

*The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.*

**State of Florida v. Randy DeWayne Gibson**

**SC07-2158**

>> GOOD MORNING.

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

>> THE FINAL CASE ON OUR  
CALENDAR THIS MORNING IS STATE  
OF FLORIDA V. GIBSON.  
ARE YOU READY TO PROCEED?

>> MAY IT PLEASE THE COURT,  
SUSAN SHANAHAN FOR THE --  
>> WOULD YOU PULL THAT  
MICROPHONE DOWN?  
YOU HAVE A VERY SOFT VOICE, SO I  
THINK WITH THE AID OF THE  
MICROPHONE --

>> THANK YOU, JUDGE.

OR JUSTICE.

SUSAN SHANAHAN FOR THE STATE OF  
FLORIDA, THE PETITIONER IN THIS  
CASE.

I'D LIKE TO RESERVE FIVE MINUTES  
FOR REBUTTAL, PLEASE.

THIS COURT SHOULD DISAPPROVE  
MATHESON WITH EVERY JURISDICTION  
IN THE NATION AND STATE THAT HAS  
ADDRESSED THIS ISSUE.

MATHESON, WHICH GIBSON HAS  
RELIED ON, HAS FOUND THAT  
NARCOTICS DETECTION DOGS ALERT  
ON A VEHICLE ONLY PROVIDES AN  
OFFICER WITH MERE SUSPICION.

>> COULD YOU JUST GIVE US WHAT  
YOU CONSIDER TO BE THE RELEVANT  
FACTS IN THIS CASE?

>> YES, YOUR HONOR.

I ABSOLUTELY WILL.

IN THIS PARTICULAR CASE, IN  
GIBSON --

>> IN GIBSON, CORRECT.

>> YES.

THE OFFICER HAD, WAS ON PATROL  
IN HIS VEHICLE, AND GIBSON, THE  
DEFENDANT IN THIS CASE, HAD BEEN

DRIVING IN HIS VEHICLE, AND THE OFFICER DETERMINED THAT GIBSON'S VEHICLE, THE WINDOWS WERE TINTED TOO DARK AND WERE AN ILLEGAL TINT.

HE PULLED GIBSON OVER BECAUSE OF THAT INFRACTION.

>> WHAT TIME OF THE DAY OR NIGHT WAS IT, AND WHAT TIME OF THE YEAR?

>> THIS WAS IN JULY, AND IT WAS JULY 2005, AND IT WAS ABOUT 6:00 IN THE EVENING.

>> ON I-75, IS THAT --

>> THAT'S CORRECT, YOUR HONOR, IN SARASOTA COUNTY.

AFTER PULLING HIM OVER --

>> DID THE RECORD REFLECT THAT THIS OFFICER WAS A ROUTINE TRAFFIC OFFICER, OR WAS HE PART OF SOME CRIMINAL INVESTIGATION UNIT?

>> HE WAS A PATROL OFFICER, BUT HE HAD ALSO BEEN INVOLVED IN A, YES, IN A SPECIAL UNIT THAT HAD, THAT HAD PATROLLED THE HIGHWAYS, AND HE HAD BEEN INVOLVED IN A NARCOTICS DETECTIONS UNIT AS WELL.

AND AFTER PULLING OVER THE DEFENDANT IN THIS CASE, BEFORE APPROACHING THE VEHICLE HE COULD TELL EVEN THOUGH THE WINDOWS WERE TINTED THAT THERE WAS SOME FURTIVE MOVEMENTS IN THE CAR WHICH MADE HIM SUSPICIOUS.

HE COULD TELL THAT GIBSON WAS PUTTING THINGS INTO THE SIDE OF THE ARMREST.

AND MOVING THINGS, MAYBE, FROM HIS WAISTBAND.

AND THIS MADE THE OFFICER VERY SUSPICIOUS FOR HIS SAFETY AS WELL AS, YOU KNOW, MAYBE WHAT WAS GOING ON.

THERE MAY HAVE BEEN WEAPONS IN THE CAR --

>> HE COULD OBSERVE THAT THROUGH THE ILLEGAL WINDOWS THAT WERE TOO DARK?

FOR THE OFFICER TO SEE IN?

>> YES.

ALTHOUGH THE WINDOWS WERE TOO

TINTED, HE STILL COULD SEE FURTIVE MOVEMENT THROUGH THE TINT.

>> SOME EXPLANATION OF THAT? THAT IS THAT, OBVIOUSLY, THOSE LAWS --

>> YES.

>> WERE INTENDED SO THAT OFFICERS COULD SEE.

>> THAT'S CORRECT.

>> IN VEHICLES AND THAT THEY NOT BE, SO WAS THERE SOME EXPLANATION ABOUT JUST HOW TINTED OR HOW DARK THESE ILLEGALLY-TINTED WINDOWS WERE? BECAUSE THAT'S, I DON'T SEE ANY RESOLUTION OF THAT IN THE RECORD.

>> WELL, WHAT I CAN TELL YOU IS HE WAS GIVEN A WARNING FOR THE ILLEGAL TINT.

>> OKAY.

BUT THE OFFICER SAID THAT THE WINDOWS WERE ILLEGALLY DARK, BUT THEY WEREN'T SO DARK.

THAT IS CORRECT.

>> -- THE VEHICLE, AND THAT THEY NOT BE SO -- WAS THERE SOME EXPLANATION ABOUT JUST HOW -- HOW TINTED, HOW DARK THESE ILLEGALLY TINTED WINDOWS WERE? THAT IS, I DON'T SEE ANY RESOLUTION OF THAT IN THE RECORD.

>> WELL, WHAT I CAN TELL YOU, HE WAS GIVEN A WARNING FOR THE ILLEGAL TINT --

>> BUT THE OFFICER SAID THAT THE WINDOWS WERE ILLEGALLY DARK, THAT THEY WEREN'T SO DARK THAT HE COULDN'T SEE THE MOVEMENTS. AND DID HE DESCRIBE THAT?

DID HE

SAY, "WELL, I COULDN'T SEE CLEARLY BECAUSE THE WINDOWS WERE TINTED? I COULD SEE -- I COULD SEE THEM CLEARLY BECAUSE THEY WEREN'T SO TINTED TO PREVENT" --

>> HE COULDN'T TELL EXACTLY WHAT WAS GOING ON.

HE COULD TELL

SOMETHING WAS GOING ON, THAT ALL

OF THE SUDDEN THERE IS MOVEMENT,  
WHICH IS NOT NORMAL IN A TRAFFIC  
STOP.

