth Amendment has always been under the
9 United States Constitution's application of it.

10 QUESTION: When the minority mentions the
11 federal cases and the majority ignores it, what
12 conclusion do I draw?

13 MS. SNURKOWSKI: That the state was perhaps a
14 little remiss in its briefing of the case because we
15 were concerned with getting the stop found to be okay,
16 and we did not ever think in our mind that we would lose
17 the search.

18 QUESTION: I'm talking about the opinions --
19 the majority --

20 MS. SNURKOWSKI: I am suggesting --

21 QUESTION: -- does not mention the federal
22 points --

23 MS. SNURKOWSKI: That's right.

24 QUESTION: -- which were called to their
25 attention by the minority.

1 MS. SNURKOWSKI: That's right.

2 QUESTION: So certainly, they read them.

3 MS. SNURKOWSKI: They just didn't find them
4 persuasive, I would submit. And I might add there was a
5 rehearing --

6 QUESTION: If they didn't find it persuasive,
7 why should I find it persuasive?

8 MS. SNURKOWSKI: That they ruled on a Fourth
9 Amendment ground as opposed to an independent state
10 issue? Or that they're applicable, the Fourth Amendment
11 is applicable. I'm sorry, I don't appreciate your
12 question.

13 QUESTION: My question is that the majority
14 did not rule on the Fourth Amendment point as such, they
15 cited state cases. The minority cited the Fourth
16 Amendment and federal cases.

17 MS. SNURKOWSKI: Right. They cited --

18 QUESTION: So, the state, the majority knew
19 about that, and did not mention it. What conclusion do
20 I draw from that as to the majority opinion?

21 MS. SNURKOWSKI: Your Honor, I don't know -- I
22 cannot pretend to understand what you would draw from
23 that. What I would draw from that is that they just did
24 not appreciate the impact that those cases -- and their
25 applicability to this particular instance.

1 Because again, the nature of the case -- it
2 came up to the Florida Supreme Court on certiorari
3 review, conflict certiorari review, regarding the
4 initial stop. The subsequent search, which became the
5 subject matter for grounds before this Court, was a
6 secondary issue that they fortuitously resolved.

7 Once the officers were onboard -- or Officer
8 Soli was onboard the boat, at that point Officer Soli
9 asked if they could check the ice hold that was in the
10 front of the boat. Garcia indicated that -- do you have
11 a warrant. Officer Soli said I'd like to check for fish
12 products. He says, do you have a warrant. At that
13 point, Officer Walker testified in the suppression
14 hearing and at the trial that, we do not need a warrant;
15 we are not going to search, you're under arrest for
16 failing to have certificate papers, your registration
17 papers.

18 At that point, no time went by, based on
19 everybody's testimony. Garcia says, you got me, in
20 essence, there's marijuana all over the boat. At that
21 point, Miranda warnings were given, the officers asked
22 him to reconfirm what he said. He said there's
23 marijuana on the boat. At that point, Officer Walker
24 asked if they would accompany Officer Soli to the ice
25 hold, at which point the top or the lid was removed and

1 marijuana -- the aroma of marijuana was everywhere and
2 apparently, leaf materials -- it was just filled to the
3 gills with marijuana.

4 The state contends that the minority opinion
5 by the Florida Supreme Court that the case was instant
6 to a lawful arrest, that it was a probable cause search
7 and that, indeed, indeed, the search of the ice hold
8 would have been justified pursuant to an inspection type
9 check, all justified the search, and that the Florida
10 Supreme Court was incorrect in finding that there was no
11 consent and no probable cause.

12 I think a review of the decisions concerning
13 consent -- and I think the reason I am going to consent
14 is that although the state never specifically argued
15 that consent was given to search the ice hold, even
16 though there was this kind of open statement like
17 there's marijuana all over the boat, the state would
18 contend that the fact that somebody's in custody, that
19 they're not able to leave -- the totality of the
20 circumstances must be reviewed, and in this particular
21 instance the consent was there.

22 But more importantly, the statement that was
23 given was not coerced in any way, fashion or form. And,
24 therefore, there was sufficient -- at that point, when
25 the officer heard that Garcia said there is marijuana

1 all over the boat, it developed the requisite probable
2 cause to conduct the search of the entire boat, as this
3 Court has suggested in Ross.

