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**State of Florida v. Gary Alan Matheson**

PLEASE RISE . PLEASE BE SEATED .

THE LAST CASE ON THIS MORNING'S DOCKET IS STATE OF FLORIDA VERSUS MATHESON. THE PARTIES ARE READY ?

YES, YOUR HONOR .

MISS SHANAHAN , YOU MAY PROCEED.

THANK YOU . CHIEF JUSTICE PAINT. GOOD MORNING. MAY IT PLEASE THE COURT , MY NAME IS SUSAN SHANAHAN FOR THE STATE OF FLORIDA. THE RESPONDENT IN THIS CASE WAS STOPPED FOR A TRAFFIC INFRACTION. UPON BEING STOPPED , THE CANINE UNIT WAS CALLED.

COUNSEL, YOU HAVE A VERY SOFT AND DISTINCT VOICE , BUT WOULD YOU RAISE THAT UP JUST A LITTLE BIT?

ABSOLUTELY , YOUR HONOR. IS THAT BETTER? THE RESPONDENT IN THIS CASE WAS STOPPED FOR A TRAFFIC INFRACTION. UPON BEING STOPPED, A SAVING UNIT WAS CALLED CONSISTING OF HILLSBOROUGH OFFICER DEPUTY GREGG AS WELL AS HIS CANINE OFFICER , WHICH WAS THE DOG RAZOR.

LET ME JUST STOP YOU THERE AS FAR AS A FEW FACTS . THE DEFENSE IN THIS CASE IS NOT TAKING ISSUE WITH WHETHER OR NOT A DOG SNIFFED THE SEARCH, WHICH IS THE ISSUE IN FRONT OF THE SUPREME COURT.

THAT IS CORRECT.

OR THAT THE DETENTION WAS UNDUALLY LENGTHENED - - UNUSUALLY LENGTHENED SO THAT THE EVIDENCE COULD COME IN.

THAT IS CORRECT.

THE SOLE ISSUE IS WHETHER OR NOT RAZOR, THE DOG , WAS VERY SHARP ON THAT DAY.

THAT'S CORRECT. WHETHER HE WAS --

I HAD TO GET THAT OUT.

THAT'S CORRECT AND HE WAS , BY THE WAY. NO , YOU -- THAT IS CORRECT . HE DID ALERT THE OTHER VEHICLE AND UPON ALERTING , THE VEHICLE WAS SEARCHED AND THEY DID FIND METHAMPHETAMINE, MORPHINE AND HYDROCODONE BILLS . THEY ALSO FOUND EVIDENCE OF DRUG PARAPHERNALIA.

AS I'M UNDERSTANDING THE STATE'S CONTENTION IT IS THAT IF THE STATE PRESENTS EVIDENCE THAT IS DOG HAS BEEN CERTIFIED THEN THAT ITSELF IS SUFFICIENT TO ESTABLISH PROBABLE CAUSE?

THE STATE'S POSITION IS THAT IF THE DOG IS PROPERLY TRAINED AND CERTIFIED .

NOW, IF YOU GET INTO THAT IT HAS TO SHOW PROPERLY TRAINED BECAUSE I KNOW SOME OF OUR EARLIER CASES WERE BEFORE THE CERTIFICATIONS CAME IN , THEN WOULDNT YOU IN TERMS OF THE ACTUAL PRELIMINARY SHOWING , HAVE TO SHOW MORE THAN JUST THAT THEY HAD THESE CERTIFICATIONS. YOU'D HAVE TO SHOW WHAT THE TRAINING WAS THAT THE DOG WENT THROUGH?

THE STATE WOULD SUBMIT THAT ONCE THE STATE HAS SHOWN THAT THE DOG IS TRAINED AND CERTIFIED - -

BUT THERE IS , AGAIN, CERTIFICATION IS A PIECE OF PAPER. TRAINING IS AN ISSUE ABOUT WHAT A PROPERLY TRAINED IS WHAT YOU SAID.

YES.

PROPER IMPLIES SOME DEGREE OF QUALITATIVE ANALYSIS, SO DOES THE STATE HAVE TO GO, IN OTHER WORDS, SHOULD THE STATE HAVE TO PRODUCE THE RECORDS FOR THEIR PRIMA FACIE CASE , THE RECORDS OF HOW THE TRAINING WENT, WHETHER THE DOG WAS A 70% DOG OR 100 % DOGLIKE THE CUSTOMS DOGS BEFORE THE YMAKE PROBABLE -- ARE ABLE TO ESTABLISH PROBABLE CAUSE?

THE STATE WOULD SUBMIT THAT THERE IS A PRESUMPTION WITHOUT THOSE RECORDS.

BUT I CAN UNDERSTAND CERTIFICATION, I JUST WANT TO MAKE SURE , HOW DO YOU GET TO A PRESUMPTION OF PROPER TRAINING JUST BY THE STATE SAYING THE DOG IS PROPERLY TRAINED?

I WOULD SUBMIT BY THE OFFICER, THE ACTUAL HANDLER OF THE DOG , TESTIFYING THAT THE DOG HAS BEEN TRAINED AND WOULD GIVE A PRESUMPTION OF TRAINING AND THEN --

DOES THE TRAINING AND -- DON'T YOU HAVE TO BE TRAINED TO BE CERTIFIED ? I MEAN, I JUST WONDER IF THERE IS A REAL DIFFERENCE HERE AND THE NEW HAVE A DOG THAT'S JUST TRAINED AND ONE THAT'S JUST CERTIFIED WITHOUT HAVING HAD ANY TRAINING?

ABSOLUTELY NOT AND THERE IS ACTUALLY NO REQUIREMENT THAT THE DOG BE CERTIFIED. THAT IS SOMETHING THAT THE LAW ENFORCEMENT AGENCIES LIKE TO DO BECAUSE IT IS AN INDEPENDENT AGENCY THAT WILL COME IN AND CERTIFY THEIR DOGS FOR THEM.

DON'T YOU HAVE TO GO BEHIND, THOUGH , JUST THE WORD CERTIFICATION, ALL RIGHT, BECAUSE THAT CAN MEAN DIFFERENT THINGS IN DIFFERENT CONTEXT AND THAT IS DONT YOU NEED TO ATLEAST HAVE EVIDENCE THAT THERE'S WHAT CERTIFICATION MEANS? SOME OF YOU ARE GOING TO RELY ON THE CERTIFICATION , ALL RIGHT, AND THAT IS THAT THE CERTIFICATION IS DONE BY A PARTICULAR BODY THAT'S RECOGNIZED AND FOR THAT BODY TO CERTIFY THE DOG TO DO THIS KIND OF WORK , THE HANDLERS OR THE MEMBERS OF THE CERTIFICATION BODY WOULD HAVE TO HAVE EVIDENCE THAT THE DOG HAS HAD CERTAIN TRAINING , AND HAS PASSED CERTAIN STANDARDS BECAUSE OTHERWISE CERTIFICATION WOULD HAVE NO MEANING , OTHER THAN THE FACT YOU WOULD HAVE CERTIFICATION, I SUSPECT, BY SAYING, WELL , YOU KNOW , WE THINK A PARTICULAR BREED OF DOG LIKE GERMAN SHEPHERDS ARE REAL GOOD AT THIS WORK , AND SO IF IT IS A NICE DOG AND IT IS A GERMAN SHEPHERD WE ARE GOING TO SELL IT. SOME GROUPS MIGHT DO THAT. ON THE OTHER HAND, YOU MIGHT HAVE A CERTIFICATION PROCESS WHERE IT IS VERY , VERY RIGOROUS, AND , IN FACT , YOU KNOW, WHAT IT MEANS THE DOG HAD TO BE TRAINED AND PART OF THE TRAINING ENDED UP BEING THAT THEY HAD TO SCORE , YOU KNOW, 99 OUT OF 100 OPPORTUNITIES THEY HAD ONCE THEY HAD THE TRAINING , SO WHAT DO WE KNOW

W A B O U T C E R T I F I C A T I O N I N T H I S R E C O R D ? T H A T I S , W H A T D O W E K N O W T H E S T A N D A R D S W E R E B E F O R E T H I S D O G W A S , Q U O T E , C E R T I F I E D ; I S T H A T R I G H T ?

H E W A S C E R T I F I E D .

C E R T I F I E D B Y W H A T B O D Y A N D W H A T D O W E K N O W T H A T C E R T I F I C A T I O N E N T A I L E D ?

T H E R E W A S A N I N I T I A L S T A T E C E R T I F I C A T I O N I N O C T O B E R O F ' 9 7 A F T E R H I S I N I T I A L T R A I N I N G . T H E R E I S N O E V I D E N C E I N T H E R E C O R D A S T O W H A T T H A T C E R T I F I C A T I O N M E A N T . H O W E V E R , H E W A S T H E N C E R T I F I E D B Y T H E U N I T E D S T A T E S P O L I C E C A N I N E A S S O C I A T I O N . T H I S I S A N I N D E P E N D E N T A G E N C Y , A N D T H A T T O O K P L A C E J U N E O F ' 9 8 A N D H E W A S C E R T I F I E D O N T H R E E S U B S T A N C E S A N D I T I S V E R Y C L E A R I N T H E R E C O R D B Y T H E T E S T I M O N Y O F T H E H A N D L E R A S W E L L A S T H E P R O C E D U R E S F O R T H A T C E R T I F I C A T I O N P R O G R A M A R E I N T H E R E C O R D O N A E A L , A N D I T S H O W S T H A T T H E D O G S H A V E T O S C O R E C E R T A I N P E R C E N T A G E I N O R D E R T O B E C E R T I F I E D . T H E Y A R E R U N T H R O U G H F I V E V E H I C L E S , A F E W O F T H O S E V E H I C L E S I N T H I S C A S E I T H I N K T H R E E O F T H E M O R T W O O F T H E M W E R E B L A N K . T H E O T H E R S C O N T A I N E D N A R C O T I C S .