>> HAS THERE BEEN AN ARGUMENT  
MADE THAT THE STOP WAS NOT --  
>> NO, THERE WAS NO ARGUMENT MADE  
BELOW THE STOP WAS NOT VALID.

>> CAN YOU TELL ME THE LOCATION  
FROM WHICH THE OFFICER -- DOES THE  
RECORD TELL US THE LOCATION  
FROM WHICH THE OFFICER MADE THIS  
OBSERVATION?

IS IT BEHIND THE CAR?

IS IT THE APPROACH?

IS --

>> THIS IS BEHIND THE VEHICLE.

>> BEHIND THE VEHICLE.

>> YES.

>> AND IN FACT HE WAS SO  
SUSPICIOUS THAT AT THE POINT  
WHAT HE DID WAS HE ASKED THE  
DEFENDANT TO GET OUT OF HIS CAR,  
AND INSTEAD OF APPROACHING HE  
WAS SUSPICIOUS ENOUGH, CONCERNED  
FOR SAFETY ENOUGH, HE ASKED THE  
DEFENDANT TO REMOVE HIMSELF FROM  
THE VEHICLE.

>> HOW DID HE ACCOMPLISH THAT?

>> PARDON ME?

>> HOW DID HE ACCOMPLISH THAT?

>> I THINK THAT HE DID -- HE EXITED  
HIS OWN VEHICLE, AND THEN  
PROBABLY FROM HIS --

>> THERE IS NO PROBLEM, I MEAN  
WHAT DOES THE RECORD TELL US?

>> THE RECORD TELLS US THAT HE  
HAD EXITED HIS VEHICLE AND  
ASKED THE DEFENDANT TO REMOVE  
HIMSELF FROM --

>> SO HE APPROACHED THE CAR, THE  
WINDOW WAS DOWN.

>> THAT IS NOT IN THE RECORD.

>> NOT IN THE RECORD.

>> HE DIDN'T DO IT --

>> YOUR HONOR, I CAN'T  
ANSWER THAT, NOT CLEAR FROM THE  
RECORD.

I CAN JUST TELL YOU HE  
SAID -- HIS TESTIMONY WAS THAT HE  
WAS CONCERNED ENOUGH FOR HIS  
SAFETY, THAT INSTEAD OF  
APPROACHING THE VEHICLE HE ASKED  
THIS DEFENDANT TO REMOVE HIMSELF  
FROM HIS VEHICLE,

IN THE APPROACH TO HIS VEHICLE.

>> ALL RIGHT.

ENDED UP --

THERE WERE THREE PEOPLE IN THE VEHICLE?

>> THERE WAS.

>> A WOMAN AND WHAT, A BABY OR A YOUNG CHILD?

>> YES, THERE WAS A CHILD IN THE BACK SEAT, A WOMAN PASSENGER.

>> HOW OLD WAS THE CHILD, DID YOU GET ANY APPROXIMATION OF THAT?

>> IF I REMEMBER CORRECTLY, I BELIEVE A CHILD THAT WAS ABOUT FIVE YEARS OLD, IF I REMEMBER CORRECTLY.

>> WAS THE OFFICER -- DID THE OFFICER TESTIFY THAT HE COULD TELL THAT THERE WAS A PASSENGER AND A CHILD IN THE VEHICLE BEFORE HE STOPPED IT?

>> I DON'T RECALL THAT HE TESTIFIED.

>> OKAY.

>> I THINK THESE ARE ALL INTERESTING BUT I GUESS WHEN I WAS TALKING ABOUT RELEVANT FACTS I REALLY WANTED YOU TO FOCUS ON THE RELEVANT FACTS ABOUT THE ISSUE OF THE DOG'S -- WAS IT THE DOG ALERT AVOIDED PROBABLE CAUSE, WHICH I GUESS IS WHAT IS THE CONFLICT ISSUE.

SO IF YOU COULD GET -- AND I KNOW THIS IS A SECONDARY ISSUE WHETHER THE STOP WAS TOO LONG, BUT LET'S JUST GET TO THE DOG IS CALLED, AND THEN THIS TO ME, THE DOG ALERTS TO THE TRUNK.

>> INITIALLY, THE FIRST ALERT WAS TO THE TRUNK.

>> AND THE DOG IS NOT CERTIFICATED IN FIREARMS; CORRECT?

>> THERE WAS NO TESTIMONY THAT THE DOG WAS CERTIFICATED TO DETECT A --

>> WAS THERE A SECOND ALERT?

>> THERE WAS A SECOND ALERT, AND WHAT THE DOG, THE OFFICER EXPLAINED, AND THIS IS THE HANDLER WHICH IS NOT THE OFFICER THAT STOPPED THE VEHICLE, THIS IS THE SECOND OFFICER, THIS IS THE

DOG HANDLER.

WHAT THEY DID IS HE EXPLAINED THAT THEY TAKE THE DOG, ISSUED A FIRST, AND THAT IS THE TOP OF THE VEHICLE, SO TO SPEAK, AND HE ISSUED THE DOG ALERT TO DO THE TRUNK OF THE VEHICLE FIRST.

>> JUST GET SO WE UNDERSTAND --

>> TO THE TRUNK, NOTHING IS FOUND IN THE TRUNK. IS THAT CORRECT?

>> THEY FOUND -- DRUGS IN THE BACK OF THE VEHICLE.

>> NOT IN THE TRUNK.

>> NOT IN THE TRUNK.

BUT WHAT THE OFFICER EXPLAINED IS THAT WHEN THE VEHICLE IS TRAVELING DOWN THE ROAD, A LOT OF TIMES THE COCAINE, WHATEVER WAS FOUND, PASSES THROUGH THE SEAMS OF THE VEHICLE, CAN BE TRUCK PASSENGER DOORS, AND THE DOG ON THE SECOND TURNAROUND DID ALERT THE PASSENGER SIDE OF THE CAR.

>> WHAT WERE THE DRUGS FOUND IN THE CAR?

>> PARDON ME?

>> WHAT WERE THE DRUGS?

>> THE DRUGS WERE FOUND, THE TYPE OF DRUG WAS COCAINE, COCAINE RESIDUE.

>> WHAT QUANTITY NOT DETERMINED.

>> WAS IT TRUCK RESIDUE?

>> YES, IT WAS.

>> SO IT WAS A RESIDUE THAT -- IT WASN'T AN AMOUNT OF DRUGS THEN.

>> THAT IS CORRECT.

>> A QUANTIFIABLE AMOUNT FOUND IN A METAL BOX WITH A FIREARM.

>> YES.

>> BACK SEAT OR BACK FLOOR, WHERE?