4 More importantly, as soon as Garcia and Mr.
5 Casal were under arrest, the search instant to a lawful
6 arrest was appropriate under Belton. We're talking
7 about a vessel which is no different than the automobile
8 and certainly, the area that was to be searched was not
9 a private sector of the boat, it was not someone's
10 locker on the boat; it was a fish hold that -- there are
11 federal district court cases that have held that even
12 the fish hold is not a private sector; it's open to the
13 public and does not contain privacy protections.

14 Based on these three arguments, the state
15 would contend that the Florida Supreme Court erred in
16 determining that the particular search herein was
17 unlawful.

18 Thank you.

19 CHIEF JUSTICE BURGER: Mr. McCormick?

20 ORAL ARGUMENT OF ARTHUR F. MCCORMICK, Esq.

21 ON BEHALF OF THE RESPONDENT

22 MR. MCCORMICK: Mr. Chief Justice, and may it
23 please the Court:

24 It is the position of the defendants that the
25 judgment of the Supreme Court of Florida should be

1 withheld. The grounds that are being offered by the
2 defendants in support of the decision of the Supreme
3 Court, the judgment of the Supreme Court, are, number
4 one, that the stopping was unlawful; number two, that
5 the search was unlawful; number three, that there was a
6 deception that was exercised by the police officers in
7 the process of representing that a search warrant was
8 not necessary; and number four, that the arrest was also
9 unlawful.

10 QUESTION: But you're not arguing that the
11 judgment rests on an adequate state ground?

12 MR. McCORMICK: Yes, sir, that also.

13 QUESTION: How about the boarding? You were
14 rejected on that.

15 MR. McCORMICK: No, I wasn't totally rejected,
16 as in the brief by the state I was accused of using a
17 thunderbust, and so I'm somewhat restricting my shot
18 right now and eliminating the boarding aspect of it.
19 Based upon the arguments in the prior case, --

20 QUESTION: So we are judging this case as
21 though the boarding was constitutional.

22 MR. McCORMICK: The boarding I don't believe
23 was by consent because --

24 QUESTION: I know, but was the boarding
25 constitutional or -- ?

1 MR. McCORMICK: If it was not by consent then
2 it wasn't constitutional.

3 QUESTION: I know, but the Florida Supreme
4 Court has said it was.

5 MR. McCORMICK: The Florida Supreme Court, in
6 intrepeting the facts --

7 QUESTION: Said the stop and the boarding was
8 constitutional.

9 MR. McCORMICK: They said that --

10 QUESTION: You haven't processed an appeal to
11 that.

12 MR. McCORMICK: No, sir, I haven't. But as
13 far as the grounds for supporting the judgment of the
14 Supreme Court of Florida, I'm not implying that the
15 boarding was unlawful. I believe that the decision of
16 the Supreme Court of Florida can be withheld, I mean,
17 can be sustained without analyzing the boarding aspect
18 of it.

19 QUESTION: All right, so we judge it as though
20 the boarding was legal and from then on, you say
21 whatever happened was enough to sustain the judgment.

22 QUESTION: Judge, that, if you see that the
23 boarding was illegal, I don't want to disagree with you
24 in that respect at all.

25 QUESTION: I didn't know that was an issue

1 here, the legality of the boarding.

2 MR. McCORMICK: I'm not raising it at this
3 point, Judge.

4 QUESTION: At this point. You've lost an
5 opportunity to raise it.

6 MR. McCORMICK: And this is the last time.
7 No, sir.

8 The reply brief of the state objects to the
9 analysis of the case on these points by the defendants.
10 We are satisfied with the judgment of the Supreme Court
11 of Florida, and that being the case, we did not file any
12 cross-petition seeking certiorari.

13 QUESTION: Did you ever challenge the
14 propriety of the arrest?

15 MR. McCORMICK: Yes, ma'am. Is that the
16 propriety of the arrest was challenged initially by a
17 written pleading on the motion to suppress. And that
18 was back on April 3, 1977. The arrest was objected to
19 and that was used as one of the grounds for the motion
20 to suppress.