L E T M E M A K E S U R E A B O U T T H E S E B E C A U S E I K N O W T H E R E I S A N I S S U E A B O U T T H I S R E C O R D . T H E R E W E R E , B E C A U S E T H E S E C O N D D I S T R I C T S A I D T H A T T H E R E W E R E N O R E C O R D S A T A L L , A N D Y O U ' V E S H O W N T H A T T H E R E W E R E F I E L D R E C O R D S A N D T H E Y W E R E T A L K I N G F I E L D R E C O R D S . B U T A S F A R A S T H E R E C O R D S O F W H A T T H E C E R T I F I C A T I O N I S , T H E R E W A S A D E P O S I T I O N B U T T H E D E P O S I T I O N W A S N E V E R P U T I N T O E V I D E N C E , S O C A N W E R E A L L Y C O N S I D E R T H A T A S B E F O R E T H I S C O U R T ?

Y E S . I W O U L D A R G U E T H A T Y O U C O U L D . I T W A S F I L E D A C T U A L L Y B Y T H E R E S P O N D E N T H I M S E L F I N H I S M O T I O N , S O I T W A S B E F O R E T H E T R I A L C O U R T T H A T - - T H E D E P O S I T I O N S W E R E A N D N O T J U S T T H E T E S T I M O N Y B U T T H E Y H A D T H E R E C O R D S O F T H E C E R T I F I C A T I O N T H A T A R E A L S O C O N T A I N E D I N T H E R E C O R D O N A E A L A N D N O T J U S T H I S F I E L D A C T I V I T Y R E P O R T S . A L L O F H I S T R A I N I N G R E C O R D S A R E C O N T A I N E D I N T H E R E C O R D O N A E A L .

N O W , G E T T I N G B A C K T O T H E I S S U E A N D I D O N ' T W A N T T O - - I W A N T T O M A K E S U R E Y O U E X P L A I N W H A T A L L O F T H I S I S , B U T I ' M T R Y I N G T O G E T T O W H A T T H E R U L E O F L A W W O U L D B E . T H E R E I S O N E L E V E L O F S A Y I N G T H A T I N A S E A R C H W A R R A N T , F O R E X A M P L E , T H E D O G W A S P R O P E R L Y T R A I N E D A N D C E R T I F I E D A N D T H A T ' S W H A T T H E M A G I S T R A T E K N O W S A N D T H A T ' S T H E J U D G E A N D A W A R R A N T I S I S S U E D , B U T I S I T E N O U G H , L E T ' S J U S T A S S U M E H E R E T H A T T H E S T A T E S A Y S T H A T H E W A S P R O P E R L Y T R A I N E D A N D C E R T I F I E D , D O E S N ' T E X P L A I N W H A T T H E T R A I N I N G W A S F O R T H E C E R T I F I C A T I O N . I S T H A T S T I L L E N O U G H A S F A R A S T H E R U L E O F L A W T H A T H A S -- A L L T H E S T A T E H A S T O D O I S T H A T , O R D O E S T H E S T A T E A L S O H A V E T O P U T O N W H A T T H E T Y P E O F T R A I N I N G A N D C E R T I F I C A T I O N W A S S O T H A T T H E J U D G E H A S T H A T B E F O R E T H E P R I M A F A C I E C A S E F O R P R O B A B L E C A U S E I S M E T ?

I F T H E D O G ' S R E L I A B I L I T Y I S B E I N G C H A L L E N G E D A S I T I S H E R E , T H E N T H E S T A T E W O U L D S U B M I T , Y E S , T H E S E T R A I N I N G R E C O R D S A N D C E R T I F I C A T I O N A R E P R O B A T I V E A S T O W H E T H E R --

S O I T W O U L D B E I N C U M B E N T O N T H E S T A T E T O D O T H A T . I F T H E D E F E N S E S A Y S I ' M G O I N G T O B E C H A L L E N G I N G T H I S , T H E N I T I S N O T U P T O T H E D E F E N D A N T T O T R Y T O G E T A L L O F T H E S E R E C O R D S . Y O U W O U L D A G R E E T H A T T H E S T A T E N E E D S T O B E A F F I R M A T I V E L Y E X P L A I N I N G W H A T T H E C E R T I F I C A T I O N A N D T R A I N I N G C O N S I S T E D O F ?

N O , T H E S T A T E ' S P O S I T I O N W O U L D B E T H A T T H E R E I S A P R E S U M P T I O N B Y - - D E F E N S E J U S T M A K E S A B L A N K E T S T A T E M E N T T H E D O G I S N O T R E L I A B L E W I T H O U T M O R E . I T W O U L D B E T H E S T A T E ' S P O S I T I O N T H A T B Y S A Y I N G T H E D O G I S P R O P E R L Y T R A I N E D A N D C E R T I F I E D T H A T ' S A P R E S U M P T I O N . I T C A N T H E N B E R E B U T T E D A N D T H E N I T W O U L D B E T H E D E F E N D A N T ' S B U R D E N

TO REBUT THAT PRESUMPTION.

YOU ARE SAYING ALONE THAT JUST A STATE THAT THE DOG IS THEN PROPERLY TRAINED WHICH, AGAIN, THERE ARE SITUATIONS WHERE A DOG IS TRAINED AND NOT CERTIFIED AND THOSE ARE THE ONES WHERE AT LEAST IN THE LAW REVIEW ARTICLE THEY SUGGESTED THAT THE DOG HAS NOT BEEN CERTIFIED, THAT THERE NOT BE A PRESUMPTION OF RELIABILITY. ARE YOU AWARE OF THAT?

YES.

SO IF THEY ARE CERTIFIED THEN YOU SAY THAT SHOULD BE ENOUGH. IT IS INCUMBENT ON THE DEFENDANT TO HAVE TO REQUEST THE RECORDS AND PUT ALL OF THAT ON?

YES.

LET ME ASK A QUESTION, BECAUSE TYPICALLY EVEN AFTER CERTIFICATION IN ORDER TO MAINTAIN COMPETENCE IN THE DOG IS FROM MY UNDERSTANDING OF WHEN I USED TO HEAR THESE THINGS I WOULD ALSO RECEIVE TESTIMONY OF THE CONTINUING EDUCATION OF THE DOG OR MAINTAINING THE DOG TO PROPER STANDARDS THAT EVEN AFTER CERTIFICATION THERE IS AN UNDERSTANDING THAT THERE IS A REGULAR PROCESS TO KEEP THE DOG'S SKILLS AT AN APPROPRIATE LEVEL.

VERY MUCH SO, AND THAT'S EVIDENT IN THIS CASE.

BUT YOU AGREE THAT THAT, IN ADDITION TO THE RECEIPT OF THE CERTIFICATION, DO YOU AGREE OR SDPRE THAT THE STATE WOULD ALSO HAVE TO ESTABLISH A POST CERTIFICATION, THE DOG'S TRAINING, ABSENT SITUATION BY THE DEFENDANT THAT THE DOG'S TRAINING POST CERTIFICATION WAS APPROPRIATE?

YES, YES.

HOW OFTEN DOES CERTIFICATION OCCUR? IS IT ANNUALLY THING?

IN MOST INSTANCES IT IS AND RAZOR WAS CERTIFIED THREE TIMES, ONCE WAS A STATE CERTIFICATION AND THEN AGAIN IN JUNE OF '98 BY THE UNITED STATES POLICE CANINE ASSOCIATION AND AGAIN IN FEBRUARY OF 2000.

THAT WAS AFTER - - FEBRUARY 2000 WAS AFTER THE SEARCH?

YES, IT WAS.

SO FROM THE DATE OF THE TRAINING, THE CERTIFICATION, WHAT IS IN THE RECORD ABOUT CONTINUING --

EDUCATION?

TRAINING.

THE CODE?

RAZOR CONTINUALLY AND ALL OF THE DOGS WITH ALL OF THE VARIOUS LAW ENFORCEMENT AGENCIES IN THIS STATE CONTINUALLY TRAIN AS JUSTICE BELL POINTED OUT WITH THE IR HANDLERS WEEKLY. >> NOW, ARE YOU SAYING THEN I WANTED TO MAKE SURE BECAUSE IT MATTERS IN TERMS OF HOW THIS OPINION ENDS UP GETTING WRITTEN IF WE AGREE WITH YOU PARTIALLY OR TOTALLY THAT THE EVIDENCE OF CONTINUING TRAINING SHOULD BE PART OF THE STATE'S BURDEN TO ESTABLISH THAT IN THEIR CASE IN CHIEF?

I WOULD SAY AFTER THE INITIAL PRESUMPTION IS REBUTTED THAT THEN IT BECOMES THE STATE'S BURDEN TO SHOW THAT THE TRAINING PROTOCOLS --

REBUTTED BY WHAT WOULD THE DEFENDANT HAVE TO SHOW?

THAT THE DOG WAS NOT PROPERLY TRAINED.