>> AGAIN, THE RECORD IS NOT CLEAR, THE FIREARM WAS FOUND IN THE BACKSEAT COVERED WITH HIS T-SHIRT NEXT TO THE SHIELD, I BELIEVE THE TIN WAS FOUND IN THE BACK SEAT AS WELL.

HE ADMITTED

THAT THE TIN WAS HIS, THE PARAPHERNALIA, THE RAZOR BLADE WAS HIS, THE COCAINE RESIDUE

ON THE RAZOR BLADE THAT THE RESIDUE AND THE TIN WAS HIS. >> LET ME GET TO A QUESTION, THAT -- OBVIOUSLY, THE FIRST QUESTION IS FOR THAT WE HAD BEFORE US IS SORT OF THE PRELIMINARY ISSUE -- WHAT WILL IT TAKE FOR THE EVIDENCE, THE DRUG-SNIFFING DOG TO BE ADMITTED AND CONSIDERED BY A TRIAL COURT WHEN THERE IS A MOTION TO SUPPRESS HERE?

ONE OF THE CONCERNS THAT I HAVE, I WOULD LIKE YOU TO EXPLAIN TO ME HERE, IS THAT INITIALLY I FIND IT VERY ATTRACTIVE IN THE DECISIONS THAT SAY WELL, IF YOU FIND THAT A DOG HAS BEEN TRAINED AND QUALIFIED THROUGH AN EXTENSIVE PROGRAM TO DO THIS KIND OF WORK THAT THAT OUGHT TO ESTABLISH SOME KIND OF PRIMA FACIE BASIS FOR THE DOG ALERTS. THAT PARTICULAR DOG DOES. HOWEVER, FINDING THAT ATTRACTIVE THEN LOOK IN THIS CASE -- HELP ME WITH -- IS THERE SOME BASIS FOR THE SCIENCE OF DOG-SNIFFING? IS THERE SOME EVIDENCE PRESENTED BY SOMEBODY IN THIS CASE THAT GETS ME SO I CAN UNDERSTAND COMMON PARLANCE? WE ALL SAY, WELL, WE OWN DOGS AND WE KNOW THEY SNIFF AT EVERYTHING, AND IT SOUNDS LIKE THEY HAVE A SPECIAL SCENT, YOU KNOW, POWERS OR SOMETHING LIKE THAT. BUT IS THERE EVIDENCE IN THIS CASE, THOUGH, FROM SOME KNOWLEDGEABLE PERSON -- I DON'T KNOW, A DOG TRAINER, A VETERINARIAN, SCIENTIST -- OR SOMEBODY THAT EXPLAINS THIS TO THE COURTS IN THE RECORD OF THIS CASE, SAYS "LOOK, HERE IS THE SPECIAL POWERS THAT A DOG HAS," YOU KNOW BEYOND WHAT A HUMAN HAS, FOR INSTANCE, AND THEN, "HERE IS HOW WE TAKE ADVANTAGE OF THOSE SPECIAL POWERS, YOU KNOW, BY TRAINING DOGS," AND THEN, "HERE ARE THE PROTECTED THINGS THAT WE CAN BE ASSURED OF THE

RELIABILITY," WHATEVER.

IS THERE SOMETHING LIKE THAT IN THE RECORD HERE?

>> NO, AND IT IS NOT REQUIRED.

WHAT WAS REQUIRED AND SHOULD BE REQUIRED IS WHAT THE STATE PRESENTED.

>> WHY SHOULDN'T IT BE REQUIRED?

>> BECAUSE --

>> IN OTHER WORDS, IF -- IF YOU ARE SAYING THIS CONCEPT THAT A DOG CAN SNIFF A ROSE INSIDE A VEHICLE FROM A HUNDRED YARDS OR SOMETHING THAT WE SHOULD JUST ACCEPT THAT BECAUSE A TRAINER SAYS, WELL, THAT IS WHAT WE TRAINED THEM TO DO AND THEY CAN DO IT, WE DON'T NEED ANY -- IS IT A FACT, SCIENTIFIC EXPLANATION OF THAT CONCEPT BEFORE WE GET TO THE POINT THAT WE JUST ACCEPTED?

>> WELL, WHAT WE HAVE, THE UNITED STATES SUPREME COURT PRECEDENT IN THE UNITED STATES VERSUS CABALLES AND UNITED STATES VERSUS PLACE SAYS A CANINE SNIFF IS SUI GENERIS, MEANS UNIQUE. THE UNITED STATES SUPREME COURT RECOGNIZED A CANINE SNIFF IS EXTRAORDINARY.

>> LET ME JUST BE SURE AT LEAST IN THIS CASE -- THERE IS NOTHING IN THIS CASE -- THERE ARE NO PREDICATES IN THE EVIDENCE THAT HE WAS PRESENTED TO THE TRIAL COURT ABOUT ANY OF THE SCIENCE OF THIS; IS THAT CORRECT?

>> THAT IS CORRECT.

>> OKAY.

I'M JUST TRYING TO BE CLEAR.

>> THAT IS CORRECT.

>> THIS IS WHAT -- WHAT CONCERNS ME, BECAUSE WE ARE DEALING WITH WHETHER IT IS APPLIED PROBABLE CAUSE WE LOOK AT THE FOURTH AMENDMENT THAT SAYS YOU KNOW THAT ONLY A WARRANT SHALL ISSUE UPON PROBABLE CAUSE IN FRONT OF A NEUTRAL MAGISTRATE, AND YET WE HAVE A MAGISTRATE WE'VE GOT THE EXCEPTION, THE AUTOMOBILE EXCEPTION, USUALLY EXIGENT

CIRCUMSTANCES.

NOW WE HAVE A CASE  
REALLY THIS WAS A STOPPING  
OF SOMEBODY THAT HAD A PAIR OF TINTED  
WINDOWS QUESTION, WHETHER THE  
STOP WAS PROLONGED UNREASONABLY,  
BUT RESOLVED IN YOUR FAVOR, AND  
WHAT THE STATE IS ASKING US TO  
DO -- AND THIS IS MY CONCERN -- IS TO  
SAY THAT IF THIS SAME EVIDENCE  
WENT BEFORE A NEUTRAL  
MAGISTRATE, WHICH IS THE DOG  
ALERTS, THERE WAS EVIDENCE THAT  
DOG WAS TRAINED CERTIFIED WITHOUT  
ANY EVIDENCE OF THE PERFORMANCE  
HISTORY OR ANY OTHER  
CIRCUMSTANCES THAT WERE  
SUSPICIOUS, ANYTHING ELSE, JUST A  
A DOG ALERT, THAT THAT IS ENOUGH  
TO SUPPLY PROBABLE CAUSE; AND  
YET I THINK A MAGISTRATE, A JUDGE,  
WOULD HAVE PROBLEMS SAYING THAT  
THAT ALONE WOULD BE ENOUGH GIVEN  
OUR OTHER CASES.