21 QUESTION: You concede now that the arrest was
22 lawful?

23 MR. McCORMICK: No, ma'am. Our position is
24 that the arrest was unlawful. In addition to that,
25 before the Third District Court of Appeals, our brief on

1 page 21 contains our objection to the arrest. Before
2 the Supreme Court of Florida, our Answer Brief on page
3 18, 19 and 40, and argument number vii.

4 QUESTION: Mr. McCormick, are you talking
5 about the arrests for not having a registration
6 statement? Not having a registration?

7

8 MR. McCORMICK: Yes, sir.

9 QUESTION: Well, at page 28 I think of your
10 brief you say that those arrests were false arrests.

11 MR. McCORMICK: Yes, sir.

12 QUESTION: What did you mean by that?

13 MR. McCORMICK: By that I mean that they were
14 unlawful. Is that there was no reasonable grounds to
15 believe -- I'm talking now about the initial arrests.
16 Actually, we've got two arrests involved. We've got the
17 first arrest --

18 QUESTION: I'm talking about the one for not
19 having a registration.

20 MR. McCORMICK: They never perfected that.
21 They told the men onboard, they said, you're under
22 arrest, but they never followed it up by any type of a
23 citation or anything else. That is the arrest that I'm
24 talking about that was unlawful.

25 QUESTION: You say that arrest was federally

1 infirm? Are you saying that was federally infirm?

2 MR. McCORMICK: No.

3 QUESTION: Constitutionally?

4 MR. McCORMICK: I'm saying that it was
5 unlawful by the laws of the state of Florida, and by the
6 same token, if there wasn't probable cause to believe
7 that a crime had been committed when they were arrested
8 for not having the registration papers, by the same
9 token, it would be federally infirm.

10 We're attacking the -- or, we're supporting
11 the decision of the Supreme Court of Florida on these
12 grounds, based primarily upon the Langley struck
13 doctrine, the decision by Justice Cardozo in the Mauley
14 Construction and Maryland Casualty case, as well as
15 Gresman Supreme Court Practice, 477, 479.

16 The state, in its presentation of the facts of
17 the case, I believe there should be some additions to it
18 in order that the total picture can be appreciated in
19 deciding this case. Is that to begin with, this was off
20 of Sugarloaf Key, is that -- I don't know if you
21 Justices are familiar with the Keys, but Sugarloaf is
22 between Marathon and Key West, and it's a rather remote
23 area of the Florida Keys and it was approximately three
24 miles offshore. It was about 1:00 o'clock in the
25 morning and the seas were rough.

1 The evidence was that the Marine Patrol had a
2 suspicion that there was lobster being stolen from
3 fishermen's traps in this area. Further was the
4 evidence that they had no reason for suspicion of any
5 kind that the defendants were involved in any type of
6 illegal activity. As a matter of fact, both of the
7 Marine Patrol officers said that when they approached
8 the vessel they had no knowledge or suspicion of any
9 kind that these men were transgressors of the law.

10 Nevertheless, they decided to stop the
11 vessel. The vessel at this time was approximately three
12 miles offshore, the seas were very rough and they
13 approached the vessel from the stern, and then threw the
14 floodlight on when they were approximately 50 feet away.

15 One of the officers asked the pilot of the San
16 Rafael to take the vessel out of gear and to bring it to
17 a stop. Of course, it's bring it to a stop as best you
18 can considering the roughness of the sea. When a vessel
19 is brought -- is taken out of gear when the seas are
20 rough, it has a tendency to be be thrown in the
21 direction that the sea wishes it to be thrown. Is that
22 you lose control of a vessel when you take it out of
23 gear in heavy seas.

24 The record indicates that the Marine Patrol
25 boat was pulled up alongside of the San Rafael and that

1 the two vessels were pounding together in the heavy sea
2 while the Marine Patrol officer questioned the men
3 onboard if they had their registration papers.

4 I believe at this juncture it should be
5 pointed out that as far as the registration law, is that
6 Florida has its registration law for power boats, motor
7 boats as they're called. Most states have their own
8 individual laws for registering motor boats. It used to
9 be that the federal government had the exclusive right
10 in this area, but then they delegated this to the states
11 and permitted the states to pass their own registration
12 laws.