IT SEEMS THAT ONE REQUIRES THE DEFENDANT TO DO A WHOLE LOT OF DISCOVERY AND IN THIS CASE, YOU KNOW, BRING ON WITNESSES AND ALL OF THAT WHEREAS THE OTHER WOULD BE THAT THE STATE WOULD HAVE THIS INFORMATION IF IT IS BEING CHALLENGED WOULD PRESENT AS PART OF THE CASE IN CHIEF. WHY ISN'T THAT SORT OF A BETTER PRACTICE? BECAUSE, YOU KNOW, I THINK WE'VE GONE FROM A SITUATION WHERE MAYBE FOR THE FIRST 20 YEARS OF DOGSITUATIONS, PEOPLE KIND OF ACCEPTED THAT THEY WERE LIABLE AND MAYBE THEY WILL GO BACK TO ACCEPTING IT BUT AT LEAST WE ARE IN A STAGE NOW WHERE THERE IS SOME QUESTION ABOUT ALL DOGS ARE EQUAL AS FAR AS THEIR TRAINING AND, YOU KNOW, AGAIN YOU'VE GOT THE CUSTOM SERVICE THAT REQUIRES 100% ACCURACY VERSUS, I GUESS, THE CERTIFICATION BY THE -- THE CANINE ASSOCIATION WHICH ONLY REQUIRES 70% ACCURACY. SO WHY ISN'T IT A GOOD IDEA TO NOT REQUIRE THE STATE ONCE CHALLENGED TO HAVE TO PUT THAT EVIDENCE ON?

I WOULD SAY THAT ONCE ON A CHALLENGE THE STATE WOULD THEN BE THE STATE'S BURDEN.

THE CHALLENGE OF SAYING, I AM GOING TO BE CONTESTING PROBABLE CAUSE BECAUSE I, YOU KNOW, ESPECIALLY HERE, BECAUSE THE DOG ALERTE D TO SOMETHING THAT THE DOG WASN'T CERTIFIED IN, WHICH WAS THE METH AND THE OTHER SUBSTANCES, HE DIDN'T ALERT TO, BUT --

HE WAS TRAINED IN METH. HE HAD NOT YET BEEN CERTIFIED, YES.

HE WASN'T CERTIFIED SO WHY SHOULDN'T THEY HAVE TO DO MORE BEFORE THE BURDEN WOULD SHIFT?

IT IS THE IRMOTION TO SURESS, AND THEY WANTED TO KEEP -- THEY ARE CHALLENGING THE DOG'S RELIABILITY.

SO IT IS THE STATE'S BURDEN TO ESTABLISH PROBABLE CAUSE?

YES, YES.

I THINK THAT WHETHER IT IS YOU PUTTING ON FIRST OR SECOND, YOU SEE ME TO AGREE THAT ALL OF THE TRAINING RECORDS SHOULD BE DISCOVERABLE AND ADMISSIBLE.

YES.

NOW, LET'S GET TO THE AREA WHERE I GUESS YOU SEE THE CONFLICT OR THE PROBLEM WITH THE SECOND DISTRICT AND THAT IS THE FIELD REPORT. IS IT YOUR CONTENTION THAT THOSE FIELD REPORTS ARE ABSOLUTELY NOT RELEVANT AT ALL OR JUST THAT THEY SHOULDN'T HAVE TO BE PART OF YOUR CASE IN CHIEF?

WELL, I WOULD SUBMIT THAT THEY ARE NOT RELEVANT AT ALL AND JUST RECENTLY THERE IS A CASE OUT OF OHIO, OHIO VERSUS WINN WHERE THE COURT OF APPEALS FOUND THAT THESE FIELD ACTIVITY REPORTS OR THE TRACK RECORD IN THE FIELD ARE NOT EVEN DISCOVERABLE BY THE DEFENSE THAT ONLY PROBATIVE RECORDS ARE THE DOG'S TRAINING

RECORDS AND HIS CERTIFICATION RECORDS.THE STATE W OULD SUBMIT THAT THAT IS NOT BEFORE THIS COURT WHETHER THEY ARE DISCOVERABLE.

WELL , WHY WOU LD WE ACC EP T THAT POSITION? I WOULD THINK T HAT IN THE TRAINING RECORDS Y OU W OU LD HAVE INFORMA TI ON A BO UT THE DOG 'S ABILITY TO ALE RT A ND WHETHER OR NOT THE DOG H AD THE ABILITY T O ALE RT FOR RES IDUAL M AT TERS AND T HA T KIND OF THING SO IF , IN F AC T , THE TRAINING RECORD DIDN'T HAVE THAT KIND OF INFORMATION AND THEN YOU HAVE FIELD R EC OR DS WHI CH SHO W THAT T HI S D OG A LE RTED ONLY 1 50 % A CC URAC Y , W OULD N' T T HA T - - ONL Y 5 0% A CC URAC Y , WOU LDN'T THAT BE R EL EV AN T A S TO WHETHER OR NOT THIS DOG REALLY HAD THE A BILI TY T O ALERT FOR R ESID UA L MAT TE RS ?

NO, BECAUSE Y OU C AN NO T DETERMINE A FALSE ALERT IN THE FIELD AND THAT IS W HERE THE SECOND DIS TRICT C OURT O F AEAL HAS M IS S CON ST RU ED .

WHY W OULDN'T THAT B E RELEVANT TO ANYBODY THA T H AS TO MAKE A D EC ISIO N , Y OU K NOW , ABOUT WHETHER PROBA BLE C AU SE WAS EST ABLI SHED IN A PARTICULAR CASE? WE KNOW T HA T I N P OLIC E AGE NCIES T HA T T HE RE A RE S OM E DOGS THAT GET THE M ED AL O F HONOR, AND, YOU KNOW , THE Y J UST - - E VE RY BO DY WANTS T HA T DOG IN THE C ANINE D IVIS IO N OR WHATEVER, AND THERE ARE OTHER D OG S T HA T HAV E A DIFFERENT, YOU KNOW , TRA CK RECORD, A ND M AY , Y OU K NOW , BE LESS FAV OR ED . SO I'M H AVIN G DIF FI CULT Y O F WHY THAT I NF OR MA TION WOULDN'T BE DISCO VE RA BLE SO THAT W E K NO W WH ETHER OR NOT , YOU KNOW, THAT'S T HE DOG THAT HAS A SPOTTY TRA CK R ECORD OR IT I S T HE MEDAL O F HONOR W IN NER.

SURE, IT MAY B E DISCOVERABLE BUT IT IS NOT PROBATIVE AS TO PROBABLE CAUSE AND THE REASON IT IS NOT P ROBATIVE IS BECAUSE Y OU DON'T KNOW WHAT A FALSE ALERT IN THE FIELD IS. THE REASON IS: I F THE DEFENDANT IS A DRIVER OF A VEHICLE AND HE HAS DRUGS ON HIM, HE GET S O UT OF T HE CAR AFTER T HE DOG HAS A LERT ED , THEY DON'T F IND D RUGS - -

WHO DET ER MINE S P ROBA BLE CAUSE ON A MOTION T O S URESS H EARING ?

WHO D ET ER MINE S PRO BA BLE CAUSE? THE TRIER OF FACT. > > S O WHY S HO UL DN'T T HE TRIER O F FACT T HA T H AS T HI S HEAVY R ESPONS IB IL IT Y B E AWARE O F ALL R EL EV AN T CIRCUMSTANCES BEF OR E MAK IN G THAT DETERMINATION? YOU SEEM TO B E S UGGE ST IN G THAT T HE O NE T HA T H AS THA T RESPONS IBILITY THAT THERE I S THE INFORMATION THAT SHE REALLY, YOU ARE GOING TO TELL H ER I S N OT R EL EV AN T T O HER A NALY SI S W HE N SHE THI NK S IT WOULD B E R EL EVAN T T O H ER ANALYSIS I N MAK IN G T HIS INDIVIDUAL DECISION EVERY TIME AS TO WHETHER OR NOT THERE WAS P ROBABLE CAUSE.

THE S TA TE I S N OT SUGGESTING THAT THEY ARE NOT DISCOVERABLE. THESE RECORDS MAY BE DISCOVERABLE. WHAT THE STATE IS S UG GESTIN G IS THAT Y OU CANNOT D ETERMINE A D OG'S R EL IABI LI TY B Y T HESE FIELD REPORTS.

I THOUGHT YOU W ER E -- T HAT, AND T HIS I S I MPOR TA NT , IT MAY NOT HAVE T O B E PART OF YOUR CASE I N CHI EF , BUT I F YOU H AV E A D OG THA T A LERTS E VERY T IME I N T HE FIELD AND DRUGS A RE ONL Y F OUND 2 OUT O F 50 T IMES , FIRST OF ALL I WOULD THINK THAT YOUR , Y OU K NO W , T HE POLIC E DEPARTMENT IS GOING TO BE Q UE STIO NING I B ETTE R GO BACK AND LOOK A T THA T DOG.

NO.

THEY ARE JUST GOING T O SAY --

NO.

BUT I THINK THAT OUR , YOU ARE NOT ASKING US TO GO THAT FAR?

NO , I'M NOT ASKING YOU TO GO THAT FAR.

SO THEY ARE DISCOVERABLE AND THE FACT IS THEY MAY BE RELEVANT TO THE TOTALITY OF THE CIRCUMSTANCES ANALYSIS.

THEY COULD BE. THEY COULD BE.

AND JUST NOT HAVE TO BE PART OF YOUR CASE IN CHIEF?

RIGHT. AND ALSO I THINK IT IS IMPORTANT TO EDUCATE THE TRIAL COURTS AS WELL AS OUR PROSECUTORS AND OUR DEFENSE COUNSEL BUT THESE FALSE ALERTS CANNOT BE - - YOU CANNOT DETERMINE RELIABILITY BY THEM. AGAIN, THE DOGS DETECT RESIDUAL ODORS .

BUT THE EXPERT WITNESS DOESN'T AGREE WITH YOU?

AND THE TRIAL COURT DIDN'T AGREE WITH THE EXPERT WITNESS.