AND YET HERE  
WE'VE GOT THE STATE, WHO IS  
HAVING A WARRANTLESS SEARCH, AND  
WE'RE SAYING THAT ANYTHING THAT  
TO CHALLENGE THIS THAT HAS GOT  
TO BE THE DEFENDANT'S  
RESPONSIBILITY TO BRING THAT  
INTO COURT.

AND THAT IS WHAT I'M CONCERNED,  
THAT WE'RE DOING THIS BACKWARDS.  
THAT IS, THAT I AGREE THAT -- I  
MEAN WE CAN'T GET ISSUED A -- THE  
U.S. SUPREME COURT SAID A SNIFF IS  
NOT A SEARCH, YOU KNOW, THERE IS  
BECAUSE THEY ONLY ALERT TO  
ILLEGAL SUBSTANCES, BUT IF THEY  
DON'T ALWAYS ALERT JUST TO  
ILLEGAL SUBSTANCES YOU HAVE THE  
DANGER OF A SEARCH WITHOUT THERE  
BEING A CERTAINTY OR A  
PROBABILITY OF THEIR BEING.  
SO WHY ISN'T IT A BETTER POLICY NOT  
TO ACCEPT THE MATHESON REASONING  
BUT TO SAY THAT THE  
NEUTRAL DECISION MAKER HAS TO  
LOOK AT THE TOTALITY OF THE  
CIRCUMSTANCES ABOUT THAT DOG,  
AND THAT THE STATE CAN'T JUST  
SAY THEY ARE TRAINED AND CERTIFIED,  
THERE SHOULD BE ADDITIONAL

INDICATIONS OF RELIABILITY OF THIS DOG AND, YOU KNOW, YOU SEE WHAT THE U.S. CUSTOMS SERVICE PUT ITS DOGS THROUGH, WHY ISN'T THAT A BETTER THING TO PROTECT THE RIGHTS OF OUR CITIZENS UNDER THE FOURTH AMENDMENT FROM WARRANTLESS SERVICES WITHOUT PROBABLE CAUSE?

>> BECAUSE PROBABLE CAUSE MEANS A FAIR PROBABILITY. IT DOESN'T MEAN ABSOLUTE CERTAINTY. AND I THINK WHAT YOU ARE ASKING FOR IS YOU WANT THESE DOGS TO BE ABSOLUTELY CERTAIN.

>> NO. I JUST WANT TO KNOW WHAT THE HISTORY IS, I JUST WANT TO SAY THAT THE STATE SAYING, WE PUT ON -- WE HAVE ESTABLISHED PROBABLE CAUSE IF THE DEFENDANT DOES NOTHING ELSE, IF WE SAY THAT THAT DOG WAS TRAINED, AND/OR CERTIFICATED.

>> HMM. >> -- THAT THAT IS ENOUGH AND THAT IT SHOULD BE -- THE DEFENDANT WHO MIGHT BE INDIGENT TO TRY TO BRING EXPERT SCIENTIFIC PROOF, TRAINING RECORDS THAT MIGHT NOT EXIST TO COUNTER THAT.

THAT IS WHAT I'M CONCERNED WITH, THE BURDEN AS THIS SHOULD -- WHETHER THAT IS TOO SMALL A BURDEN FOR THE STATE WHEN WE LOOK AT WHAT WE REQUIRE IN THE AREA OF CONFIDENTIAL INFORMANTS, OF ALL THE OTHER THINGS WHERE WARRANTS ARE REQUIRED, I WOULD FIND IT VERY AMUSING IF WE WERE AUTHORIZING SEARCHES OF, YOU KNOW, WAREHOUSES, WHATEVER, ON A DOG SNIFF THAT DIDN'T HAVE ANY OTHER INFORMATION IN IT FOR A WARRANT TO BE OBTAINED.

>> OKAY. WE ARE LOOKING AT, AGAIN, IN THIS PARTICULAR CASE, IN MOST -- THE FOURTH AND FIFTH DISTRICT HAS DISAPPROVED SEARCHES OF

VEHICLES.

WE KNOW THAT IN  
VEHICLES, WE HAVE THE CAROL  
DOCTRINE LOOKING AT MOBILITY.  
YOU DON'T -- YOU HAVE LESS  
EXPECTATION OF PRIVACY IN A VEHICLE  
THAN YOU DO IN MAYBE A WAREHOUSE  
OR YOU DO IN YOUR HOME.

AND PROBABLE CAUSE AGAIN IS NOT  
ABSOLUTE CERTAINTY, AND WHEN YOU  
SAY THAT DOG STATE COMES IN YOU  
SAY MY DOG YOU HAVE A TRAINER OR  
HANDLER SAYS MY DOG IS TRAINED,  
CERTIFIED, HE HAS HAD 400 HOURS IN  
THIS PARTICULAR CASE OF  
TRAINING, TWO AND A HALF MONTHS,  
HE COMPLETED THIS PROGRAM, AND  
TO OBTAIN HIS CERTIFICATION HE  
HAS TO GO THROUGH A CERTAIN  
NUMBER OF SEARCHES, AND BE  
CORRECT ON ALL OF THOSE  
SEARCHES.

>> THEY HAVE TO DO SO MANY -- THEY  
HAVE TO MAINTAIN THAT TRAINING  
EVERY MONTH.

>> MAINTAIN TRAINING.

>> CORRECT?

>> THAT IS CORRECT.

>> CONTINUE AND CERTIFICATION,  
THEY ARE RECERTIFIED EVERY SINGLE  
YEAR, KIND OF LIKE A LAW SCHOOL,  
MAYBE EVERY LAW SCHOOL IS  
DIFFERENT.

>> HOW MUCH DID ONE OF THESE  
COST IN THE TRAINING OF THESE DOGS?  
WHAT IS THE NORMAL COST?  
IS IT IN THIS RECORD?

>> IT IS NOT IN THIS RECORD.

YOU ARE ASKING HOW MUCH IT COST TO  
COMPLETE A TRAINING PROGRAM?

OR --

>> TO HAVE A DOG LIKE THIS FOR  
THE AVERAGE LAW ENFORCEMENT, DO  
YOU KNOW?

I KNOW A CASE I HAD TEST

--

>> IT IS NOT IN THIS RECORD.

