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State of Florida v. Gary Alan Matheson

PLEASE R IS E . PLEASE BE S EA TE D .

THE LAST C ASE O N T HI S MORNING'S DOCKET IS S TATE O F FLORIDA VERSUS MAT HESO N. THE P ARTIES ARE READY ?

YES, YOUR HONOR .

MISS SHA NAHA N , YOU MAY PROCEED.

THANK YOU . CHIEF J US TI CE P AINT. GOOD MORNING. MAY IT PLEASE THE COURT , M Y NAME IS SUSAN S HANA HA N F OR THE STATE OF FLORIDA. THE R ESPONDENT IN THIS CASE WAS STOED FOR A TRAFFIC INFRACTION. UPON BEING STO ED , THE CANINE UNIT WAS CALLED.

COUNSEL, YOU H AVE A V ER Y SOFT A ND D ISTI NC T V OI CE , B UT WOULD YOU RAISE T HAT UP JUST A LITTLE BIT?

ABSOLUTELY , YOUR HONOR. IS THAT BETTER? THE R ESPONDENT IN THIS C AS E WAS STOED FOR A TRAFFIC INFRACTION. UPON BEING STOED, A SAY N INE UNIT WAS CAL LE D CONSISTING OF H IL LS BO ROUG H OFFICER DEP UT Y G RE CO A S WEL L AS HIS C AN INE OFF ICER , W HICH WAS THE DOG R AZ OR.

LET M E JUS T STO P Y OU THERE AS FAR A S A FEW F AC TS . THE DEFENSE IN THIS C AS E IS NOT T AKING ISSUE W ITH WHETHER OR NOT A DOG S NI FFED THE SEARCH, W HICH I S THE ISSUE IN FRONT OF THE SUPREME COURT.

THAT IS CORRECT.

OR THAT THE DET EN TI ON W AS UNDUALL Y LENGTHENED SO T HE EVIDE NC E COULD COME IN.

THAT IS CORRECT.

THE SOLE ISSUE I S W HETHER OR NOT RAZOR, THE D OG , W AS VERY SHARP ON THAT DAY.

THAT'S C ORRECT. WHETHER HE W AS --

I HAD TO G ET T HA T O UT.

THAT'S C ORRECT AND HE WAS , BY THE WAY. NO , Y OU - - THA T I S CORRE CT . HE DID ALERT T O T HI S V EHIC LE A ND UPON ALERTIN G , T HE VEHICLE WAS SEARCHED AND THEY DID FIND METHAMPHETAMINE, MOR PH INE AND HYDRO C OMPA NY D ON BIL LS . THEY ALSO FOUND E VIDENCE O F DRUG PARAPHERNALIA.

AS I'M UND ERST ANDING THE STATE'S C ONTE NT IO N I T I S THAT IF T HE STA TE P RESE NTS EVIDENCE THAT IS DOG HAS BEE N CER TIFI ED T HE N T HA T ITSELF IS S UFFICIENT T O ESTABLISH PROBABLE CAUSE?

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

NOW, IF YOU GET INTO IT THAT IT HAS TO SHOW PROPERLY TRAINED BECAUSE I KNOW SOME OF OUR EARLIER CASES WHERE BEFORE THE CERTIFICATIONS CAME IN, THEN YOU LDN'T KNOW 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 THIS, AGAIN, CERTIFICATION IS A PIECE OF PAPER. TRAINING IS AN ISSUE ABOUT WHAT AND PROPERLY TRAINED IS WHAT YOU SAID.

YES.

PROPERLY IS SOME DEGREE OF QUALIFICATION, SO DOES THE STATE HAVE TO GO, IN OTHER WORDS, SHOULD THE STATE HAVE TO PRODUCE THE RECORDS FOR THEIR PRIMARY CASE, THE RECORDS OF HOW THE TRAINING WENT, WHETHER THE DOG WAS A 70% DOG OR 100% DOG LIKE THE CUSTOMS DOGS BEFORE THE MAKE PROBABLE -- ARE A BLE 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 TRAINING -- DON'T YOU HAVE TO BE TRAINED TO BE CERTIFIED? I MEAN, I JUST WONDER IF THERE IS A REASON IF THERE IS A REQUIREMENT AND YOU 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 WILLCOME 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 DON'T YOU NEED TO AT LEAST HAVE A VIDEOTAPE THAT'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 COULD HAVE CERTIFICATION, I SUE, BY SAYING, WELL, YOU KNOW, WE THINK A PARTICULAR BREED OF DOG LIKE GERMAN SHEPHERDS ARE REAL GOOD AT THIS WORK, AND SO IT IS A NICE DOG AND IT IS A GOOD MAN'S HEARD WE ARE GOING TO SHEET. SOME GROOMERS 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, ON 99 OUT OF 100 OPPORTUNITIES THEY HAD ONE THEY HAD THE TRAINING, SO WHAT DO WE KNOW

W A BO UT C ERTIFICATION IN THI S REC ORD? THAT IS, WHAT DO W E KNO W THE STA NDARDS WERE B EF OR E THIS DOG WAS , Q UOTE , C ERTI FI ED ; IS THAT RIGHT?

HE WAS CERTIFIED.

CERTIFIED BY W HA T B ODY AND WHAT DO W E K NO W T HA T CERTIFICA TION ENTAILED?

THERE WAS A N I NITI AL STATE C ERTIFICATION IN OCTOBER OF ' 97 A FT ER H IS INITIAL TRAINING . THERE IS NO EVIDENCE IN THE RECORD A S TO WHAT THA T C ER TIFI CATION MEANT. HOWEVER, HE WAS THEN CERTIFIED BY THE UNITED STATES POLICE C ANIN E ASSOCIATION. THIS IS AN INDEPENDENT AGENCY, AND THA T T OO K P LACE JUNE OF ' 98 A ND H E W AS CERTIFIED ON THREE SUBSTANCES AND IT IS VERY CLEAR IN THE RECORD B Y T HE TES TIMONY OF THE HANDLER AS WEL L A S T HE P ROCE DURE S FOR THAT C ERTI FICA TI ON P ROGRAM ARE IN THE REC OR D O N A EAL , A ND IT SHO WS T HAT T HE DOG S HAVE T O S CORE C ER TAIN P ERCENTAGE IN ORDER TO B E CERTIFIED . THEY ARE RUN THR OU GH F IV E V EHICLES, A FEW OF T HOSE VEHICLES IN THIS CASE I THINK THREE O F THEM OR T WO OF THEM WERE B LANK . THE OTH ER S CON TA IN ED NARCOTICS.