I UNDERSTAND , AN EXPERT WITNESS, WHETHER THAT TRIAL COURT DOES OR ANOTHER , DISAGREES THAT FIELD REPORTS ARE NOT RELEVANT , CORRECT?

THE EXPERT IN THIS CASE?

YES.

ACTUALLY HE DIDN'T SAY WHETHER THEY WERE RELEVANT OR NOT.

HE USED THEM.

HE USED THEM , YES , HE DID .

JUSTICE ANSTEAD HAS A QUESTION.

I WILL GO BACK TO THE FIRST PART ABOUT WHO HAS THE BURDEN OR WHATEVER. DON'T WE HAVE A GENERAL RULE THAT SAYS IF YOU HAVE A WARRANTLESS SEARCH THAT IT IS THE STATE'S BURDEN TO DEMONSTRATE PROBABLE CAUSE AND WHY I SN'T THAT THE RULE THAT WE SHOULD ALY HERE THAT ONCE CHALLENGED , THAT IT IS THE STATE'S BURDEN TO DEMONSTRATE THAT INDEED THEY DID HAVE PROBABLE CAUSE AT THE TIME BECAUSE THE POLICE OFFICERS ALL KNEW THAT THIS WAS A CERTIFIED DOG AND WHAT THAT MEANT AND ALL OF THAT KIND OF THING , SO I'M HAVING DIFFICULTY WITH YOUR POSITION THAT SOMEHOW IT SHOULD BE THE BURDEN OF THE DEFENSE IN CHALLENGING A WARRANTLESS SEARCH. THIS WAS A WARRANTLESS SEARCH.

IT WAS A WARRANTLESS SEARCH.

AND WE HAVE A GENERAL RULE THAT SAYS THE BURDEN IS ON THE STATE ONCE THAT WARRANTLESS SEARCH IS CHALLENGED.

THE STATE DID MEET THE BURDEN IN THIS CASE.

I'M NOT - - I'M JUST TRYING TO DEFEND WITH OUR EXISTING POLICY. I'M NOT TALKING ABOUT WHETHER OR NOT IT HAS BEEN DEMONSTRATED IN A PARTICULAR CASE.

I'M NOT TRYING TO SHIFT THE BURDEN. I'M SAYING THERE IS A GENERAL PRUCTION BY THE

STATE SAYING THE DOG IS TRAINED AND CERTIFIED THERE IS A PRESUMPTION.

WHAT'S GOING TO BE SUFFICIENT, YOU KNOW, ONCE THE STATE PUTS ON ITS PROOF AS SOMETHING WE'VE GOT TO TRY TO SAVE AGAIN GOING BACK TO, THOUGH, THE IDEAT THAT IT IS THE TRIAL JUDGE THAT MAKES THAT DETERMINATION OF PROBABLE CAUSE, RIGHT?

THAT'S CORRECT. IT IS THE TRIAL JUDGE AND THE TRAINING RECORDS AND THE CERTIFICATION RECORDS ARE VERY PROBATIVE. THAT IS WHAT IS GOING TO DETERMINE THE DOG'S RELIABILITY, NOT THE FIELD ACTIVITY REPORT.

I'M REALLY HAVING A DIFFICULT TIME. I'VE NOT SEEN MANY CIRCUMSTANCES IN MY HUMAN EXPERIENCE THAT CERTIFICATION OR TRAINING IS THE ABOUT-ALL-END-ALL. IT IS - - BE-ALL, END-ALL. IT IS HOW DOES IT PERFORM? THERE MUST BE SOME WAY YOU CAN DETERMINE IF A THING IS FUNCTIONING AS IT WAS TRAINED AND CERTIFIED TO FUNCTION AND PERFORM?

THAT IS WHY THEY CONTINUALLY TRAIN AND IF THERE ARE ANY PROBLEMS IN TRAINING AND THEY FALSELY ALERT IN TRAINING THEN THEY DO GO BACK AND PROVIDE REMEDIAL TRAINING AND THE DOG WILL BE CERTIFIED.

IF IT IS FUNCTIONING INAPPROPRIATELY WHEN IT IS ALY !!IED, I DON'T - - MAYBE WE'VE GOT A PSYCHOTIC DOG OR SOMETHING. I DON'T KNOW. IT JUST SEEMS TO CONFLICT WITH COMMON SENSE THAT TRAINING AND CONDITIONING ARE FINE AND CERTIFICATION, BUT THAT A NALICATION IS WHERE REALLY THE RUBBER MEETS THE ROAD IS HOW DOES THAT ANIMAL PERFORM?

BECAUSE THIS IS NOT LIKE -- I WILL USE THE EXAMPLE OF BASKETBALL WHERE IN PRACTICE THE STAR OF THE TEAM DOES WONDERFUL AND THEN WHEN HE GOES OUT IN THE COURT AND ACTUALLY PLAYS A GAME HE DOES TERRIBLE. YOU CAN JUDGE HIS PERFORMANCE IN A GAME. YOU CANNOT DO THAT WITH A DOG IN A FIELD. IF AN OFFICER WALKS UP TO A CAR AND SMELLS MARIJUANA THAT GIVES HIM PROBABLE CAUSE TO SEARCH. IF HE SEARCHES THAT CAR AND DOESN'T FIND ANY DRUGS, THAT DOESN'T MEAN HE WAS WRONG. YOU DON'T SAY THAT HIS PERFORMANCE IN THE FIELD WAS INCORRECT. IT IS THE SAME WITH A DOG. ONLY IN A CONTROLLED SETTING WILL YOU KNOW IF IT IS A FALSE ALERT. THAT IS THE ONLY WAY.

IN OTHER WORDS IF I CAN FOCUS YOUR ARGUMENT, A DOG MAY SMELL THE PRESENCE OF DRUGS, EVEN AFTER THE DRUGS HAVE LEFT THE SCENE FOR SOME PERIOD OF TIME?

EXACTLY.

SO THE DOG MAY BE ABSOLUTELY CORRECT THAT AT SOME POINT THERE WERE DRUGS IN THAT VEHICLE, IT IS JUST THAT THEY WERE TAKEN OUT AT SOME TIME BEFORE THE POLICE ARRIVED?

YES.

ARE THE DOGS SUPPOSED TO BE TRAINED TO NOT - - BETWEEN RESIDUAL ODORS AND THE ACTUAL PRESENCE OF DRUGS?.

NO, THEY ARE TRAINED TO DETECT THE ODOR OF NARCOTICS AND LIKE I SAID IF THE DRIVER OF THE VEHICLE HAS THE DRUGS AND HE JUST STEPS OUT SO THEY CAN SEARCH BECAUSE A DOG HAS ALERTED THE DOG IS STILL GOING TO PICK UP THE SCENT MOLECULES.

SO THE DOG CAN NEVER MAKE A MISTAKE?



IT IS NOT KNOWN IF THE DOG CAN MAKE A MISTAKE IN THE FIELD. THAT IS WHY THEY TRAIN.

ISN'T THIS A DANGEROUS RULE TO ACCEPT, THAT IS, THAT THE DOG IS NEVER MAKE A MISTAKE?

NO.

THAT EITHER THE DRUGS WERE THERE BEFORE, YOU KNOW, AND SO WE HAVE SORT OF AN INFALLIBLE, YOU KNOW, -- INFALLIBILITY PROPOSITION HERE, AND CONTRARY TO YOUR ANALOGY, THIS IS NOT A GAME. THIS IS ALLOWING THE STATE NOW TO INVADE SOMEBODY'S PRIVACY, WHETHER IT IS -- SO WHAT YOU ARE SAYING IS THAT IN THIS CASE, EVEN THOUGH THEY FOUND NOTHING, NOBODY COULD SAY THAT THE DOG MADE A MISTAKE, THAT WE ALL WOULD SAY THAT THE DOG REALLY IS INFALLIBLE AND THERE HAD TO HAVE BEEN DRUGS THERE AT SOME TIME?

EVEN THE DEFENSE EXPERT IN THIS CASE SAID YOU WILL NOT KNOW IN THE FIELD IF A DOG HAS FALSELY ALERTED WITHOUT KNOWING DISSIPATION RATES OF PARTICULAR DRUGS.

YOU HAVE WAY EXTENDED, BUT JUSTICE BELL HAD A QUESTION.

I'LL MAKE IT AS QUICK AS I CAN. THE DIFFERENCE I SEE IN WHAT JUSTICE LEWIS WAS ASKING YOU HERE, YOU DON'T HAVE THE DOG TESTIFYING TO WHAT YOU SMELL. WHAT YOU HAVE IS THE OFFICER WHO HANDLES THE DOG TESTIFYING TO WHAT THEY DID, AND IT IS THAT COMPONENT THAT CONCERNS ME BECAUSE IN THE CERTIFICATION PROCESS YOU HAVE THE HANDLER WITH THE DOG PROVIDING CERTAIN THINGS BUT BECAUSE YOU HAVE THE OFFICER WORKING THE DOG THERE IS ALWAYS THE TEMPTATION OF THE PROBLEM THAT YOU HAVE AND EXCUSE ME, BUT THE BAD COP, WHO -- THE WORK IN THE FIELD CARRYING THE DOG SO THE ACTUAL WORKING IN THE FIELD MAY BE DIFFERENT THEN AND SO DOESN'T THAT MAKE THE FIELD REPORT SOMEWHAT PROBATIVE? I UNDERSTAND THE FALSE REPORTING CONCERN BUT THERE IS ALSO A COLLATERAL CONCERN ON THE OTHER SIDE OF THAT IS THAT YOU HAVE NOT ONLY THE DOG'S TRUSTWORTHINESS BUT THE HANDLER OF THE DOG'S TRUSTWORTHINESS BECAUSE THAT'S HOW REALLY THE TESTIMONY IS GETTING THROUGH, SO IS IT INDICATIVE, BECAUSE YOU COULD HAVE A DOG DOING 97, 100% IN THE CONTROLLED CERTIFICATION PROCESS, BUT 50% IN THE FIELD IF YOU HAVE A HANDLER WHO IS NOT WORKING THE DOG PROPERLY AND WITH APPROPRIATE INTEGRITY?