>> IT --

>> WOULD THAT MAKE A DIFFERENCE  
ON THIS PARTICULAR HIGHWAY THAT  
THIS PARTICULAR DOG AND HANDLER  
OFFICER, THERE HAVE BEEN TEN  
PRIOR STOPS THAT DAY, AND ON  
EVERY ONE OF THOSE THE DOG

ALERTED, BUT IN NONE OF THOSE CIRCUMSTANCES WERE THERE ANY CONTRABAND, NARCOTICS OR DRUGS FOUND?

IS THAT SOMETHING THAT OUGHT TO BE CONSIDERED OR SOMETHING THAT IS IRRELEVANT BECAUSE THIS DOG HAS BEEN TRAINED?

IS THAT THE VIEW OF THE STATE, IT MAKES NO DIFFERENCE IN THE WORLD BECAUSE IT IS ONLY THE CERTIFICATION, THE TRAINING OF WHATEVER, WHEREVER IT CAME FROM, WHETHER IT WAS WASHINGTON OR TRAINED IN FLORIDA, OR TRAINED IN MICHIGAN, WHO KNOWS WHERE?

>> THE REASON THE TRAINING CERTIFICATION IS SO IMPORTANT, AND THAT IS IN THE REASON, THAT IS WHY -- TRAINED CERTIFICATION THEY DO A CONTROLLED ENVIRONMENT, ONLY IN A CONTROLLED ENVIRONMENT CAN YOU HAVE A VERIFIED ALERT, AND WHEN YOU GO OUT IN THE FIELD YOU DON'T KNOW IF DRUGS ARE FOUND OR NOT, IF THERE MAY HAVE BEEN RESIDUAL ODORS.

DOGS ARE NOT TRAINED TO DETECT WHETHER DRUGS ARE ACTUALLY, THERE IS DANGER --

>> NO.

>> DON'T YOU THINK -- SO IF I'M DRIVING A VEHICLE, I HAVE MONEY IN MY PURSE AS RESIDUE, AND WE'RE SAYING THAT THE DOG MIGHT ALERT TO SOMETHING THAT ISN'T OR IN A RENTAL CAR, WE'RE TALKING STILL ABOUT NOT -- THAT UNLESS WE ARE GOING TO SAY LET'S SEARCH VEHICLES, LET'S JUST -- NOT WORRY ABOUT BRINGING THIS DOG IN, LET'S JUST SAY, IS THAT UNDER THE FOURTH AMENDMENT, AUTOMOBILES ARE NOT PROTECTED AT ALL?

I MEAN THAT WOULD AT LEAST BE A LITTLE MORE -- AT LEAST WE HAVE WOULD BE ELIMINATING THIS FACADE THAT WE HAVE, BUT THAT IS -- YOU SEE, THAT IS THE FALLACY OF WHAT I THINK YOUR

ARGUMENT IS, IS THAT THEY CAN DO IT IN A CONTROLLED ENVIRONMENT, BUT IT DOESN'T MATTER IF THEY SCREW UP IN THE FIELD BECAUSE IF THEY SCREW UP IN THE FIELD 90% OF THE TIME THAT IS SOMETHING THE MAGISTRATE OR JUDGE SHOULD KNOW ABOUT.

>> THAT IS A CREDIBILITY DETERMINATION FOR THE TRIAL COURT, AND THAT IS WHY IT IS REBUTTABLE PRESUMPTION, AND THERE IS SUCH A MINUTE AMOUNT OF RESIDUE.

>> PLACES THE BURDEN ON THE OTHER SIDE.

>> PARDON?

>> IT IS PLACING THE BURDEN ON THAT ELEVENTH PERSON THAT STOPPED, TO GO AND PROVE THOSE PRIOR TEN IS REALLY WHAT YOU ARE SAYING.

>> THE BURDEN IS ON THE STATE FIRST TO SHOW THAT THE DOG TRAINED AND/OR CERTIFICATED, AND THAT JUST CREATES --

>> THAT IS THE QUESTION WE COME BACK TO THAT IS WHY I ASKED THE QUESTION ABOUT TEN PRIOR STOPS, AND ALL ALERTS AND MAYBE ALERTS AT EVERY DOOR, YET NO CONTRABAND FOUND SO.

YOU ARE SHIFTING THE BURDEN, TO THE DEFENDANT TO SHOW THAT, AND MANY TIMES, WITH NOT HAVING ACCESS TO RECORDS TO SHOW THAT.

>> THEY CAN ABSOLUTELY GET ACCESS TO RECORDS.

THOSE WOULDN'T REALLY I THINK HELP THE TRIAL COURT IN TERMS OF THOSE ARE UNVERIFIED ALERTS.

>> YOU ARE SAYING THEN THAT AGAIN, YOUR ARGUMENT IS THAT THE RELIABILITY AND ACTUAL OPERATION HAS ABSOLUTELY NOTHING TO DO WITH IT BECAUSE YOU SAID THAT MAKES NO DIFFERENCE TO THE FACT FINDER.

>> IT IS A CREDIBILITY DETERMINATION FOR THE FACT FINDER. BUT RESIDUAL ODORS THE DOG WILL ALERT TO RESIDUAL ODORS, BUT LET ME JUST SAY THAT CURRENCY IN YOUR PURSE IS SUCH A TRACE

AMOUNT, ONLY LASTS FOR A FEW HOURS, BECAUSE IT GOES THROUGH HANDS AND ALL DIFFERENT KINDS OF THINGS, THAT --

>> HOW DO WE KNOW THAT?

>> THAT I CAN TELL YOU IS OUTSIDE THE RECORD BUT IS -- FROM STUDIES.

>> DID THE CERTIFICATION PEOPLE HERE THAT TESTIFIED ABOUT THE TRAINING, IS THERE ANY REQUIREMENT IN THE CERTIFICATION PROGRAM OR THE RECERTIFICATION PROGRAM THAT A RECORD BE KEPT OF THIS DOG'S PERFORMANCE?

>> EVERY LAW ENFORCEMENT AGENCY KEEPS TRAINING RECORDS OF THEIR DOGS AND THEY DO THIS FOR A DIFFERENT NUMBER OF PURPOSES, FIRST OF ALL, TO KNOW WHETHER THEIR DOG --

>> IS -- IS THERE A REQUIREMENT UNDER THE CERTIFICATION OR RECERTIFICATION STANDARDS THAT A RECORD BE KEPT OF THE DOG'S PERFORMANCE IN THE FIELD?

THAT IS SORT OF A, YOU KNOW -- THAT IS A YES OR NO QUESTION.

>> NO.