LET ME MAKE SURE A BOUT THESE BECAUSE I KNO W THERE IS AN ISSUE ABOUT THI S RECORD. THERE WERE, B ECAU SE T HE SECOND DISTRICT SAID T HA T THERE WERE NO RECORDS AT A LL , AND YOU'VE SHOWN T HA T T HERE WERE FIELD RECORDS AND T HEY WERE T ALKI NG FIE LD R ECOR DS . BUT AS FAR AS T HE RECORDS O F WHAT THE CERTI FI CA TION I S , T HERE W AS A D EP OS IT IO N B UT THE D EPOSITION W AS N EVER P UT INTO EVIDENCE , S O CAN W E R EALLY CONSIDER T HA T A S BEFORE THIS COURT?

YES. I WOULD A RGUE THAT Y OU COULD. IT WAS F ILED A CTUA LL Y B Y T HE RESPONDENT HIMSELF IN H IS MOTION, SO IT WAS BEF OR E T HE TRIAL COURT THA T -- THE DEP OSITIONS WERE AND N OT JUST THE TESTIMONY BUT T HEY HAD THE RECORDS OF THE CERTIFICATION THAT ARE ALSO CONTAINED IN THE RECORD ON AEAL AND NOT JUST HIS FIELD A CTIVITY REPORTS. ALL OF HIS T RAININ G R ECORDS ARE CONTAINED IN THE RECOR D ON AEAL.

NOW, GETTING BACK TO T HE ISSUE AND I DON'T WANT TO -- I WANT TO MAKE SUR E Y OU EXPLAIN WHAT ALL OF THIS IS , BUT I'M TRYING TO G ET T O WHAT THE RULE OF LAW W OU LD BE . T HERE IS O NE LEV EL O F S AY IN G THAT IN A SEARCH WARRA NT , FOR E XAMPLE , THE DOG W AS P ROPERLY T RAIN ED A ND CERTIFIED AND THAT'S WHAT THE MAGISTRATE K NOWS A ND T HAT'S T HE J UDGE A ND A WARRANT IS ISSUED , BUT I S I T ENO UGH , L ET'S J US T ASS UM E HERE THAT T HE S TA TE S AY S THAT HE W AS PRO PE RLY T RA INED AND CERTIFIED , D OE S N'T EXPLAIN WHAT THE TRAININ G W AS FOR THE CERTIFICATION . IS T HAT STI LL E NOUGH AS FA R AS THE RULE O F LAW T HA T H AS -- ALL THE STATE H AS T O D O IS THAT, O R DOE S T HE S TA TE ALSO HAVE T O PUT O N W HA T T HE TYPE OF TRAINING AND C ERTIFICATION W AS SO THAT THE JUDGE HAS THA T B EFOR E THE P RIMA FACIE C AS E F OR P ROBABLE CAUSE IS MET?

IF THE D OG 'S REL IA BI LITY IS BEING CHALLE NGED A S I T I S HERE, THEN THE STATE W OU LD SUBMIT, YES , THESE TRAIN IN G RECORDS AND C ERTIFI CA TION ARE PROBA TIVE A S T O WHETHER --

SO I T WOULD B E INC UMBE NT ON THE STATE T O D O THA T. IF THE DEF EN SE S AY S I 'M GOING TO BE CHALL EN GI NG T HI S , THEN IT I S N OT U P T O T HE DEFENDANT TO TRY TO GET ALL OF THESE RECORDS. YOU WOULD AGREE THAT THE STATE NEEDS TO BE AFF IR MATIVELY E XP LA INING WHAT THE C ER TI FICA TION AND T RAINING CONSISTED OF?

NO, THE STATE 'S P OSITION WOULD BE THAT THERE IS A PRESUMPTION B Y -- D Efen SE JUST MAKES A BLA NK ET STATEMENT THE DOG IS NOT RELIABLE WITHOUT MORE. IT WOULD B E THE S TATE 'S POSITION THAT BY SAYING THE DOG IS PROPERLY T RA INED AND CERTIFIED THAT'S A PRESUMPTION. IT CAN THEN B E REBUTTE D AND THEN IT WOULD BE T HE DEFENDANT'S BURDEN

TO REBUT THAT PRESUMPTION.

YOU ARE SAYING ALSO THAT JUST A STATE THAT THE DOG IS THEN PROPERLY TRAINED WHICH, AGAIN, THERE ARE STATES WHERE A DOG IS TRAINED AND NOT CERTIFIED AND THOSE ARE THE ONES WHERE A STATE EAST IN THE LAW REQUIRES A RTICLED 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 COMPLIANCE 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, IN ADDITION TO THE RECEIPT OF THE CERTIFICATION, DO YOU AGREE OR SDPTE THAT THE STATE WOULD ALSO HAVE TO ESTABLISH A POST CERTIFICATION, THE DOG'S TRAINING, ABSENT SENTENCING BY THE DEFENDANT THAT THE DOG'S TRAINING POST CERTIFICATION WAS APPROPRIATE?

YES, YES.

HOW OFTEN DOES CERTIFICATION OCCUR? IS IT A YEARLY 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 A FEW YEARS AGO AS OF THE SEARCH?

YES, IT WAS.

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

EDUCATION?

TRAINING.

THE CODE?

RAZOR COMBINEDLY 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 HANDLERS WEEKLY. >> NOW, ARE YOU SAYING THEN I WANTED TO MAKE SURE BECAUSE IT MATTERS IN TERMS OF HOW THIS OPENED 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 RECORDS --

REBUTTE DBY WHOULD 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 DISCOURSES AND IN THIS CASE, YOU KNOW, BRINGING ON WITNESSES AND ALL OF THAT WHEREAS THE OTHER WOULD BE THAT THE STATE WHO HAS THIS INFORMATION IF IT IS BEING CHALLED IN COURT 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 DOGS ITUATION, 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 THE TRAINING AND, YOU KNOW, AGAIN YOU'VE GOT THE CUSTOM SERVICE THAT REQUESTS 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, YOU KNOW, ESPECIALLY HERE, BECAUSE THE DOG ALREADY TOSOMETHING THAT THE DOG WASN'T CERTIFIED IN, WHICH WAS THE MET AND OTHER SUBSTANCES, HE DIDN'T ALERT TO, BUT --

HE WAS TRAINED IN MET. 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 MTOA GRUE 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 DISTRIC 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 WOULD SUBMIT THAT THAT IS NOT BEFORE THIS COURT WHETHER THEY ARE DISCOVERABLE.