IF YOU LOOK AT THESE TRAINING RECORDS AND I KNOW THE WAY THE HILLSBOROUGH COUNTY SHERIFF'S OFFICE DOES IS IT IS IN TRAINING. YOU ALSO HAVE A SUPERVISOR WHO HIDES THE DRUGS SO A LOT OF TIMES THE HANDLER DOESN'T KNOW --

WHAT JUSTICE BELL IS POINTING OUT IS THAT YOU HAVE TWO ELEMENTS IN THE FIELD, WHICH IS YOU MAY NOT HAVE MAYBE IT IS A DIFFERENT TRAINER, YOU KNOW, AND JUST THAT, A GAIN, THAT IS WHY IT IS PROBATIVE THAT MAYBE THERE IS THE TRAINER IN THE FIELD OR THE HANDLER IN THE FIELD THAT IS ACTUALLY AFFECTING THE DOG'S RELIABILITY.

AGAIN, THAT'S WHY THEY HAVE THE SUPERVISOR TO MAKE SURE THAT THE DOG IS NOT --

IN THE FIELD THEY HAVE?

O. I'M SORRY, NO, BUT THE FIELD, THE SUPERVISOR DOES LOOK AT THESE FIELD ACTIVITY REPORTS EVERY TIME AND SIGNS OFF ON THEM.

THEY DON'T EVEN STAY AROUND TO KNOW WHETHER THE DRUGS WERE FOUND?

A LOT OF TIMES THEY GET CALLED TO ANOTHER SCENE AND I JUST WANT TO RESPOND TO HIS

QUESTION REALLY BRIEFLY. THEY ARE NOT -- THEY DO NOT CUE, THEY MAKE SURE THEY DON'T CUE TO THE HANDLER IN THESE TRAINING EXERCISES AND ALSO THE CERTIFICATION IS AN INDEPENDENT AGENCY. IF THERE WAS ANY CUING BY THE HANDLER YOU WOULD KNOW IT IN THE CERTIFICATION.

THE ONLY TESTIMONY YOU GET IS THE HANDLER TESTIFYING THE DOG CUED?

BUT YOU WOULD HAVE --

THE TESTIMONY, THE DOG IS NOT GOING UP AND TESTIFYING HE CUED AND THE PEOPLE WHO DON'T HANDLE THE DOG DON'T NECESSARILY KNOW WHETHER HE CUES BY SITTING, SCRATCHING, BARKING OR WHATEVER, SO THE ONLY TESTIMONY THAT THE TRIER OF FACT HAS IS THE HANDLER'S TESTIMONY THAT I WALKED THE DOG AROUND AND THE DOG CUE D NORMALLY.

INSERT IF INDICATION, THE PEOPLE WHO CERTIFY THESE DOGS AND THE SE HANDLERS, THEY WOULD KNOW IF THE HANDLER IS CUING.

BUT THEY ARE NOT IN THE FIELD. MY QUESTION IS OUT: WHEN THE CAR STOPPED BESIDE THE HIGHWAY AND THE ONE OFFICER IS WRITING THE TICKET WHILE THE OTHER OFFICER HAS THE DOG WALKING IT AROUND THE CAR AND THE N -- AND IN THE HEARING BEFORE THE JUDGE, THE ONLY ONE TESTIFYING THAT THE DOG ALERTED IS THE HANDLER.

THAT'S CORRECT.

SO HOW DO WE AS THE -- HOW DOES THE TRIER OF FACT IN THE FIELD REPORT EVEN THOUGH THE DOG MAY DO 100% IN THE CONTROLLED ENVIRONMENT, IF THE DOG IS ONLY ACCURATE 150%, DOESN'T THAT RAISE AT LEAST A QUESTION OF FACT OF WHETHER THE OFFICER IS MISSING OR OUTSIDE THE FALSE REPORT?

I WOULD SUGGEST THAT IT DOES NOT, BECAUSE YOU JUST DON'T KNOW IN THE FIELD IF DRUGS HAD JUST BEEN IN THE CAR, IF THERE ARE JUST DIFFERENT DISSEMINATION RATES OF THE DRUGS. WITHOUT KNOWING THOSE THINGS THEN YOU COULD NOT USE THOSE FIELD ACTIVITY REPORTS TO JUDGE THE DOG'S RELIABILITY. THEY MAY BE PROBABILE.

WITH OUR HELP, YOU HAVE WAY EXCEEDED OUR TIME. THANK YOU FOR YOUR ASSISTANCE. THANK YOU.

AND WE WILL CONSIDER YOUR ASPECT OF THE ARGUMENT. MISS HUMPHRIES.

THANK YOU, YOUR HONOR. MY NAME IS CELLE HUMPHRIES AND I AM HERE ON BEHALF OF GARY ALAN MATHESON. THERE ARE TWO ISSUES BEFORE THE COURT. THE FIRST IS WHETHER THE COURT HAS DISCRETIONARY JURISDICTION AND THE SECOND ISSUE IS THE QUESTION OF THE MOTION TO SUPPRESS LOOKING AT RAZOR'S RELIABILITY. TURNING TO THE FIRST ISSUE OF JURISDICTION, THE STATE HAS FILED A NOTICE TO INVOK THIS COURT'S JURISDICTION ASSERTING THAT THERE IS DIRECT CONFLICT BETWEEN A THIRD DISTRICT COURT OF APPEAL DECISION AND THIS DECISION FROM THE SECOND DISTRICT. AS THIS COURT KNOWS, IN ORDER FOR THERE TO BE DIRECT CONFLICT, FOR THERE TO BE DISCRETIONARY JURISDICTION, THE CONFLICT MUST BE EXPRESSED AND DIRECT AND IT IS NOT HERE. THE DECISION BEING POINTED TO BY THE STATE IS VETTE R VERSUS STATE. IN THAT CASE THE DECISION IS DISTINGUISHABLE FOR TWO REASONS. FIRST OF ALL, AS JUSTICE PARIENTE REFERRED TO, THE ANALYSIS THERE IS OF A SEARCH WARRANT. SO THE TRIAL COURT'S ANALYSIS WAS SPECIFICALLY FOCUSED ON THE FOUR CORNERS OF THE AFFIDAVIT.

AND IN THAT VETERAN OPINION, WE HAVE A STATEMENT HERE THAT SAYS SINCE THE REPRESENTATION THAT RINGO WAS PROPERLY TRAINED, CONVEYED PROBABLE CAUSE STANDING ALONE. NOW, IN THE SECOND DISTRICT OPINION THAT'S BEFORE US, DON'T THEY SAY IN ESSENCE, THAT PROPERLY TRAINED DOG DOES NOT PROVIDE PROBABLE CAUSE, THAT STANDING ALONE, SO A REN'T THOSE TWO STATEMENTS REALLY IN CONFLICT?

I RESPECTFULLY DISAGREE, JUSTICE QUINCE. FIRST OF ALL THAT STATEMENT WAS SPECIFICALLY MADE IN THE CONTEXT OF LOOKING AT AN AFFIDAVIT THAT WAS SUBMITTED TO A TRIAL COURT FOR OBTAINING A SEARCH WARRANT AND WHAT THE THIRD DISTRICT --

WHEN IT SAYS PROPERLY TRAINED IN AN AFFIDAVIT OR A PERSON TESTIFIES, THAT IT IS PROPERLY TRAINED, EXPLAIN TO ME WHAT THE DIFFERENCE IS.

YOUR HONOR, AS I REFER TO IN THE BRIEF THERE IS GENERALLY A LOWER STANDARD STIPULATED IN THE PROBABLE CAUSE ANALYSIS WHEN LOOKING AT A DETERMINATION MADE BY A TRIAL COURT WHO IS ISSUING A SEARCH WARRANT BECAUSE THERE THE PRESUMPTION IS YOU HAVE THE UNBIASED TRIAL COURT LOOKING AT THE FACTS PRESENTED TO THE TRIAL COURT BASED ON THOSE FACTS IS IT ENOUGH FOR THE TRIAL COURT TO MAKE THE DETERMINATION AND THAT'S NOT WHAT WE HAVE HERE. WE HAVE A SITUATION WHERE OFFICERS ARE AT THE SCENE, SUBJECT TO THE COMPETITIVE ENTERPRISE OF FERRITING OUT CRIME AND LOOKING FOR NARCOTICS AND THERE IS A MORE OF A POSSIBILITY THAT A LAW ENFORCEMENT OFFICER IS GOING TO BE MORE WILLING TO FIND PROBABLE CAUSE THAN THE UNBIASED JUDGE WHO IS BEING ASKED TO ISSUE A SEARCH WARRANT.

THIS STATEMENT HAZMADE BY THE THIRD DISTRICT AS I READ THIS CASE, DOESN'T SEEM TO BE QUOTING WHAT THE TRIAL JUDGE SAYS, BUT IT SEEMS MORE TO BE ACCEPTING AS A GENERAL PROPOSITION FROM THE FRANK OPINIONS THAT THAT'S NOT GOING TO BE PROBABLE CAUSE STANDING ALONE.

WELL, YOUR HONOR --

AS OPPOSED TO A FINDING IN THIS PARTICULAR CASE.