>> SO DOES THAT MAKE ANY SENSE?

>> YES.  
IT MAKES SENSE.

>> IT MAKES SENSE THAT NO RECORD SHOULD BE KEPT?

HOW FAR THE DOG IS -- NOW THE DOG HAS BEEN LET OUT, AND IS PERFORMING IN THE FIELD AND YET THERE IS NO REQUIREMENT --

>> YOU ARE ASKING TWO DIFFERENT QUESTIONS.

>> -- THAT SUPERVISES THE DOG, KEEPS ANY RECORD OF THE PERFORMANCE OF THE DOG.

>> NO.  
YOU ASKED --

[NO AUDIO]  
-- PROBABLE.

>>> UM-HMM.

>> SO SHOULDN'T HE HAVE HAD KNOWLEDGE OF THIS DOG'S PERFORMANCE?

>> HE DID HAVE THE KNOWLEDGE, HE

DIDN'T HAVE THE RECORD WITH HIM,  
AND I WOULD SUBMIT HE COULD  
TESTIFY TO THAT, HE WAS -- HE WAS  
NOT AWARE THAT THIS WAS GOING TO  
BE A MATTER OF OR ISSUE RAISED,  
AND HE DIDN'T HAVE THOSE RECORDS  
WITH HIM.

HE SAID I DON'T KNOW  
HOW MANY TIMES MY DOG HAS --  
>> HE DIDN'T SAY "I DON'T KNOW  
BECAUSE I DON'T HAVE ANY RECORDS  
WITH ME.

HE JUST SAID HE DIDN'T  
KNOW.

>> HE DID NOT KNOW.

I WOULD  
SUBMIT HE DID NOT HAVE THOSE  
RECORDS WITH HIM.

ABSOLUTELY THOSE RECORDS ARE  
KEPT.

AND IF YOU READ THE -- IF YOU READ  
THE TESTIMONY IN THIS CASE THE  
ONLY ISSUE REALLY ADDRESSED  
BEFORE THE TRIAL COURT WAS THE  
DELAY, NOT SO MUCH THE  
RELIABILITY OF THE DOG.

>> THERE WAS A QUESTION --

>> THERE WERE --

>> THERE WERE ONE OR TWO, THERE  
WERE ONE OR TWO QUESTIONS.

>> CAN I ASK A QUESTION.

>> SURE.

>> I WAS READING -- YOU MADE THE  
BOLD STATEMENT THAT ALL  
JURISDICTIONS TALK IN TERMS OF  
CERTIFICATION, BUT AS I READ THE  
PRINCIPLES OF LAW IN THOSE CASES  
THEY ALSO -- MANY OF THE CASES USE  
THE PHRASE "RELIABLE,  
RELIABILITY" IN ADDITION TO  
CERTIFIED TRAINING.

DO ALL OF THOSE  
CASES YOU ARE RELYING ON  
SPECIFICALLY ADDRESS AND EXCLUDE  
RELIABILITY FACTORS AS ACTUAL  
OPERATION, AND SPECIFICALLY MAKE  
THAT HOLDING?

OR DO THEY INCLUDE THAT, AS PART  
OF THE ASSUMPTION OF THAT RULE,  
ASSUMING THAT RULE OF LAW  
LAW THAT THERE MUST BE  
RELIABILITY, THAT TRAINING AND  
CERTIFICATION IS CERTAINLY, IS  
PART OF IT?

>> THOSE CASES HOLD THAT TRAINING AND CERTIFICATION EQUAL A PRUDENT --

>> EQUAL RELIABILITY, YES AND AT THAT POINT --

>> RELIABILITY OF THE DOG IS ESTABLISHED BY THE INTENSE TRAINING AND THE CONTROLLED ENVIRONMENT THAT THEY HAVE TAKEN TO WHERE THEY ARE -- ASKED TO PERFORM CERTAIN TASKS TO DETERMINE SPECIFIC DRUGS AND TRAINED TO SPECIFIC DRUGS.

>> YES.

>> AND THE CERTIFICATION ESTABLISHES THE RELIABILITY.

>> ARE YOU TELLING US IF WE GO --

>> THAT IS CORRECT.

>> ALL THE FEDERAL APPELLATE CASES THEY ALL JUST HAVE THAT PER SE RULE?

BECAUSE I -- IN LOOKING AT THEM, SEE MANY EXAMPLES OF WHERE THEY ARE TALKING ABOUT GENERAL RELIABILITY, NOT A PER SE RULE THAT THERE IS -- I MEAN SOME OF THEM DO, BUT OTHERS TALK ABOUT TOTALITY OF THE CIRCUMSTANCES.

>> THE ONES WHO HAVE ADDRESSED THE SPECIFIC ISSUE DO SAY TRAINING AND CERTIFICATION EQUALS RELIABILITY, AND EQUALS A PROBABLE CAUSE DETERMINATION WHICH CAN THEN BE REBUTTED, THERE IS ONE CASE OUT OF OHIO HAS EVEN SAID THAT THE TRACK RECORD OF A DOG IN THE FIELD ISN'T EVEN DISCOVERABLE BY DEFENSE BECAUSE THEY DON'T FIND IT RELEVANT.

THAT IS NOT WHAT THE STATE IS ASKING HERE.

THE STATE DOES SAY THAT IS RELEVANT, AN ISSUE FOR THE TRIAL COURT TO DETERMINE, AGAIN, IT IS -- IT IS FOR THE CREDIBILITY, IT GOES TO THE CREDIBILITY OF THE DOG.

THESE ARE FEDERAL CASES AS WELL AS STATE CASES, EVERY SINGLE ONE OF THEM HAS ADDRESSED THE ISSUE, THAT MENTIONED -- MATHESON SPECIFICALLY DISAPPROVES MATHESON, FINDS MATHESON OUTS OF THE MAINSTREAM,

THAT NARCOTICS -- DOGS ARE A VERY VALUABLE TOOL FOR LAW ENFORCEMENT.

>> ARE YOU -- DOES IT, TENNESSEE -- SUPREME COURT, YOU CONCLUDED THAT CASE, ONE THAT I'M -- PARDON ME.

>> THAT REJECTED A PER SE RULE OF PROBABLE CAUSE, THE TENNESSEE SUPREME CIRCUIT COURT.

>> I'M NOT SURE WHICH CASE.

>> ENGLAND 19

SOUTHWEST 3RD AT 768.

DID YOUR RESEARCH NOT COVER THAT?

>> I'M NOT FAMILIAR, FAMILIAR WITH THAT CASE.