WELL, WHY WOULD WE ACCEPT THAT POSITION? I WOULD THINK THAT IN THE TRAINING RECORDS YOU WOULD HAVE INFORMATION ON A BOUT THE DOG'S ABILITY TO ALERT AND WHETHER OR NOT THE DOG HAD THE ABILITY TO ALERT FOR INDIVIDUAL MATTERS AND THAT KIND OF THING SO IF, IN FACT, THE TRAINING RECORD DIDN'T HAVE THAT KIND OF INFORMATION AND THEN YOU HAVE FIELD RECORDS WHICH SHOW THAT THIS DOG ALERTED ONLY 150% ACCURACY, WOULD NOT THAT ONLY 50% ACCURACY, WOULDN'T THAT BE RELATED EVEN TO WHETHER OR NOT THIS DOG REALLY HAD THE ABILITY TO ALERT FOR RELATED MATTERS?

NO, BECAUSE YOU CAN NOT DETERMINE A FALSE ALERT IN THE FIELD AND THAT IS WHERE THE SECOND DISTRICT COURT OF APPEAL HAS MISSED CONSTRUED.

WHY WOULDN'T THAT BE RELEVANT TO ANYBODY THAT HAS TO MAKE A DECISION, YOU KNOW, ABOUT WHETHER PROBABLE CAUSE WAS ESTABLISHED IN A PARTICULAR CASE? WE KNOW THAT IN POLICE AGE NCIES THAT THERE ARE SOME DOGS THAT GET THE MEDAL OF HONOR, AND, YOU KNOW, THEY JUST -- EVERYBODY WANTS THAT DOG IN THE CANINE DIVISION OR WHATEVER, AND THERE ARE OTHER DOGS THAT HAVE A DIFFERENT, YOU KNOW, TRACK RECORD, AND MAY, YOU KNOW, BE LESS FAVORABLE. SO I'M HAVING DIFFICULTY OF WHY THAT INFORMATION WOULDN'T BE DISCOURAGEABLE SO THAT WE KNOW WHETHER OR NOT, YOU KNOW, THAT'S THE DOG THAT HAS A SPOTTY TRACK RECORD OR IT IS THE MEDAL OF HONOR WINNER.

SURE, IT MAY BE DISCOVERABLE BUT IT IS NOT PROBATIVE AS TO PROBABLE CAUSE AND THE REASON IT IS NOT PROBATIVE IS BECAUSE YOU DON'T KNOW WHAT A FALSE ALERT IN THE FIELD IS. THE REASON IS: IF THE DEFENDANT IS A DRIVER OF A VEHICLE AND HE HAS DRUGS ON HIM, HE GETS OUT OF THE CAR AFTER THE DOG HAS ALERTED, THEY DON'T FIND DRUGS --

WHO DETERMINES PROBABLE CAUSE ON A MOTION TO SUPPRESS HEARING?

WHO DETERMINES PROBABLE CAUSE? THE TRIER OF FACT. >> SO WHY SHOULDN'T THE TRIER OF FACT THAT HAS THIS HEAVY RESPONSIBILITY BE AWARE OF ALL RELATED CIRCUMSTANCES BEFORE MAKING THAT DETERMINATION? YOU SEEM TO BE SUGGESTING THAT THE ONE THAT HAS THAT RESPONSIBILITY THAT THERE IS THE INFORMATION THAT SHE REALLY, YOU ARE GOING TO TELL HER IS NOT RELATED TO HER ANALYSIS SINCE SHE THINKS IT WOULD BE RELATED EVEN TO HER ANALYSIS IN MAKING THIS INDIVIDUAL DECISION EVERY TIME AS TO WHETHER OR NOT THERE WAS PROBABLE CAUSE.

THE STATE IS NOT SUGGESTING THAT THEY ARE NOT DISCOVERABLE. THESE RECORDS MAY BE DISCOVERABLE. WHAT THE STATE IS SUGGESTING IS THAT YOU CANNOT DETERMINE A DOG'S RELATED LIABILITY BY THESE FIELD REPORTS.

I THOUGHT YOU WERE -- THAT, AND THIS IS IMPORTANT, IT MAY NOT HAVE TO BE PART OF YOUR CASE IN CHIEF, BUT IF YOU HAVE A DOG THAT ALERTS EVERY TIME IN THE FIELD AND DRUGS ARE ONLY FOUND 2 OUT OF 50 TIMES, FIRST OF ALL I WOULD THINK THAT YOUR, YOU KNOW, THE POLICE DEPARTMENT IS GOING TO BE QUESTIONING WHETHER TO GO BACK AND LOOK AT THAT DOG.

NO.

THEY ARE JUST GOING TO SAY --

NO.

BUT I THINK THAT TO UR , Y OU ARE NOT ASKING US TO G O T HAT FAR?

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

SO THEY ARE DIS COVE RA BL E AND THE FACT I S T HE Y MAY B E RELEVANT T O THE T OT ALIT Y O F THE CIR CU MS TA NCES A NA LYSI S.

THEY COULD BE. THEY COULD BE.

AND J US T N OT H AVE T O B E PART OF YOU R CASE IN CHIEF?

RIGHT. AND ALSO I THINK IT I S IMPORTANT TO EDUCATE THE TRIAL COURTS AS WELL A S OUR PRO SECUTORS AND OUR DEF EN SE COUNSEL BUT THESE FALSE ALERTS CANNOT BE -- Y OU C ANNOT D ETERMINE R EL IA BILITY BY THEM. AGAIN, THE D OG S DETEC T RESIDUAL O DO RS .

BUT THE EXP ERT W IT NESS DOESN'T AGREE WITH YOU?

AND THE TRIAL C OURT DIDN'T AGREE WITH THE EXPERT WITNESS.

I UNDERSTAND , A N E XPER T WITNESS, WHETHER THAT TRIAL COURT DOES OR ANOTHER , DISAGREES THAT FIELD REPORTS ARE NOT R ELEVANT , COR RECT?

THE EXPERT IN THI S CAS E?

YES.

ACTUALL Y H E D IDN' T S AY WHETHER THEY WERE RELEVANT OR NOT.

HE USED THEM.

HE USED THEM , YES , H E D ID .

JUSTICE ANS TE AD HAS A QUESTION.