WELL, THEN LET'S LOOK AT THE STATEMENT OF LAW THAT THE COURT IS SAYING. FIRST OF ALL, IF THERE IS ANY CONFUSION ABOUT WHAT THE THIRD DISTRICT IS ACTUALLY SAYING, THAT IS REASON ENOUGH ALONE FOR THERE TO BE NO EXPRESS AND DIRECT CONFLICT, AND LOOK CLOSELY AT VETTER. IT CITES A DECISION ISSUED ONE YEAR PRIOR, STATE V. SUSS FOSTER WHICH ITEMIZE SEVERAL FACTORS THAT MUST BE CONSIDERED AND IT IS THAT SAME THIRD DISTRICT OPINION THAT THIS SECOND DISTRICT COURT OPINION CITES WITH APPROVAL FOR THE FACTORS REQUIRED FOR ESTABLISHING.

BUT DOES VETTER, EVEN THOUGH IT CITES THE FOSTER, DOESN'T REALLY GO INTO THOSE FACTORS THAT ARE LISTED IN THE FOSTER OPINION, DOES IT?

IT DOESN'T BECAUSE EVIDENCE WAS NOT PRESENTED AT THE EVIDENTIARY HEARING AND THAT'S ANOTHER REASON WHY IT IS DISTINGUISHABLE. THE DEFENDANT ENTERED A PLEA BEFORE THE STATE HAD THE OPPORTUNITY TO PRESENT ANY OF ITS EVIDENCE, SO, AGAIN, IT IS COMPLETELY DISTINGUISHABLE FROM WHAT WE HAVE HERE. HERE WE HAVE A FULL-BLOWN EVIDENTIARY HEARING. IN FACT, THERE WERE TWO HEARINGS, ONE ON FEBRUARY 24 OF 2000 AND THEN AGAIN IN MARCH. THERE WAS A SUBSTANTIAL AMOUNT OF EVIDENCE PRESENTED TO THIS TRIAL COURT UPON WHICH THE TRIAL COURT EXAMINED AND MADE ITS DECISION. SO BASED ON THAT, WE FIND THAT -- WE BELIEVE THAT THERE IS NO EXPRESS AND DIRECT CONFLICT BETWEEN THESE TWO DECISIONS AND THEREFORE THIS COURT DOES NOT HAVE DISCRETIONARY JURISDICTION, BUT IF IT COURT DISAGREES AND IF IT COURT CHOOSES TO EXERCISE ITS DISCRETIONARY JURISDICTION WE ASSERT THAT THE TRIAL COURT WRONGLY

DENIED THE MOTION TO SURESS AND I WOULD LIKE TO TAKE AN O ORTUNITY TO ADDRESS SOME OF Y OUR CONCERNS, JUSTICE BEL L , AND OTHER QUESTIONS HAVE SUG GESTED. IF YOU LOOK S PECIFI CA LL Y A T RAZOR'S TRACK RECOR D T HI S DEM ONSTRATES A RECORD OF A DOG W HO D ID NOT P ERFO RM A S HE IS EXPECTED TO.

BEFORE YOU GET TO THA T , DIDN'T THE D CA H AV E T O G IV E SOME DISCRETION TO THE TRIAL COURT AND THE TRIAL COURT REJECTED THE E XP ER T' S TES TIMONY, THE D CA S EE MED T O WHOLEHE ARTEDLY ENDORSE T HE EXPERT'S TES TIMO NY . ISN'T THAT R EVER SI BL E I N ITSEL F?

WELL, I GUESS I HAV E THREE RESPONSES. FIRST OF ALL, T HI S COURT CAN RULE ON THE MERITS OF THE MOTION TO SURESS EVEN IF THE COURT D IS AGREES WITH T HE SECOND DISTRICT'S REASO NING. SO IF THI S COURT FIN DS ANOTHER BASIS FOR F IN DINGTHAT THE MOTION T O S UP PR ESS WAS WRONGLY DENIE D THI S COURT CAN D O S O. TURNING TO THE COURT'S ANALYSIS, FIRST I B EL IEVE THAT THE COURT, T HE S EC ON D DISTRICT PROPERLY LOOKE D AT ALL OF THE U ND ISPU TE D EVIDENCE TO THE EXTENT THAT THERE WAS ANY DISPUTED EVIDENCE, THE S ECON D DISTRICT INTERPRETED I T I N FAVOR OF THE PREVAIL ING PARTY BELOW .

YOU WANT TO GET INTO T HE FACTS OF THIS C ASE AND IF W E ACCEPT JURISDI CTION WE NEE D TO LOOK AT P RI NC IP LE S O F L AW . SO W HAT P RI NCIPLE OF LAW COMES OUT OF THE SECON D DISTRICT CASE THAT Y OU BELIEVE THAT WE SHO UL D ENDORSE FOR THI S S TATE ?

WELL , ACTUA LL Y T HE SEC OND DISTRICT STATES TWO DIFFERENT PRINCIPLES AND W E URGE BOTH TO THIS COURT. FIRST, THE SECON D D IS TRICT ASSERTS THAT THERE SHOULD BE A CERTAIN PRIME A F ASCI A S HOW -- PR IM A F ACIE CAS E. THAT THE Y S HO UL D ESTABLISH WHAT THIS C ER TIFICA TION MEANS, WHAT ACTUALLY HAENED TO OBT AIN THE CERTIFICATION AND WHAT SPECIFIC PROCEDURES ARE BEING FOLLOWED TO MAINTAIN THAT LEVEL OF R ELIABI LI TY WITH TRAINING.

I D IDN'T HEAR THE STATE REALLY ARGUING AGAINST THE FACT THAT THEY - - I F THE RELIABILITY IS QUESTIONED WHETHER IT IS CAL LE D A REBUTABLE PRESUMPTION THATTHEY WOULD P UT O N E VIDE NC E OF WHAT THE CERTI FI CA TION MEANS AND THE CONTINUING TRAINING, SO THA T W OUL D B E - - THAT'S N UM BE R O NE , A ND THEN WHAT ELSE?

WELL, MAYBE I'M NOT BEI NG CLEAR ENOUGH. THAT THERE IS NO PRESUMPTION OF EVIDENCE.THE STATE H AS T O SPECIFICALLY ESTABLISH THAT THIS CERTIFICATION MEA NS THIS DOG IS REL IA BLE. THE ACTUAL --

SO EVEN I F IT I S N OT - - J UST T O EST ABLISH P ROBABL E CAUSE, IF IT IS Q UEST IONE D AT ALL THEN THEY HAVE T O P UT ON THAT WIT HOUT IT , AND THERE WOULDN'T BE ANYTHING THAT YOU WOULD HAVE TO S AY , OTHER THAN I D ON 'T AGREE THAT HE WAS REL IA BL E?

THAT'S OUR FIRST POSITION , YES, AND OUR SECOND P OS IT IO N IS IN THIS CASE T O THE EXTENT THAT WE L OO K H ERE A T THE E VIDENCE S TILL ESTABLISHES THAT THERE WAS NOT PROBABLE CAUSE.

LET'S GO BACK TO T HEN THE ISSUE OF THE FIELD REPOR TS . D IDN'T T HE CON TR AR Y TO W HAT AEARS TO BE THE OVERWHELMIN G NUMBER OF CASES AROUND THE C OUNT RY , THA T THE SECOND D ISTRIC T GAV E UND UE WEI GHT. I'M NOT SUG GESTING WHETHER THEY SHOULD HAVE BEEN DISCOVERABLE OR ADMISSIBLE B UT UNDUE W EIGH T T O R AZOR 'S PERFORMANCE IN THE FIELD. DO YOU KNOW OF A NY CASES OUT THERE IN ALL O F T HE O THER JURISDICTIONS WHERE F IELD PERFORMANCE ITSEL F WAS T HE INDICATOR OF WHETHER T HE RE WAS P ROBABLE CAUSE OR NOT?

STATE VERSUS F OS TE R C IT ED AS ONE OF ITS FACTORS , N OT T HE P RI MARY, BUT I N T HA T DECISION IT SAYS IN QUOTES , ESPECIALLY INFORMATION REGARDING FALSE ALE RTS. FOSTER

SPECIFICALLY POINTS TO THE OTHER FACTORS REGARDING TRAINING AND THIS REGARDING ACTUAL PERFORMANCE.

THERE HAVE BEEN A LOT OF CASES, THOUGH, ACROSS THE COUNTRY IN THE LAST 20 YEARS DISCUSSING WHETHER A DOG'S ALERT CONSTITUTES PROBABLE CAUSE AND I ASSUME WE HAVE JUSTICE PARTICIPANTS ASKING IS IN CASES AROUND THE COUNTRY, WHAT OTHER STATES, IF ANY, HAVE SAID THAT FIELD REPORTS ARE RELEVANT TO DETERMINING THE RELIABILITY OF THE ALERT?

NO OTHER CASES THAT I HAVE FOUND. NO OTHER STATE OR FEDERAL. IN FACT, THEY HAVE RULED THE OTHER WAY AND WE RESPECTFULLY DISAGREE WITH THOSE DECISIONS AND THIS CASE MAKES CLEAR WHY. IF YOU GO BACK TO THE UNITED STATES POLICE KAY FLIN ASSOCIATION'S EVALUATION OF RAZOR AND HIS HANDLER AS A TEAM IT SHOWS MANY PROBLEMS. SPECIFICALLY IN THE RECORD, PAGES 363 TO 366, THE UNITED STATES POLICE CANINE ASSOCIATION NOTES ONE, THAT THIS HANDLER KEYED RAZOR ON TO FLASHERS. TWO, THAT DURING THE CERTIFICATION TESTING THIS HANDLER CAUSED RAZOR TO FALSELY ALERT, AND NUMEROUS OTHER ERRORS, INCLUDING POOR LEASH CONTROL AND POOR HANDLING OF THE DOG SO THERE IS ALREADY EVIDENCE GOING BACK TO THE CERTIFICATION THAT THERE WERE PROBLEMS WITH RAZOR FALSE ALERTING.