I CAN TELL YOU

IDAHO, SOUTH DAKOTA, OHIO, MARYLAND SPECIFICALLY DISAPPROVED

MATHESON, HAVE ALIGNED WITH LAVERONI AND COLEMAN, AND THERE IS THE 11TH CIRCUIT -- OF

COURSE, OUR, YOU KNOW, FEDERAL CASE, EXTEND VIRTUAL --

>> JUSTICE PARIENTE SAID YOU WERE ASKING FOR PER SE PROBABLE CAUSE RULE, AS I UNDERSTOOD YOUR POSITION, CORRECT ME IF I'M WRONG, IS THAT YOUR POSITION IS IN LINE WITH THE FOURTH DISTRICT AND THE FIFTH DISTRICT POSITION WHICH ULTIMATELY WOULD BE THAT YOU HAVE A PRIMA FACIE CASE BY SHOWING THE TRAINING OF THE DOG.

AND THAT OTHER MATTERS CAN COME IN ON CROSS EXAMINATION, OR PRESENTATION OF TESTIMONY, ULTIMATELY THE TRIAL JUDGE HAS TO MAKE A DETERMINATION OF PROBABLE CAUSE ON TOTALITY OF THE CIRCUMSTANCES.

>> THAT IS ABSOLUTELY CORRECT.

>> SO GO AHEAD.

>> AND HELP ME A LITTLE BIT WITH THE -- AS A PRACTICAL MATTER, THE FOLKS WITH US, PUBLIC DEFENDERS WE HAVE ACROSS THE STATE, WE GET REPORTS AND THE DEFENDERS ARE NOT GOING TO BE ABLE TO EVEN HAVE LAWYERS, FOR FOLKS IN COURTROOMS, I MEAN THESE ARE TROUBLESOME ISSUES TO PLACE THE BURDEN AS A PRACTICAL MATTER JUST AS A PRACTICAL MATTER, TO PLACE

THE BURDEN ON ONE COMING IN  
CHALLENGING WHEN THEY DON'T HAVE  
THOSE RECORDS IN THEIR HANDS  
WHEN YOU ARE SAYING THAT THE LAW  
ENFORCEMENT HAS THE -- THEY HAVE  
IT READILY AVAILABLE, IT IS RIGHT  
THERE, WHAT IS THE FEAR  
TO LET SOMEBODY SEE THOSE  
DOCUMENTS?

AND JUST TO MAKE THAT AS A  
PRACTICAL MATTER?  
TO HAVE THOSE JUST PART OF THE  
EVIDENCE THAT IS AVAILABLE IN  
THESE KINDS OF CASES?

I MEAN YOU ARE SAYING THIS IS  
GREAT, SEEMS TO ME THERE SHOULD  
BE NOTHING TO FEAR THAT THIS IS  
WHAT IT IS GOING TO SHOW.

>> OH, THERE IS NOTHING TO FEAR  
I CAN TELL YOU AS A PRACTICAL  
MATTER -- TALK ABOUT JUDICIAL  
ECONOMY THE OTHER STATE TO COME  
IN EVERY SINGLE CASE AND BRING  
VOLUMES OF RECORDS TO THE TRIAL  
COURT AND SHOW, YOU KNOW THE  
TRACK RECORDS OF THE DOGS THAT  
EVERY SINGLE TRAINING RECORD ON  
THE DOG ALL THEY ARE DOING,  
CERTIFICATIONS, ONEROUS BURDEN  
NOT SURE THAT IS NECESSARILY  
SOMETHING --

>> ARE WE SEIZING PEOPLE  
THAT MUCH IT COMES IN VOLUMES?

>> NO BUT THEY COME IN VOLUME.  
NOW, RECORDS OF DOGS DETAILED  
RECORDS OF TRAINING RECORDS  
THESE DOGS ARE TRAINED EVERY  
WEEK.

>> HOW ABOUT RELIABILITY  
IN THE FIELD THAT IS WHAT  
I'M CONCERNED WITH.

>> THEY GO ON SEARCHES  
CONSTANTLY SO YOU ARE TALKING  
ABOUT AGAIN, VOLUMINOUS RECORDS  
AND THAT IS WHY I THINK, JUST  
COMING IN AND SAYING MY DOG IS  
PROPERLY TRAINED AND HE IS CERTIFIED,  
AND THEY DO SAY A LITTLE BIT  
MORE THAN THAT, THEY SAY YOU  
KNOW, WHAT THE TRAINING PROGRAM  
CONSISTED OF HOW MANY HOURS,  
WHAT THE CERTIFICATION MAY BE  
CONSISTED OF GOING TO LAW SCHOOL  
AND YOU GO TO YOUR BAR EXAM,

THAT --

>> IS IT LIKE LAW SCHOOL?

WE HAVE ABA ACCREDITATION.

THERE IS AN ACCREDITING AGENCY FOR THESE AND THAT IS WELL-KNOWN.

>> YES I CAN TELL YOU THAT THE CERTIFICATION PROGRAM, THERE ARE TWO OR THREE CERTIFICATION PROGRAMS, THEY ARE INDEPENDENT FROM LAW ENFORCEMENT AGENCIES, GO TO THESE LAW ENFORCEMENT AGENCIES, CERTIFY DOGS FOR THEM.

>> YOU ARE WELL OVER, WE'RE GOING TO GIVE YOU TIME, IT IS AN IMPORTANT ISSUE TO ALL OF US.

YOU WILL HAVE TIME TO GIVE REBUTTAL.

>> THANK YOU FOR YOUR TIME.

>> LET'S ALLOW THE DEFENSE AN OPPORTUNITY.

>> MAY IT PLEASE THE COURT.

MY NAME IS CAROL WILSON ON BEHALF OF RANDY GIBSON, AS A PRELIMINARY MATTER REGARDING THE FACTS OF THIS CASE -- THE RECORD SHOWS, ON PAGE 33, THAT MR. GIBSON'S ATTORNEY FILED A MOTION TO SUPPRESS IN WHICH HE STATED WHERE SPECIFICALLY THE ITEMS WERE FOUND, IN THE CAR, AND THIS IS NOT DISPUTED BY THE STATE THEY BOTH PARTIES AGREED AT THE END OF THE HEARING, THAT IT WAS A -- THE WEAPON WAS FOUND AT THE REAR WHERE THE DOG FIRST ALERTED, THE DOG IS NOT TRAINED IN FIREARMS.

THE SECOND TIME AROUND THE DOG ALERTED WHEN THE HANDLER WAS SHOWING THE DOG WHERE TO SNIFF, THE DOG ALERTS AT THE BOTTOM OF THE PASSENGER CAR.