13 Florida passed it, and by definition under the
14 Act, is that they state that all motor boats -- and I
15 believe this has application to an inquiry by you,
16 Justice Powell, is that all motor boats must be
17 registered. But then what they do is they say that the
18 following vessels are not to be considered as motor
19 boats under the Act. They talk about boats strictly
20 used for racing, they talk about other vessels from
21 other states where they are properly registered. And
22 more importantly, they say documented vessels are not
23 labeled as motor boats, and they don't have to have
24 registration papers.

25 The evidence was at this point that the

1 defendants produced the documentation papers for the
2 vessel. And even though the documentation papers were
3 produced clearly indicating to the police officers that
4 registration papers were not necessary, they insisted
5 upon the registration papers.

6 Officer Soli then requested permission to get
7 aboard, and at this time the boats are still pounding
8 together in the heavy seas, and there's no indication
9 inside of the record that permission was ever granted.
10 All it is is that she proceeded to get aboard and was
11 given assistance while getting aboard by the defendants.

12 Once aboard, she immediately engaged in a
13 search of the vessel. Is that she states that the
14 purpose of going onboard -- her true purpose in going
15 onboard was to find seafood products. The Florida
16 statute on point 370.021 specifically states that there
17 must be reason to believe that the conservation law has
18 been violated in order for the Marine Patrol officer to
19 conduct a search of a vessel in that respect.

20 So in violation of that section of the Florida
21 statute, she nevertheless proceeded to try and search
22 the vessel. The first area she went into was the
23 wheelhouse. The record indicates that she followed the
24 men into the wheelhouse. She didn't receive any consent
25 to go into the wheelhouse; she just went into it from

1 the cockpit. She then went into the grocery box, and
2 she wasn't looking for the registration papers when she
3 went into the grocery box.

4 QUESTION: Well, Mr. McCormick, supposing that
5 a state customs agent, state marine officer, has legally
6 boarded the boat and there isn't just a standoff between
7 the captain or whoever it is. The captain realizes the
8 officer is there and walks to the wheelhouse and goes to
9 the wheelhouse himself. Do you think that when the
10 state police officer comes from the outside part of the
11 boat to the inside part of the boat he has to ask
12 permission if the captain has simply gone on ahead,
13 indicating for him to follow?

14 MR. McCORMICK: Well, if the captain indicated
15 that he should follow, then I would go along with you,
16 but the record doesn't indicate that the captain
17 indicated to him to follow.

18 QUESTION: Well, what does the record indicate?

19 MR. McCORMICK: The record indicates that once
20 Office Soli got onboard, she immediately commenced to
21 search for seafood products.

22 QUESTION: But from your description of how
23 she got to the wheelhouse, it sounds as though she had
24 followed the captain there. Not that she pushed the
25 captain over to one side and went into the wheelhouse on

1 her own.

2 MR. McCORMICK: That's right. Yes, sir. But
3 then she went into the grocery box, and she wasn't
4 following the captain when she went into the grocery
5 box. She was really conducting a search.

6 QUESTION: Well now, the Florida Supreme Court
7 opinion says that in this case, consent was freely given
8 to board the vessel and to look in the icebox. Now, we
9 have to take that as the correct finding, do we not?
10 You didn't come here on a petition for certiorari to
11 dispute that. We have to assume those things are true.

12 MR. McCORMICK: I did not cross-petition, and
13 I believe it's our position that it's not necessary for
14 us to cross-petition based upon the Langley-Cardozo
15 decision.

16 QUESTION: Well, you can't ask us to disregard
17 that state court's factfinding.

18 MR. McCORMICK: Well, that's the reason why I
19 said I don't want to have our position rely strictly
20 upon the boarding or the illegality of the boarding of
21 the vessel, because of that point.

22 But now as far as the icebox goes, --

23 QUESTION: Well, it can't rest on that point
24 at all.

25 MR. McCORMICK: Pardon?

1 QUESTION: It can't rest on that point at
2 all. Don't we judge this case on the grounds that the
3 officers were legally on the vessel?

4 MR. McCORMICK: I believe so.

5 The icebox consent was given to look in the
6 icebox but no place else. It was after the Marine
7 Patrol officer conducted a search of the wheelhouse, the
8 grocery box and the cabin and then the icebox that she
9 proceeded to the forward hold and indicated to Garcia
10 that she wanted to see what kind of fish products Mr.
11 Garcia had in the foreward hold. It was then that Mr.
12 Garcia said, do you have a search warrant.