I WILL G O BACK TO THE FIRST PART ABOUT W HO HAS THE BURDEN OR WHATEVER. DON'T WE HAVE A GENER AL RUL E THAT SAYS IF YOU HAV E A WARRANTLESS SEARCH THAT I T IS THE STATE'S BUR DEN T O D EMONSTRATE PROBABLE CAUSE AND WHY I SN'T T HA T T HE R UL E THAT WE SHOULD A LY H ER E THAT O NC E C HA LL EN GE D , T HAT IT IS THE STA TE 'S BUR DE N T O D EMONSTRATE THAT IND EED THE Y DID H AVE P ROBABLE CAUSE A T THE TIME BECAUSE THE POLICE OFFICERS ALL KNE W T HAT T HIS WAS A CERTIFI ED D OG A ND WHA T THAT MEANT AND ALL OF THA T KIND OF T HING , S O I 'M H AV IN G DIFFICULTY WITH YOUR POSITION THAT SOMEHOW IT SHOULD BE THE B UR DEN O F THE DEFENSE IN C HALL ENGI NG A WARRANT LESS SEA RCH. THIS WAS A WAR RA NT LE SS SEARCH.

IT WAS A WARRA NT LESS SEARCH.

AND WE HAVE A GEN ERAL RULE THAT SAYS THE BURDEN IS ON THE STATE O NC E T HAT WARRANT LE SS SEA RC H I S CHALLENGED.

THE STATE DID M EET T HE BURDEN IN THIS CASE.

I'M NOT -- I'M JUS T TRYING TO D EF END W IT H OUR EXISTING P OLIC Y. I 'M NOT TALKING ABO UT WHETHER OR NOT IT HAS B EE N DEMONSTRATED IN A PARTICULAR CASE.

I'M NOT T RY ING TO S HIFT THE BURDEN. I'M SAYING THERE IS A GENERAL PRUCHTION BY THE

STATE SAYING THE DOG IS TRAINED AND CERTIFIED THEREIS 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 BACK TO, THOUGH , THE IDEAS 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 -A LL END ALL . IT IS -- BE-AL L , 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 ALMOST, I DON'T -- MAYBE WE'VE GOT A PSYCHOTIC DOG OR SOMETHING. I DON'T KNOW. IT JUST SEEMS TO COMPLAIN WITH COMMON SENSE THAT TRAINING AND CONDITIONING ARE FINE AND CERTIFICATION, BUT THAT ANALYSIS IS WHERE REALLY THE RUBBER MEETS THE ROAD IS HOW DOES THAT ANALYSIS?

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 MARIGUANA 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 -- BUT WHEN INDIVIDUAL DRUGS AND THE ACTUAL PRESENCE OF DRUGS?.

NO, THEY ARE TRAINED TO DETECT THE ODOORS OF NARCOSES AND LIKE I SAID IF THE DRIVER OF THE VEHICLE HAS THE DRUGS AND HE JUST SETS THEM OUT SO THEY CAN SEARCH BECAUSE A DOG HAS ALERTED THE DOG IS STILL GOING TO PICK UP THE SCENTS ON THE ECULES .

SO THE DOG CAN NEVER MAKE A MISTAKE?

IT IS NOT K NO WN IF T HE DOG CAN M AKE A MIS TAKE I N THE FIELD. THAT IS WHY THEY TRAIN.

ISN'T THIS A D ANGERO US RUL E TO ACCEPT , THA T I S , THAT THE DOG IS N EV ER MAK E A MISTAKE?

NO.

THAT EITHER THE D RU GS WERE THERE BEFORE , YOU KNO W , AND SO WE HAVE SORT O F A N IN FAL IBLT, YOU K NO W , - - INFALLIBILITY PROPOSITIONHERE, AND CONTRARY T O Y OU R ANALOGY, THIS IS NOT A GAME. THIS IS ALLOW IN G T HE STA TE NOW TO I NV AD E SOM EBOD Y' S PRIVACY , W HETH ER IT I S - - S O W HAT YOU A RE SAY IN G I S THA T IN THIS CASE , E VE N T HO UG H THEY FOUND NOTHING, N OB ODY COULD SAY THAT THE DOG MAD E A MISTA KE , T HA T W E A LL W OU LD SAY THAT THE DOG R EALLY I S I NFALLIBLE AND T HE RE H AD T O HAVE BEEN DRUGS THE RE A T SOME TIME?

EVEN THE D EF EN SE E XPERT IN THIS CASE SAI D Y OU W IL L NOT KNOW IN THE FIELD IF A DOG HAS FALSELY ALERT ED WITHOUT KNOWING DISSI PATION RATES OF PARTICULAR DRUGS.

YOU HAVE W AY E XTEN DE D , BUT JUSTICE B ELL H AD A Q UESTION.

ILL M AKE IT A S Q UICK AS I CAN. THE DIFFERENCE I SEE I N W HA T JUSTICE L EWIS WAS A SKING YOU HERE, YOU D ON'T HAVE T HE D OG TESTIFYING TO WHA T Y OU SMELL. WHAT YOU HAVE IS THE OFFICER WHO HANDLES THE DOG TESTIFYING TO WHAT THEY D ID , AND IT IS T HA T COM PONE NT THA T C ON CE RN S M E B EC AUSE IN THE CERTI FICATION PROCESS YOU HAVE THE HANDLER WITH THE DOG PROVI NG C ER TAIN THINGS BUT BECAUSE YOU H AV E THE OFFICER WOR KING THE D OG THERE IS ALWAYS THE TEMPTATION OF T HE P ROBL EM THAT YOU H AV E AND EXCUS E M E , BUT T HE B AD C OP , WHO - - THE WORK IN THE FIE LD C UING THE D OG SO THE A CT UAL WOR KI NG I N THE FIELD MAY B E D IFFE RE NT THEN AND SO DOESN'T T HAT MAKE THE FIELD R EPOR T SOMEWHAT PROBATIVE ? I UNDER STAND THE FALSE REPORTING C ONCERN BUT THERE IS ALSO A COLLATERAL C ONCERN ON THE OTHER SIDE OF THA T I S THAT YOU HAVE NOT O NLY THE DOG'S TRUSTWO RT HYNESS BUT THE HANDLER OF THE D OG 'S TRUSTWORTHYNESS BECAUSE THAT'S HOW REALLY THE TESTIMONY IS GETTING T HROU GH , SO IS IT I ND IC AT IV E , B ECAUSE YOU COULD H AV E A DOG DOI NG 97, 100% I N T HE C ONTR OLLE D C ERTIFICATION PROCESS , B UT 5 0% I N T HE F IELD I F Y OU H AV E A HAN DLER W HO I S NOT W ORKI NG THE DOG PRO PERLY AND W IT H AROPRIATE INTEG RITY?