SO YOU ARE SAYING A FACT FINDER WOULD ABSOLUTELY THEN BASED ON THIS HAVE TO FIND NO PROBABLE CAUSE OR IT WOULD BE A QUESTION OF THE CIRCUMSTANCES FOR THE FACT FINDER?

IT WOULD BE A TOTALITY OF THE CIRCUMSTANCES AND MAYBE --.

MAYBE WE GO BACK TO THIS ISSUE WHICH IS JUST IN TERMS OF WHERE OUR SCOPE OF REVIEW IS, IS THAT YOU ARE NOT ASKING US TO ANNOUNCE A HARD AND FAST RULE THAT THE REHAS TO BE 95% TEST SCORE ON A DOG BEFORE THEY CAN EVEN BE OUT THERE SNIFFING?

NO, YOUR HONOR, WE'RE NOT ASKING AND PROBABLE CAUSE IS NOT SUBJECT TO PERCENTAGES BUT WE ARE SAYING HERE THE PERFORMANCE OF THIS DOG IS SO POOR. THERE IS NO WAY HE COULD HAVE FORMED THE BASIS FOR PROBABLE CAUSE.

THIS IS, I KNOW -- I THOUGHT THAT ACTUALLY HIS PERFORMANCE IN THE CANINE WAS LIKE ACTUALLY 96%. THAT HE, AS FAR AS THE DOG HIMSELF.

IF YOU ARE GOING BACK TO THE CERTIFICATION.

THAT'S WHAT I THOUGHT YOU WERE -- YOU SAID THAT HE DID TERRIBLY IN HIS CERTIFICATION.

WELL, ACTUALLY MY COMMENT RIGHT NOW WAS REFERRING TO HOW POORLY HE DID IN THE FIELD ACTIVITY REPORTS.

WASN'T HE SORT OF A NADOG AS FAR AS HIS CERTIFY -- CERTIFICATION FROM THE CANINE ASSOCIATION?

WELL, TWO COMMENTS TO THAT. FIRST OF ALL THE RECORD IS SOMEWHAT INCONCLUSIVE BUT DEPUTY GRECO DOES SAY AT ONE POINT IN HIS DEPOSITION THAT MY DOG PERFORMED 100%. THAT'S NOT THE CRITICAL INQUIRY. HOW MANY TIMES DID HE FALSELY ALERT?

WELL, LET'S CIRCLE BACK, THOUGH, TO START OUT WITH THE TRIAL COURT, UNLIKE THE JUDGE NOW THAT'S ISSUING THE WARRANT, WE DON'T HAVE THAT IN THIS PARTICULAR CASE, BUT THEIR RESPONSIBILITIES ARE SIMILAR ALTHOUGH ONE IS REALLY ACTING JUST ON T

HE BASIS OF ONE SIDED PRESENTATION, BUT WHY SHOULDN'T IT BE THE TRIAL JUDGE THAT FIRST OF ALL WE START OUT WITH YOU CHALLENGE THE LEGALITY OF THE SEARCH AND THE EXISTENCE OF PROBABLE CAUSE, BUT WHY WOULDN'T IT BE SUFFICIENT FOR THE STATE THEN TO MEET ITS BURDEN IF IT PUTS ON A CASE THAT THE DOG IS CERTIFIED AND WHAT THAT CERTIFICATION MEANS? THAT IS, THAT THERE IS SOME QUALITATIVE MEANING TO THAT, AND THEN IF THERE ARE PROBLEMS WITH THE PARTICULAR DOG AND THAT INFORMATION IS DISCOVERABLE THAT THAT'S WHAT THE DEFENSE THEN WOULD COME BACK WITH AND SAY, WELL, YES, THAT'S ALL GOOD WITH THE CERTIFICATION BUT WE ARE GOING TO BE ABLE TO DEMONSTRATE THAT THIS PARTICULAR DOG HAS ALL KINDS OF PROBLEMS AND THEN, JUDGE, WHEN YOU CONSIDER THE TOTALITY OF THE CIRCUMSTANCES WE BELIEVE IT IS REASONABLE FOR YOU TO CONCLUDE THERE WAS NO PROBABLE CAUSE IN THIS PARTICULAR CASE. WHY SHOULDN'T THAT ESSENTIALLY, THAT'S PRETTY MUCH WHAT GOES ON NOW IN MOTIONS TO SUPPRESS ON THAT, SO WHY SHOULDN'T THAT JUST EXTEND TO THE SITUATION THAT WE HAVE HERE AND FOR THE TRIER OF FACT TO CONSIDER THE TOTALITY OF THE CIRCUMSTANCES AND MAY BE IN SOME CASES THE DEFENSE WOULDN'T CHOOSE TO PUT ON THOSE RECORDS BECAUSE THE RECORDS ACTUALLY WOULD BE AGAINST THEM AND SO WHY WOULDN'T IT BE ENOUGH FOR THE STATE IN TERMS OF INITIALLY ESTABLISHING CROSSING THE THRESHOLD OF PROBABLE CAUSE TO DEMONSTRATE THE CERTIFICATION AND TRAINING OF THE DOG AND WHAT THAT MEANS AND NOW IF THERE ARE PROBLEMS OUT THERE WITH THE DOG IN THE FIELD FOR THE DEFENSE TO HAVE TO BE THE ONE TO COME BACK AND SORT OF IMPEACH, YOU KNOW, THE CERTIFICATION.

TWO REASONS. FIRST OF ALL, THIS IS A WARRANT LESS SEARCH SO BECAUSE IT IS A WARRANT LESS SEARCH IT IS THE STATE'S BURDEN TO PROVE THAT THERE WAS PROBABLE CAUSE BUT EVEN IF THIS COURT FOUND THAT THE PROPER PROCEDURE WOULD BE GOING BY PRESUMPTION, HAVING THE STATE MEET ITS BURDEN BY JUST INTRODUCING THE GENERAL EVIDENCE OF CERTIFICATION AND TRAINING, A PROBLEM WITH THEN PUTTING THE BURDEN ON THE DEFENSE TO REBUT THAT WITH EVIDENCE THAT THE SPECIFIC ACTIVITY REPORTS, FIELD ACTIVITY REPORTS AND ALL IS THERE IS A QUESTION AS TO WHETHER OR NOT THAT IS ACTUALLY DISCOVERABLE BY THE DEFENSE.

WELL, I'M ASSUMING THAT IT IS DISCOVERABLE BY THE DEFENSE. IN OTHER WORDS, THAT ALONG WITH THE RULE THAT HOLDS THAT THAT IS DISCOVERABLE, BECAUSE THAT MAY CAST SOME LIGHT ON THE QUALIFICATION OR COMPETENCE OF THE HANDLER OR THE DOG, THAT THE STATE DOES, I MEAN THE DEFENSE DOES HAVE ACCESS TO THAT, AND WHY, YOU KNOW, WHY IS IT ANY DIFFERENT THAN ANY OTHER MOTION TO SUPPRESS HEARING WHERE THERE WASN'T A WARRANT AND THE STATE HAS A BURDEN, BUT THAT THEY CAN INITIALLY MEET IT BY SHOWING CERTIFICATION BUT ALSO SHOWING WHAT THAT MEANS? THAT IS, THAT IT IS JUST NOT CERTIFICATION, YOU KNOW, THAT DOESN'T HAVE ANY SUBSTANCE TO IT OR MEANING TO IT.

IF THE COURT CHOOSES TO USE SUCH A PRESUMPTION LIKE THAT, ARGUABLY THAT WOULD STILL BE ABLE. DISCOVERY ISSUE IS A REAL ISSUE. I KNOW THAT YOUR ISSUE IS ASSUMING THAT IT IS NOT, BUT IN THIS CASE IN PARTICULAR THAT WAS AN ISSUE AND IF YOU LOOK AT THE DEPOSITION SUBMITTED, THAT SUPPLEMENTED THE MOTION TO SUPPRESS, THERE WAS A GREAT DEAL OF DIFFICULTY WITH THE DEFENSE OBTAINING THIS INFORMATION BECAUSE YOU HAVE TO REMEMBER JUST THAT INFORMATION IS NOT BEING HELD BY THE STATE ATTORNEY'S OFFICE, IS NOT INFORMATION --

SO IF WE HOLD THAT IT IS RELEVANT INQUIRY AND THEREFORE I HEARD THE STATE TODAY SAY IT WAS DISCOVERABLE. I THINK THAT WAS -- WHETHER THAT'S A CONCESSION FOR THE ENTIRE STATE, I THINK THAT OBVIOUSLY IF IT IS RELEVANT IT IS DISCOVERABLE. I WOULD LIKE TO JUST DIRECT YOUR ATTENTION TO ANOTHER PART OF THE SECOND DISTRICT'S OPINION AND ONE THAT YOU SEE ME TO HONOR IN YOUR BRIEF, WHICH IS THE QUESTION

OF W HE THER THE E XISTENCE OF PROBA BL E C AU SE MUST BE A SS ESSE D S OL ELY FROM THE PER SPECTIVE O F T HE OFFICERS AT THE SCENE, THE KNOWLEDGE, AND I T SEEMS THA T THE SECOND D IS TR IC T S AID A N OFFICER WHO K NOWS ONLY T HI S DOG IS TRAINED AND C ER TIFIED AND HAS NO O THER I NFORMATION AT MOST CAN O NL Y SUS PECT THAT A SEARCH BASED ON THE DOG'S ALERT WIL L Y IE LD CONTRABAND. THAT STATEMENT I N Y OU R POSITION SEEMS TO I MP LY T HA T EVEN IF YOU HAD A D OG W HO HAD 1 00 % , Y OU KNO W , T RA ININ G , AND THAT T HA T WAS - - T HA T THAT OFFIC ER WAS G IVIN G THA T DOG AND THAT DOG HAD D ON E GREAT WORK ALL THR OUGHOU T , THAT IF THE O FFICER H IM SE LF W HO WAS O R HERSE LF W HO W AS TAKING THE D OG ARO UN D D IDN' T HAVE C OM PL ET E K NO WLED GE O F THAT DOG'S HIS TO RY , INCLUDING ITS TRAINING , CERTIFICATION, FIELD RECORDS , THAT THERE WOULDN'T BE SUFFICIENT PROBABLE CAUSE . IS THAT - - A M I MIS READ IN G T HEIR S TATEMENT A ND Y OU R POSITION THAT T HE C OU RT COULDN'T TAKE INTO CONSIDERATION WHAT OTHER OFFICERS KNOW I N ESTABLISHING PROBABLE CAUSE, WHAT THE OFFICER M IGH T H AVE BEEN TOLD OR J US T W HA T EXISTED IN THE REC ORDS O F THE P OLICE DEPARTMENT?