13 And Officer Soli said all we want to do is
14 take a look in there and see what kind of fish products
15 you have. And he again repeated the question, and this
16 dialogue was going on and Officer Walker, in the Marine
17 Patrol boat alongside shouted out then and said, we
18 don't have a search warrant, we don't need a search
19 warrant. We're not searching your boat. You're under
20 arrest for not having your registration papers. And
21 that's the arrest that I was speaking about that I say
22 is unlawful.

23 QUESTION: Why, again, do you say it was
24 unlawful? Because they didn't prepare something like a
25 certificate of arrest?

1 MR. McCORMICK: No. I said it was unlawful
2 because the Florida statutes specifically state that
3 registration papers are not necessary for a documented
4 vessel.

5 QUESTION: So you're saying there was no
6 offense for which --

7 MR. McCORMICK: Yes, sir.

8 QUESTION: But didn't the Supreme Court of
9 Florida disagree with you on that?

10 MR. McCORMICK: No, it didn't.

11 QUESTION: You say under Florida law he could
12 not have been arrested for not having a boat
13 registration certificate onboard.

14 MR. McCORMICK: Yes, sir, that's correct.

15 QUESTION: The Florida Supreme Court opinion,
16 however, says, and I quote, "They..." meaning the
17 officers, "...then asked to see the boat's registration
18 certification, which is legally required to be
19 onboard." And they cite a statute. And we're supposed
20 to disregard that?

21 MR. McCORMICK: It's supposed to be onboard a
22 vessel for a motorboard, but this isn't a motorboat.
23 It's a vessel that has documentation --

24 QUESTION: But they were dealing with this
25 particular case, though.

1 MR. McCORMICK: Yes, ma'am.

2 QUESTION: And they've told us in this case in
3 that sentence that it was legally required.

4 MR. McCORMICK: Then I advance this as an
5 argument that was rejected by the Supreme Court. And I
6 believe, according to the Langley decisions as well as
7 the other authorities that I mentioned, we're able to
8 advance not only the arguments accepted by the Supreme
9 Court of Florida, but also, those rejected by the
10 Supreme Court. And even arguments not even advanced to
11 the Supreme Court.

12 QUESTION: But you're unlikely to prevail,
13 whatever you may be able to advance, on an argument that
14 says that the Supreme Court of Florida misunderstood
15 what the Florida police could arrest for, or what was
16 legally required to be onboard under Florida law.

17 MR. McCORMICK: There's no indication inside
18 of the decision of the Supreme Court that the arrest was
19 lawful.

20 QUESTION: Suppose under Florida law it was
21 lawful, that having a registration certificate onboard
22 was required, and that you could arrest for not having
23 it. And suppose the officer said to the captain, well,
24 you don't have a registration certificate so we're
25 arresting you for that.

1 Now, if that was a lawful arrest, the only way
2 it could have been lawful is if it were lawful without a
3 warrant.

4 MR. McCORMICK: Yes, sir.

5 QUESTION: Now, are you saying that they
6 needed a warrant?

7 MR. McCORMICK: No. I'm saying that it was an
8 unlawful arrest because there was no probable cause to
9 believe that the statute was violated. The statute
10 requiring registration papers. Registration papers were
11 not required.

12 QUESTION: Well, they didn't have them.

13 MR. McCORMICK: They weren't required because
14 it was a documented vessel.

15 QUESTION: The Florida Supreme Court says they
16 were required.

17 MR. McCORMICK: They were required by Florida
18 statute as far as -- there certainly is a Florida
19 statute that says that motor boats must have
20 registration papers. But if I may read to you from the
21 record, this is A-15, this is the testimony of Officer
22 Walker.

23 "Two gentlemen came out of the wheelhouse. I
24 identified myself as Mark Walker, again with Marine
25 Patrol, and I told them that I would like to check their

1 reigstration papers for their boat. Question: And did
2 they produce the registration papers? Answer: At first
3 he handed me a white piece of paper and the tax receipt,
4 taxes paid on the boat. I assumed it was paid on the
5 boat. I told him that that wasn't what I wanted to see,
6 that I wanted a small square piece of paper which was a
7 Florida registration certificate. He returned and
8 handed me the documentation papers for the vessel, and I
9 asked him if he was captain of the boat. I don't
10 remember whether he replied whether he was captain or
11 not..." et cetera.