IF YOU LOOK AT THESE TRAINING RECORDS AND I KNOW THE WAY THE H IL LS BOROUG H COUNTY S HE RIFF 'S OFF IC E D OE S IS I T I S I N T RA INING. YOU ALSO HAVE A S UP ER VISOR WHO HIDES THE DRU GS S O A L OT OF TIMES THE HANDLER D OESN'T KNOW --

WHAT JUSTICE BELL I S POINTING OUT IS THAT Y OU HAVE TWO E LE MENT S I N T HE FIELD, WHICH IS Y OU M AY N OT H AV E MAY BE I T I S A D IF FERE NT TRAINER, YOU K NO W , AND J US T THAT, A GAIN , T HA T I S WHY I T IS P RO BATIVE THAT M AY BE THERE IS THE TRAINER I N T HE FIELD OR THE HANDLER I N T HE F IELD THAT IS A CTUA LL Y AFFECTING THE DOG'S RELIABILITY.

AGAIN, THAT'S WHY T HE Y HAVE THE SUPERVISOR T O MAKE SURE THAT THE DOG IS NOT --

IN T HE F IELD T HEY H AV E?

O. I 'M SORRY, N O , BUT T HE FIELD, THE SUPERVISOR DOES LOOK AT THESE FIE LD ACTIV IT Y REPORTS EVERY TIME AND SIGNS OFF ON THEM.

THEY DON'T E VEN STA Y AROUND TO KNO W WHETH ER T HE DRUGS WERE FOUND?

A LOT OF T IMES T HEY G ET CALLED TO ANOTHER S CE NE AND I JUST WANT TO RESPOND T O HIS

QUESTION REA LL Y B RI EFLY . T HEY ARE NOT -- T HEY DO NOT CUE , THEY MAKE SURE THEY DON'T CUE TO THE HANDLER IN THESE TRAINING EXERCISES AND ALSO THE CERTIFICATION IS A N INDEPENDENT AGENCY. IF THERE WAS ANY CUEING 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 CUED NOT MALLY.

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

BUT THEY ARE NOT IN THE FIELD. MY QUESTION IS OUT : WHEN THE CAR STOPPED BEFORE THE HIGHWAY AND THE ONE OFFICER IS WRITING THE TICKET WHILE THE OTHER OFFICER HAS THE DOG WALKING IN A ROUND THE CAR AND THE -- 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 ASK 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 CUEING 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 DISPOSITION RATES OF THE DRUGS . WITHOUT KNOWING THOSE THINGS THEN YOU COULD NOT USE THESE FIELD ACTIVITY REPORTS TO JUDGE THE DOG'S RELIABILITY. THEY MAY BE PROBATIVE.

WITH OUR HELP , YOU HAVE WAY EXCEEDED YOUR 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 CELINE 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 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 INVOKE 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 VETTED 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 CONDITIONS OF THE AFFIDAVIT.

AND IN THAT VETERAN'S 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 SECTION, THAT PROPERLY TRAINED DOG DOES NOT PROVE PROBABLE CAUSE, THAT STANDING ALONE, SO AREN'T THESE 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 I SAY SOMEONE IS 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 STANDING ALIEN IN THE PROBABLE CAUSE ANALYSIS WHEN LOOKING AT A DEFENDER MINA TION 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 ENTERING OUT CRIME AND LOOKING FOR NARCOTICS AND THERE IS A MORER 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 MADE BY THE THIRD DISTRICT AS I READ THIS CASE, DOESN'T SEE ME TO BE QUOTING WHAT THE TRIAL JUDGE SAYS, BUT IT SEEMS MORE TO BE A CEEPING AS A GENERAL PROPOSITION FROM THE FRANK OPINIONS THAT THAT'S NOT GOING TO BE PROBABLE CAUSE STANDING ALONE.

WELL, YOUR HONOR --

AS ORDERED TO A FADING 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 ON YEAR PRIOR, STATEVER SUS FOSTER WHICH IT MENTIONED MANY 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 IT EVER THOUGH IT CITES THE FOSTER, DOESN'T REALLY GO INTO THE 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 THE OTHER 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 THIS COURT DISAGREES AND IF THIS 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 OORTUNITY TO ADDRESS SOME OF YOUR CONCERNS, JUSTICE BELIE, AND OTHER QUESTIONS HAVE SUGGESTED. IF YOU LOOK SPECIFICALLY AT RAZOR'S TRACK RECORD THIS DEMONSTRATES A RECORD OF A DOG WHO DID NOT PERFORM AS HE IS EXPECTED TO.

BEFORE YOU GET TO THAT, DIDN'T THE COURT HAVE TO GIVE SOME DISCRETION TO THE TRIAL COURT AND THE TRIAL COURT REJECTED THE EXPERT'S TESTIMONY, THE COURT SEEKS TO WHOLEHEARTEDLY ENDORSE THE EXPERT'S TESTIMONY. ISN'T THAT EVER SUBLIME IN ITSELF?

WELL, I GUESS I HAVE THREE RESPONSES. FIRST OF ALL, THIS COURT CAN RULE ON THE MERITS OF THE MOTION TO SURESS EVEN IF THE COURT DOES NOT AGREE WITH THE SECOND DISTRICT'S REASONING. SO IF THIS COURT FINDS ANOTHER BASIS FOR FINDING THAT THE MOTION TO SURESS WAS WRONGLY DENIED, THIS COURT CAN DO SO. TURNING TO THE COURT'S ANALYSIS, FIRST I BELIEVE THAT THE COURT, THE SECOND DISTRICT PROPERLY LOOKED AT ALL OF THE UNKNOWN AND ISPUTED EVIDENCE TO THE EXTENT THAT THERE WAS ANY DISPUTED EVIDENCE, THE SECOND DISTRICT INTERPRETED IT IN FAVOR OF THE PREVAILING PARTY BELOW.

YOU WANT TO GET INTO THE FACTS OF THIS CASE AND IF WE ACCEPT JURISDICTION WE NEED TO LOOK AT PRINCIPLES OF LAW. SO WHAT PRINCIPLE OF LAW COMES OUT OF THE SECOND DISTRICT CASE THAT YOU BELIEVE THAT WE SHOULD ENDORSE FOR THIS STATE?

WELL, ACTUALLY THE SECOND DISTRICT STATES TWO DIFFERENT PRINCIPLES AND WE URGE BOTH TO THIS COURT. FIRST, THE SECOND DISTRICT ASSERTS THAT THERE SHOULD BE A CERTAIN PRIME AS A STANDARD -- PRETTY MUCH A FAIR CASE. THAT THEY SHOULD ESTABLISH WHAT THIS CERTIFICATION MEANS, WHAT ACTUALLY HAD BEEN DONE IN THE CERTIFICATION AND WHAT SPECIFIC PROCEDURES ARE BEING FOLLOWED TO MAINTAIN THAT LEVEL OF RELIABILITY WITH TRAINING.