NO, YOUR HONOR, YOU ARE CORRECTLY UNDERSTANDING OUR POSITION AND OUR POSITION IS THAT FOR TWO REASONS , FIR ST OF ALL, YES, T HE F OC US I S O N WHAT THE OFFICER KNOWS. THE OFFICER WHO IS MAKING THE P ROBABLE C AU SE DETERMINATION, WHETHER OR NOT THAT W AS P RO PE R DEPEN DINGS SOL EL Y O N WHA T INFORMATION HE HAS AND THERE ARE TWO REASONS WHY.

SO WITHIN T HI S S IT UA TI ON WHERE SOMEONE IS CALLED OUT TO THE SCENE AND ON T HA T DAY I DON'T K NO W H OW T HI S PARTICULAR THING WORKS BUT HE IS TOLD YOU ARE G OING O UT THERE, TAKING T HI S DOG , AND THAT DOG ALERT S , AND THE P OLICE DEPARTMENT K NOWS T HAT THE DOG IS A - - THE IR A CE D OG. THAT HIS D OG H AS A , YOU K NO W , COLD THAT DAY , T HA T T HE RE CAN'T BE PROBABLE C AU SE BECAUSE THAT OFFICER DOE SN'T HAVE COMPLETE KNOWLEDGE ABOUT THE DOG 'S B AC KGROUN D , TRAINING AND FIELD REPORTS?

THAT'S ACTUALLY A SLIGHTLY DIFFERENT QUESTION. AS LONG AS SOMEBODY K NOWS THAT THIS IS AN ACE D OG BASED ON TRAINING AND C ERTIFICATION, WE MIGHT HAVE SOMETHING DIFFERENT.

I JUST WANTED TO MAKE SURE THEN T HAT I T WOULD BE THE FELLOW O FF ICER OR WHATEVER IS KNOWN BY THE POLICE DEPARTMENT.

SO THE E XTENT I AM SUG GESTING THAT THE COURT IGNORE THAT, NO , I AM N OT . I AM S AY IN G W E HAV E TWO R EAL I SSUES HERE. FIRST OF ALL WE HAVE A CERTIFICATION PROCESS BYNATIONAL ORG AN IZ ATIONS WHICH IS SUBJECT TO N O R EG UL AT IO N. THERE IS NO R EQ UIRE ME NT REGARDING WHAT IS SUFFICIENT ACCORDING TO THESE AGE NCIE S , I N ORDER TO P RO DUCE A DOG THAT IS P ROPERLY CERTIFIED AND ABLE TO D ET EC T N AR COTICS AND, IN FACT, THERE I S A VERY INTERESTING FACT INTHIS RECORD THAT I S VER Y TELLING AND THAT IS IF YOU LOOK AT THE C ER TIFI CATE B Y THE UNITED STATE S P OLIC E CANINE ASSOCIATION, IT SIMPLY SAYS THA T R AZ OR W AS CERTIFIED TO D ETEC T O N NARCOTICS AND THE OFFICERS HERE ASSUMED IT WAS METHAMP HETAMINE, ALONG W IT H COKE, H ER OI N A ND M ARIJ UA NA . WELL, IT WAS N OT METHAMPHETAMINE, AND DAYS BEFORE THE F IRST HEA RI NG IN IN THIS CASE, THE HIL LSBOROUGH C OUNT Y SHERIFF'S OFF IC E T OO K HIM T O THE N ORTH AMERICA P OL IC E D OG ASSOCIATION WHO DOES THINK YOU CAN CER TIFY A D OG I N METHAMP HETAMINE. SO HERE WE HAVE TWO N AT IONAL AGENCIES THAT A RE PUR PO RT IN G F OR THEIR BUS INESS T O CERTIFY DOGS AS B EI NG RELIABLE IN THE FIELD FOR DET ECTING DRUGS A ND THEY DON'T AGREE OR HAVE SIMILAR STANDINGS IN REGARDS TO WHA T A DOG CAN BE CERTIFIED I N.

THE COURT I N T HI S S EC OND DCA SAID THAT T HE HIL LSBOROUGH S HE RI FF 'S COUNTY M AINT AI NE D B AS IC ALLY NO F IE LD R ECOR DS ON RAZ OR'S PERFO RMANCE?

THERE IS SOME CONFUSION IN THE RECORD BECAUSE DEPUTY GRECO DOESN'T KNOW ABOUT THE FIELD RECORDS. IF YOU LOOK AT THE WHOLE RECORD THERE ARE SOME FIELD ACTIVITY REPORTS.

BOTTOM LINE, IN ORDER TO MAINTAIN CERTIFICATION, DON'T THEY HAVE TO MAINTAIN SOME FIELD REPORTS OR SOME REPORTS OF AT LEAST THEIR CONTINUING OF THE TRAINING?

THERE IS NO REQUIREMENT OF THAT. THE CERTIFICATION IS SOMETHING BUT WHEN IT IS BY THE UNITED STATES POLICE CANINE ASSOCIATION THAT HAPPENS ONCE A YEAR, BRINGING DOG IN, WE DO A FEW TESTS AND WE CERTIFY OR NOT.

BUT THERE IS NO REQUIREMENT THAT THEY MAINTAIN THIS CERTIFICATION?

NOT BY THAT AGENCY. THERE IS A REQUIREMENT AS FAR AS THE POLICE THEN WANTING TO ESTABLISH THIS DOG IS BEING RELIABLE, THE POLICE THEN ON THEIR OWN DO TRAINING AND TESTING AND THERE IS ANOTHER POINT I WANT TO ADDRESS IF I CAN FOR A MOMENT, THE STATE IN THEIR COMMENTS MADE THE STATEMENT THAT RAZOR HAD RECEIVED STATE CERTIFICATION IN ADDITION TO THE UNITED STATES POLICE CANINE ASSOCIATION. THAT'S NOT TRUE. THERE IS A DEPOSITION BY DEPUTY GRECO WHERE HE FIRST SAYS THAT THINKING IT IS THE FDLE BUT THEN HE REALIZES IT IS JUST A CERTIFICATION FROM THE HILLSBOROUGH COUNTY SHERIFF'S OFFICE AND THAT'S AT PAGE 153. HERE'S THE OTHER PROBLEM: NOT ONLY DO YOU HAVE NATIONAL AGENCIES WHO DON'T AGREE REGARDING THE PROTOCOLS AND WHAT CAN BE DONE TO INSURE RELIABILITY. AT THE INTERMEDIATE LEVEL ALL OF THE DIFFERENT AGENCIES THAT HAVE THESE DOGS THEY ALL HAVE THEIR OWN REQUIREMENTS AND OWN PROTOCOLS. THEY ARE ALL DEFINING WHAT IS SUFFICIENT AND IN THIS CASE ONE OF THE MOST Troublesome ASPECTS OF THE HILLSBOROUGH COUNTY SHERIFF'S OFFICE SYSTEM IS IF YOU TEST AND TRAIN THE DOGS A SIGNIFICANT PORTION OF THAT IS HAVING THE HANDLER, INCLUDING DEPUTY GRECO, HIDE THEIR OWN DRUGS AND THEN WALK THE DOG. THEY ARE SUPPOSED TO BE MAINTAINING RAZOR'S ACCURACY, THE OFFICER MAY BE CUING THE DOG JUST LIKE THIS OFFICER WAS DOING DURING A CERTIFICATION TESTING BACK BEFORE THE UNITED STATES POLICE CANINE ASSOCIATION SO IF THIS COURT CHOOSES TO ADDRESS -

YOUR TIME HAS EXPIRED IF YOU JUST WANT TO CONCLUDE.

IF THIS COURT DOES CHOOSE TO ADDRESS THE MOTION TO SURESS, WE ASK THIS COURT TO FIND THAT THE STATE FAILED TO ESTABLISH THAT RAZOR WAS SUFFICIENTLY RELIABLE. THAT THE EVIDENCE ESTABLISHES THAT NEITHER THE ORIGINAL CERTIFICATION PROCEEDINGS OR THE SUBSEQUENT TRAINING PROCEDURES WERE SUFFICIENT AND HIS ACTUAL RECORD WAS NOT SUFFICIENT. THANK YOU, YOUR HONOR.

THANK YOU VERY MUCH. THE COURT WILL BE IN RECESS UNTIL TOMORROW. WE'LL BE IN RECESS.

PLEASE RISE.