12 QUESTION: Anyway, the Florida Supreme Court
13 opinion says that he could not -- the registration
14 certificate could not be located.

15 MR. McCORMICK: That's correct. There was no
16 registration certificate.

17 QUESTION: And after having said that the
18 certificate was legally required to be onboard. Anyway,
19 they were legally on the vessel; there was no
20 registration certificate to be found. And if they could
21 be arrested for that -- there was no misrepresentation,
22 I suppose, then, about the warrant.

23 MR. McCORMICK: If they could arrest for the
24 registration papers, I think next -- assuming that was
25 legal for purposes of argument at this stage -- is that

1 the next question is would they have the authority to
2 search the vessel. And Section 371.58 states that
3 you're able to conduct a safety check with the owner or
4 operator's consent, or when there has been reasonable
5 cause to believe that a part of that section has been
6 violated.

7 Now, if there was a violation of the safety
8 requirements, then I say, yes, you could. In contrast,
9 if you don't have your registration papers onboard, is
10 that -- for example, if you don't pay your income taxes,
11 I don't think that would give them the authority to
12 search the forward hold. And by the same token, if they
13 don't have the registration papers onboard, I don't
14 think that would give them the right to search the
15 forward hold.

16 QUESTION: So you're suggesting, which may be
17 quite right, that under Florida law, even if you need a
18 registration certificate onboard, even if you can be
19 arrested for not having it, you may not search the rest
20 of the vessel, or search the vessel at all, unless you
21 have probable cause to believe you're going to find
22 something besides the non-existence of a registration
23 certificate.

24 MR. McCORMICK: I would think, so, yes, sir.

25 QUESTION: You think that's Florida law.

1 MR. McCORMICK: Yes, sir. I believe that
2 would be consistent with the Carroll case, and I think
3 it's also consistent with State versus --

4 QUESTION: Well, it isn't. Justice Stevens
5 suggested to you that the requirement of probable cause
6 is -- that was imposed on these officers is purely
7 Florida law. Even if they could have arrested for not
8 having a registration certificate.

9 MR. McCORMICK: Well, that portion of the
10 decision, the last two pages of the opinion in chief,
11 that deals with the aspect of probable cause and the
12 arrest is that if all Florida statutes that they talk
13 about, together with the Hill case and I believe the
14 Taylor case and one other case, and they don't mention
15 anywhere --

16 QUESTION: Is that the premise of your
17 argument that this judgment, then, rests on an adequate
18 state ground?

19 MR. McCORMICK: Yes, sir, it certainly does.

20 In addition to that, our Article I, Section 12
21 of the Florida Constitution which was in force in 1977
22 and which was in force right straight through the trial
23 and the appeals up until last year, was a little bit
24 broader than the Fourth Amendment to the United States
25 Constitution. Article I, Section 12 even stated that

1 any evidence that was obtained -- that was unreasonable
2 could not be introduced in court proceedings.

3 QUESTION: What happened last year, Mr.
4 McCormick?

5 MR. McCORMICK: Well, they changed the
6 constitution and now they're going along with the
7 Supreme Court of the United States.

8 QUESTION: Florida changed its constitution?

9 MR. McCORMICK: Yes, sir.

10 It's suggested by the state that the search
11 was incident to the arrest, and that area, I believe the
12 Chimel versus California is still the law here before
13 the Supreme Court is that there has to be, number one, a
14 lawful custodial arrest, is that there's been no
15 indication whatsoever that there was a lawful, custodial
16 arrest here.

17 And that the search be limited to an area into
18 which the arrestee might reach in order to grab a weapon
19 or evidential item. Is that the forward hold -- is that
20 the arrest took place in the cockpit of the boat. The
21 forward hold is on the other side of the cabin. There's
22 a hatch. The evidence is that it required two men,
23 strong men, to be able to lift the hatch, and before
24 they could even get to it, there's fish traps located on
25 top of the hatch that have to be removed. So this would

1 certainly not be an area where the arrestee might reach
2 for a weapon or perhaps attempt to get some evidence and
3 destroy it.