I DIDN'T HEAR THE STATE REALLY ARGUING AGAINST THE FACT THAT THEY -- IF THE RELIABILITY IS QUESTIONED WHETHER IT IS CALLED A REBUTTABLE PRESUMPTION THAT THEY WOULD PUT ON EVIDENCE OF WHAT THE CERTIFICATION MEANS AND THE CONTINUING TRAINING, SO THAT WOULD BE -- THAT'S NUMBER ONE, AND THEN WHAT ELSE?

WELL, MAYBE I'M NOT BEING CLEAR ENOUGH. THAT THERE IS NO PRESUMPTION OF EVIDENCE. THE STATE HAS TO SPECIFICALLY ESTABLISH THAT THIS CERTIFICATION MEANS THIS DOG IS RELIABLE. THE ACTUAL --

SO EVEN IF IT IS NOT -- JUST TO ESTABLISH PROBABLE CAUSE, IF IT IS QUESTIONED AT ALL THEN THEY HAVE TO PUT ON THAT WITHOUT IT, AND THERE WOULDN'T BE ANYTHING THAT YOU WOULD HAVE TO SAY, OTHER THAN I DON'T AGREE THAT HE WAS RELIABLE?

THAT'S OUR FIRST POSITION, YES, AND OUR SECOND POSITION IS IN THIS CASE TO THE EXTENT THAT WE LOOK HERE AT THE EVIDENCE TILL ESTABLISHES THAT THERE WAS NOT PROBABLE CAUSE.

LET'S GO BACK TO THEN THE ISSUE OF THE FIELD REPORTS. DIDN'T THE COURT SAY TO WHAT APPEARS TO BE THE OVERWHELMING NUMBER OF CASES AROUND THE COUNTRY, THAT THE SECOND DISTRICT GAVE UNDUE WEIGHT. I'M NOT SUGGESTING WHETHER THEY SHOULD HAVE BEEN DISCOVERABLE OR ADMISSIBLE BUT UNDUE WEIGHT TO RAZOR'S PERFORMANCE IN THE FIELD. DO YOU KNOW OF ANY CASES OUT THERE IN ALL OF THE OTHER JURISDICTIONS WHERE FIELD PERFORMANCE ITSELF WAS THE INDICATOR OF WHETHER THERE WAS PROBABLE CAUSE OR NOT?

STATE VERSUS FOSTER CITED AS ONE OF ITS FACTORS, NOT THE PRIMARY, BUT IN THAT DECISION IT SAYS IN QUOTES, ESPECIALLY INFORMATION REGARDING FALSE ALERTS. FOSTER

SPE CI FI CALLY P OI NTS TO THE OTHER FACTORS REGARDING TRAINING AND T HIS REGARDING ACTUAL PERFORMANCE.

THERE HAVE BEEN A LOT O F CASES, THOUGH , A CROS S T HE COUNTRY IN THE LAST 2 0 Y EA RS D ISCUSSING WHE TH ER A D OG 'S A LERT C ON ST IT UT ES P ROBA BL E CAUSE AND I ASSUM E W HA T JUSTICE PARIE NTE IS ASKIN G IS IN CASES A ROUND T HE COUNTRY, WHAT OTHER S TATE S , IF ANY, HAVE SAI D T HA T FIE LD REPORTS ARE RELEVANT T O DETERMINING THE RELIABILITY OF T HE A LE RT ?

NO OTHER CAS ES T HAT I HAVE FOUND. NO OTHER STATE OR FED ERAL. IN FACT, THEY HAVE R UL ED T HE OTHER WAY AND W E RESPECTFULLY DISAGREE W ITH THOSE D ECISIONS AND THIS CASE MAKES C LEAR W HY. IF YOU GO B ACK T O THE U NITE D STATES POLICE K AY F LI N A SSOCIATION'S EVALUAT ION OF RAZOR AND H IS HANDLER AS A TEAM IT SHOWS M ANY PROBLEMS. SPE CIFICALLY IN THE REC OR D , PAGES 3 63 T O 3 66 , THE UNI TE D STATES POLICE C ANIN E ASSOCIATION NOTES O NE , T HA T THIS HANDLER K EY ED R AZ OR O N TO FLA SHINGS. TWO, THAT D URIN G T HE CERTIFICATION T ESTING THIS HANDLER CAU SE D RAZ OR T O F ALSELY A LE RT , A ND N UM ER OU S OTHER ERROR S , I NCLU DI NG P OO R LEA SH CONTROL AND P OO R HANDLING OF THE DOG SO THERE IS ALREADY EVIDENCE G OINGBACK TO THE CER TIFICA TI ON THAT THERE WERE PROBLEMSWITH RAZOR FALSE A LERTIN G.

SO YOU ARE S AY IN G A F AC T F INDER WOU LD A BSOL UT EL Y T HE N BASED ON THIS HAVE TO F IN D NO PROBABLE C AUSE OR IT WOULD BE A QUESTION O F THE CIRCUMSTANCES FOR T HE FACT FINDER?

IT WOULD BE A TOT AL ITY O F THE CIR CU MS TANC ES A ND M AYBE --.

MAYBE WE GO BACK T O THIS ISSUE WHICH IS JUST I N TER MS OF W HERE O UR S CO PE O F R EVIE W IS, I S T HAT Y OU A RE N OT ASK ING US T O A NN OUNC E A H AR D AND FAST RULE THAT T HE RE H AS TO BE 9 5% T ES T SCOR E O N A DOG BEFORE THEY C AN E VE N B E OUT THERE SNIFFING?

NO, YOUR HONOR , W E'RE NOT ASKING AND P ROBABLE C AU SE IS NOT SUBJECT TO PERCENTAGES BUT WE ARE SAYIN G HERE THE PERFORMANCE OF THIS DOG I S SO POOR. THERE IS NO WAY H E COU LD HAVE FORMED THE B AS IS F OR PROBABLE CAUSE.

THIS IS , I KNO W -- I T HOUGHT THAT ACT UA LL Y H IS PERFORMANCE IN THE CAN IN E WAS LIKE ACT UALL Y 9 6% . T HAT HE , AS FAR A S THE DOG HIMSELF.

IF YOU ARE GOING BACK TO THE CERTI FICATION.

THAT'S WHAT I THO UGHT YOU WERE -- YOU SAI D T HAT HE D ID TERRIBLEY IN HIS CERTIFICATION.

WELL, ACTUALLY MY COMMENT RIGHT NOW WAS REF ERRI NG T O HOW POORL Y H E DID I N T HE FIELD ACTIVITY REPORTS.

WASN'T HE SORT O F A N A DOG AS FAR AS HIS C ERTI FY -- C ERTIFICATION FROM THE CANINE ASSOCIATION?

WELL, TWO COMME NTS T O THAT. FIRST OF ALL THE RECORD I S SOMEWHAT INCONCLUSIVE BUT DEPUTY GRECO D OES S AY A T ONE POINT IN HIS DEPOS ITION T HAT MY DOG PERFORMED 1 00 %. THAT'S NOT THE C RI TI CA L INQUIRY. HOW MANY TIMES DID HE F ALSE ALERT?

WELL , L ET 'S C IRCL E B AC K , THOUGH, TO START OUT W IT H THE TRIAL COU RT , U NLIK E THE JUDGE NOW THAT'S I SS UI NG THE W ARRANT, WE D ON 'T H AVE T HAT IN THIS P ARTICULAR C ASE , BUT THEIR RESPONSIBILITIES ARE SIMILAR ALT HOUGH ONE IS REALLY ACTING JUST ON T

HE BASIS OF ONE SIDE 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 THE STATE FOR THE STATE THEN TO MEET ITS BURDEN IF I PUT IT ON A CASE THAT THE DOG IS CERTIFIED AND WHAT THAT CERTIFICATION MEANS? THAT IS, THAT THERE IS SOME QUALITATIVE MANUFACTURING TO THE DOG, AND THEN IF THERE ARE PROBLEMS WITH THE PARATI CULAR DOG AND THAT INFORMATION IS DISCOVERABLE THAT HAS WHAT THE DEFENSE THINK WOULD COME BACK WITH AND SAY, WE 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 THE 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 MAYBE 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 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 WHETHER 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 WARRANTLESS SEARCH SO BECAUSE IT IS A WARRANTLESS 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 WHICH 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 COVERABLE, BECAUSE THAT MAY CAST SOME LIGHT ON THE QUALIFICATIONS 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 A NY DIFFERENT THAT ANOTHER MOTION TO SUPPRESS SHARING 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 CERTIFICATION, YOU KNOW, THAT DOESN'T HAVE ANY SUBSTANCE TO IT OR MEANING TO IT.

IF THE COURT CHOSES TO USE SUCH A PROPOSITION LIKE THAT, A REGULARITY THAT WOULD STILL BE ABLE. DISCOVERY ISSUE IS A REAL ISSUE. I KNOW THAT YOU RAISE THIS 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 RELATED IT IS COVERABLE. I WOULD LIKE TO JUST DIRECT YOUR ATTENTION TO ANOTHER PART OF THE SECOND DISTRICT'S OPINION AND ONE THAT YOU SEE MENTIONED ON IN YOUR BRIEF, WHICH IS THE QUESTION

OF WHETHER THE EXISTENCE OF PROBABLE CAUSE MUST BE A SS ESSE D S OLELY FROM THE PERSPECTIVE OF THE OFFICERS AT THE SCENE, THE KNOWLEDGE, AND IT SEEMS THAT THE SECOND DISCUSSION IS THAT THE OFFICER WHO KNOWS ONLY THAT THIS DOG IS TRAINED AND CERTIFIED AND HAS NO OTHER INFORMATION AT MOST CAN ONLY SUSPECT THAT A SEARCH BASED ON THE DOG'S ALERT WILL LEAD TO CONTRABAND. THAT STATEMENT IN YOUR POSITION SEEMS TO IMPLY THAT EVEN IF YOU HAD A DOG WHO HAD 100%, YOU KNOW, TRAINING, AND THAT THAT WAS -- THAT THAT OFFICER WAS INVOLVED IN THAT DOG AND THAT DOG HAD DONE GREAT WORK ALL THROUGHOUT, THAT IF THE OFFICER HIMSELF WHO WAS OR HERSELF WAS INVOLVED IN TAKING THE DOG AROUND AND DIDN'T HAVE COMPLIANCE WITH THE DOG'S HISTORY, INCLUDING ITS TRAINING, CERTIFICATION, FIELD RECORDS, THAT THERE WOULDN'T BE SUFFICIENT PROBABLE CAUSE. IS THAT -- AM I MISREAD IN GETTING THE HEIR'S STATEMENT AND YOUR POSITION THAT THE COURT COULDN'T TAKE INTO CONSIDERATION WHAT OTHER OFFICERS KNOW IN ESTABLISHING PROBABLE CAUSE, WHAT THE OFFICER MIGHT HAVE BEEN TOLD OR JUST WHAT EXISTED IN THE RECORDS OF THE POLICE DEPARTMENT?

NO, YOUR HONOR, YOU ARE CORRECTLY UNDERSTANDING OUR POSITION AND OUR POSITION IS THAT FOR TWO REASONS, FIRST OF ALL, YES, THE FACT IS ON WHAT THE OFFICER KNOWS. THE OFFICER WHO IS MAKING THE PROBABLE CAUSE DETERMINATION, WHETHER OR NOT THAT WAS PROPERLY DEPENDENT ON WHAT INFORMATION HE HAS AND THERE ARE TWO REASONS WHY.

SO WITHIN THIS STATEMENT WHERE SOMEONE IS CALLED OUT TO THE SCENE AND ON THAT DAY I DON'T KNOW HOW THIS PARTICULAR THING WORKS BUT HE IS TOLD YOU ARE GOING OUT THERE, TAKING THIS DOG, AND THAT DOG ALERTS, AND THE POLICE DEPARTMENT KNOWS THAT THE DOG IS A -- THE IRACE DOG. THAT HIS DOG HAS A, YOU KNOW, COLD THAT DAY, THAT HE CAN'T BE PROBABLE CAUSE BECAUSE THAT OFFICER DOESN'T HAVE COMPLETE KNOWLEDGE ABOUT THE DOG'S BACKGROUND, TRAINING AND FIELD REPORTS?

THAT'S ACTUALLY A SLIGHTLY DIFFERENT QUESTION. AS LONG AS SOMEBODY KNOWS THAT THIS IS AN ACE DOG BASED ON TRAINING AND CERTIFICATION, WE MIGHT HAVE SOMETHING DIFFERENT.

I JUST WANTED TO MAKE SURE THEN THAT IT WOULD BE THE FELLOW OFFICER OR WHATEVER IS KNOWN BY THE POLICE DEPARTMENT.