4 The Carroll Exception is that -- just briefly,
5 the probable cause for the arrest is that it's our
6 contention did not exist. Nor was there probable cause
7 to believe that contraband was onboard. Is that the
8 testimony of Officer Soli and Officer Walker was that
9 they had no suspicion whatsoever that there was any
10 contraband onboard. As a matter of fact, they testified
11 that they just wanted to take a look in the forward hold
12 because they thought they might be able to locate some
13 lobster.

14 I don't know how they're able to say that
15 after they -- assuming that they did find the seafood
16 products, that they could identify those seafood
17 products as either being stolen or perhaps legally
18 gained.

19 The evidence was also, by the testimony of the
20 officers, that they had no reason to believe that this
21 boat either fished in Florida waters or ever sold fish
22 products in Florida waters.

23 QUESTION: Well, what were the traps doing
24 there?

25 MR. McCORMICK: The traps were onboard the

1 boat, and they --

2 QUESTION: You said they didn't fish, but what
3 were they doing with traps?

4 MR. McCORMICK: They stated that they were on
5 the way to the Bahamas. It's a caysal bank which is
6 located almost due east of Sugarloaf, approximately 40
7 miles into the stream.

8 The further position of the state is that this
9 was a lawful administrative inspection. It's our
10 position that as far as it being a lawful administrative
11 inspection, Chapter 370 specifically states that the
12 only time that you can have an inspection is if there is
13 probable cause to believe that the conservation law has
14 been violated. And they, by their own testimony, stated
15 they had no reason whatsoever, even a suspicion, to
16 believe that the conservation law was violated.

17 371 deals with registration papers and safety
18 equipment. Is that it's the state's position now, which
19 I say lacks vitality because the first time it was
20 advanced was in their reply brief. Is that they say
21 that -- the state is contending that the probable cause
22 was gained by the lack of papers onboard, the
23 registration papers. This is the first time that they
24 advance this, in their reply brief. And it's our
25 position, of course, that the failure to have

1 registration papers wasn't -- that doesn't give you the
2 probable cause to conduct the search.

3 It is the state's position that the question
4 for review, as indicated in their brief on their
5 petition for certiorari, -- it states that the
6 respondents were validly arrested. It stated that the
7 Supreme Court of Florida so found that the respondents
8 were validly arrested, prior to the hold of the boat
9 being searched. Is that nowhere in the opinion is there
10 any indication that the state Supreme Court thought that
11 the defendants were validly arrested.

12 And, of course, this is a pivotal point, is
13 that if you -- it has to be established in the first
14 instance that there was a valid arrest. Otherwise,
15 everything else pretty much collapses.

16 Lastly, the decision mentioned inside of the
17 defendants' brief; namely, Bumper v. North Carolina,
18 which I believe is very similar to the case at bar, as
19 well as, of course, U.S. v. Moat, which is at 359 Fed
20 2nd, and O.J. Sales, Inc., which is a 99 Supreme Court
21 case. Is that similar in kind where there's been a
22 misrepresentation, especially if it's with reference to
23 a search warrant or it's represented to the defendant
24 that authority to search existed when, in fact, it did
25 not, is that any statements made as well as evidence

1 received and especially consent ostensibly given does
2 not constitute consent at all.

3 And as was indicated in the case of State v.
4 Taylor, acquiescence to authority does not constitute
5 consent.

6 Thank you, gentlemen.

7 CHIEF JUSTICE BURGER: Do you have anything
8 further?

9 MS. SNURKOWSKI: No, Your Honor.

10 CHIEF JUSTICE BURGER: Thank you, counsel, the
11 case is submitted.

12 (Whereupon, at 2:50 p.m., the case was
13 submitted.)

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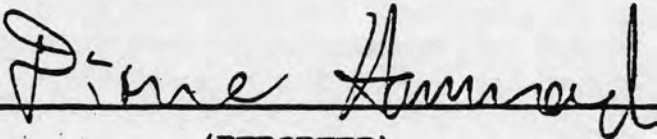
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FLORIDA, Petitioner v. CONSTANTINO CASAL AND OMAR GARCIA # 81-2318

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BY

A handwritten signature in cursive script, appearing to read "Pine Hunsaid", is written over a horizontal line.

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