SO THE EXTENT I AM SUGGESTING THAT THE COURT IGNORE THAT, NO, I AM NOT. I AM SAYING WE HAVE TWO REAL ISSUES HERE. FIRST OF ALL WE HAVE A CERTIFICATION PROCESS BY NATIONAL ORGANIZATIONS WHICH IS SUBJECT TO NORMAL REGULATION. THERE IS NO REQUIREMENT REGARDING WHAT IS SUFFICIENT ACCORDING TO THESE AGENCIES, IN ORDER TO PRODUCE A DOG THAT IS PROPERLY CERTIFIED AND ABLE TO DETECT NARCOTICS AND, IN FACT, THERE IS A VERY INTERESTING FACT IN THIS RECORD THAT IS VERY TELLING AND THAT IS IF YOU LOOK AT THE CERTIFICATE BY THE UNITED STATES POLICE CANINE ASSOCIATION, IT SIMPLY SAYS THAT RAZOR WAS CERTIFIED TO DETECT ON NARCOTICS AND THE OFFICERS HERE ASSUMED IT WAS METHAMPHETAMINE, ALONG WITH COKE, HEROIN AND MARIJUANA. WELL, IT WAS NOT METHAMPHETAMINE, AND DAYS BEFORE THE FIRST HEARING IN THIS CASE, THE HILLSBOROUGH COUNTY SHERIFF'S OFFICE TALKED TO THE NORTH AMERICAN POLICE DOG ASSOCIATION WHO DOES THINK YOU CAN CERTIFY A DOG IN METHAMPHETAMINE. SO HERE WE HAVE TWO NATIONAL AGENCIES THAT ARE REPORTING FOR THEIR BUSINESS TO CERTIFY DOGS AS BEING RELIABLE IN THE FIELD FOR DETECTING DRUGS AND THEY DON'T AGREE OR HAVE SIMILAR STANDINGS IN REGARDS TO WHAT A DOG CAN BE CERTIFIED IN.

THE COURT IN THIS RECORD SAID THAT THE HILLSBOROUGH COUNTY MIGHT AGREE AS IT IS NOT REPORTED ON RAZOR'S PERFORMANCE?

THERE IS SOME CONFUSION IN THE RECORD BECAUSE D EE PLY -- DEPUT Y G RECO D OE SN 'T K NO W ABOUT THE F IELD R ECOR DS . IF YOU LOOK A T THE W HO LE RECORD THERE ARE SOM E F IELD ACTIVITY REPORTS.

BOTTOM LINE , I N O RDER TO MAINTAIN CERTIFICATION, DON'T THEY HAVE TO MAINTAIN SOME FIELD R EPOR TS O R S OM E REPORTS OF AT LEA ST T HEIR CONTINUING OF THE TRAINING?

THERE IS N O R EQ UI RE MENT OF THAT. THE CER TIFICATION I S S IM PL Y S OMETHING BUT WHEN IT I S B Y THE UNITED STATES POL ICE CANINE ASS OCIATION THAT H AENS ONCE A YEA R , BRI NG DOG IN, WE DO A F EW T ES TS AND WE CERTIFY O R NOT .

BUT THERE IS NO REQUIREMENT THAT THEY MAINTAIN THIS CERTIFI CA TION?

NOT BY THAT AGENCY. THERE IS A REQUI RE MENT AS FAR AS T HE P OLIC E T HE N WANTING TO ESTABLISH THIS DOG IS BEING R EL IA BLE , THE POLICE THEN O N THEIR OWN D O TRAINING AND TESTING AND THERE IS ANOTHER POINT I WANT TO ADDRESS I F I C AN F OR A MOMENT, THE STATE IN T HE IR COMMENTS MADE THE S TATEMENT THAT RAZOR H AD R EC EIVE D STATE CERTIFICA TI ON I N ADDITIO N TO THE UNITED STATES POLICE C ANIN E ASSOCIATION. THAT'S NOT TRUE. THERE IS A DEPOSITION BY DEPUTY GRECO WHERE HE FIR ST SAYS THAT THINKING IT I S T HE FDLE BUT THE N H E R EA LI ZE S I T IS JUST A CERTIFICATION F RO M THE HILLSBOROUGH COU NT Y SHERIFF'S OFFICE AND THAT'S AT PAGE 153. H ERE'S THE OTHER PROBLEM: NOT ONLY DO YOU H AV E NATIONAL AGENCIES WHO DON'T AGREE REGARDING THE PROTOCOLS AND WHAT CAN BE DONE TO INSURE REL IA BI LITY . AT THE INT ER ME DIAT E L EV EL ALL OF THE DIFFERENT AGENCIES THAT HAVE THESE DOGS THEY ALL HAVE THE IR OWN REQUIREMENTS AND OWN PRO TOCOLS. THEY ARE ALL DEFIN ING W HAT IS SUFFICIENT AND IN THIS CASE ONE OF T HE M OS T T ROUBLESOME ASPECTS OF T HE HILLSBOROUGH COU NT Y SHERIFF'S OFFICE SYSTEM IS IF YOU TEST AND T RA IN THE IR DOGS A SIGNIFICANT PORTION OF THAT I S H AVING THE H ANDLER , I NCLU DI NG D EP UT Y GRECO, HID E T HEIR OWN D RUGS AND THEN WALK THE D OG . T HEY ARE S UP PO SED TO B E MAINTAINING RAZOR'S A CC UR ACY , THE OFFICER MAY BE CUING T HE DOG JUST LIKE THIS OFFICER WAS DOING D URING A CER TIFICATION TESTI NG B AC K BEFORE T HE UNITED S TATES POLICE CANINE ASS OC IA TION S O IF THIS COURT C HO OS ES T O ADDRESS -

YOUR TIME HAS E XP IR ED I F YOU JUST WANT TO C ON CL UD E.

IF T HI S COU RT DOE S C HO OS E TO ADDRESS THE MOTION TO SURESS, WE ASK THIS C OU RT TO FIND THAT THE STATE FAILED TO ESTABLISH THAT RAZOR WAS SUFFICI ENTLY RELIABLE. THAT THE EVIDENCE ESTABLISHES THAT NEITHER THE ORIGINAL CERTIFICATION PROCEEDINGS OR T HE S UBSEQUENT TRAINING PROCEDURES WERE SUFFICIENT AND HIS A CT UAL REC OR D WAS NOT SUFFICIENT. THANK YOU, YOUR HONOR.

THANK YOU VERY MUCH. THE C OURT WILL BE IN REC ES S UNTIL TOM ORRO W. WE'LL BE IN R EC ES S .

P LEASE R IS E .