NOW, THE RESIDUE OF COCAINE IS FOUND IN THE GLOVE COMPARTMENT OF THE CAR.

>> WE WERE UNDER THE IMPRESSION THERE WAS RESIDUE OF COCAINE IN THE BOX WHERE THE WEAPON WAS FOUND.

>> THAT IS INCORRECT.

>> CORRECT US.

EXACTLY WHERE WAS THE WEAPON?

>> IN A METAL CONTAINER IN THE GLOVE

COMPARTMENT OF THE CAR STATED IN THE DEFENSE MOTION TO SUPPRESS, AT THE END OF THE EVIDENTIARY HEARING THE STATE IS GOING TO CALL AN OFFICER TO SAY WHERE HE SEIZED THE ITEMS. THE COURT SAYS DO YOU AGREE WHERE THESE ITEMS WERE FOUND, TO THE DEFENSE, THEY SAY WE HAVE NO DISPUTE OVER THAT. THAT IS WHAT THE RECORD SHOWS. THE STATE DOES NOT MAKE ANY OTHER -- PUT FORTH ANY OTHER EVIDENCE IN THAT REGARD, SO THE COURT IS SAFE TO BELIEVE THAT THAT IS WHERE THE ITEMS WERE.

>> SO YOU ARE SAYING THAT THE DOG ALERT TO THE TRUNK, NOTHING WAS FOUND IN THE TRUNK.

>> NO, THERE WERE NO DRUGS IN THE TRUNK.

>> SECOND ALERT YOU SAY THE RECORD SHOWS THAT THE HANDLER, ACTUALLY DIRECTED THE DOG TO A SPECIFIC PLACE IN THE VEHICLE?

>> WELL, THE HANDLER, THIS IS HIS PROCEDURE, THE PROBLEM WITH THESE CASES, IS IF YOU READ THESE CASES, AT LEAST MY READING IS IT IS DIFFERENT, IN ALL THE CASES, YOU FEEL KINDLY OF CRAZY. WHAT IS THE STANDARD? LAWYERS ARE SUPPOSED TO TAKE SPECIFIC COURSES, THEY ARE SUPPOSED TO GRADUATE FROM COLLEGE. BUT WILL DOGS ALL OVER PLACES, CUSTOMS DOGS, TRAINING FOUR MONTHS --

>> YOU ARE GOING NOW TO A BROADER ISSUE.

WE ARE TRYING TO NARROW WHAT YOU ARE SAYING, ABOUT WHERE THE --

>> HANDLER.

>> WAS FOUND AND HOW THE DOG HAPPENED TO ALERT, ON NEAR THAT PARTICULAR PLACE, SO HOW ABOUT, CAPSULATE WHAT YOU JUST SAID.

AS I UNDERSTOOD IT THAT IS THAT -- THE HANDLER OF THE DOG OKAY, FIRST BROUGHT THE

DOG TO A PARTICULAR PLACE  
OUTSIDE THE VEHICLE, AND THEN  
TOLD THE DOG WHAT?

THE TRANSCRIPT SHOWS I  
BELIEVE THE HANDLER SAID  
SOMETHING ABOUT DOPE.

>> THERE WAS ANOTHER OFFICER  
THAT TOLD THE HANDLER WE THINK  
THERE IS DRUGS.

>> LET ME ASK YOU BECAUSE YOU'RE  
FAR MORE FAMILIAR WITH THE  
TRANSCRIPT THAN I AM, SO TELL  
ME, EXACTLY WHAT HAPPENED WHEN  
THE DOG HANDLER POLICE OFFICER  
FROM THE LOCAL MUNICIPALITY  
ARRIVED WITH THE DOG.  
WHAT HAPPENED WITH THE DOG AND  
HANDLER THEREAFTER.

>> THE HANDLER TOOK THE DOG AROUND  
FIRST THE LOWER PART OF THE CAR.

>> WHAT SIDE OF THE CAR?

>> I DON'T THINK THE RECORD  
INDICATES WHERE THE HANDLER  
STARTED.

>> DIDN'T IT INDICATE HE STARTED  
AT THE FRONT BUMPER ABOUT  
DRIVER'S SIDE FRONT BUMPER.

>> I DON'T REMEMBER --

>> NORMAL PROCEDURE.

>> THE RECORD IS NOT SPECIFIC  
ABOUT WHAT PLACES ON THE OUTSIDE  
OF THE VEHICLE THAT THE TRAINER  
TOOK THE DOG -- AND THE DOG  
SCENT?

>> WELL WE HAVE THE RECORD HERE,  
HE DESCRIBES LIKE EVERY OTHER  
SEARCH I DO I TOOK THE DOG TO THE  
FRONT DRIVER CORNER OF THE CAR  
GIVE HIM THE COMMAND FIND DOPE ON  
LEAD I WALK BACKWARDS AS HE IS  
IN FRONT OF ME, WE WALK AROUND  
THE VEHICLE.

SO THAT IS HOW HE STARTS.

>> CLEAR UP FOR US, YOU KNOW,

>> THE RECORD'S NOT SPECIFIC  
ABOUT WHAT PLACES ON THE OUTSIDE  
OF THE VEHICLE THAT THE  
HANDLER -- OTHER DOES SAY WHERE,  
WE HAD THE RECORD HERE.  
HE DESCRIBES, LIKE EVERY OTHER  
DRUG SEARCH I DO, I PUT HIM IN

THE SIT, GIVE HIM THE COMMAND,  
FIND DOPE.

ON LEAD I WALK BACKWARDS AS HE'S  
IN FRONT OF ME, AND WE WALK  
AROUND THE VEHICLE.

SO THAT'S HOW HE STARTS.

>> WELL, CLEAR UP FOR US, YOU  
KNOW, WHAT WAS FOUND AND WHERE  
IT WAS FOUND.

YOU SAY THAT THERE WAS A METAL  
BOX IN THE GLOVE COMPARTMENT  
THAT HAD A WEAPON INSIDE OF IT?

>> NO, THAT HAD RESIDUE.

>> I'M SORRY.

>> THAT HAD COCAINE RESIDUE.

>> WHERE WAS THE WEAPON?

>> IT WAS IN THE REAR OF THE  
CAR.

>> THE WEAPON WAS IN THE REAR OF  
THE CAR?

>> YES, JUSTICE.

>> THE METAL BOX IN THE GLOVE  
COMPARTMENT HAD COCAINE RESIDUE  
IN IT?

>> YES.

>> IS THAT --

>> DID THE DOG ALERT TO THAT  
PART?

>> THE DOG ALERTED TO THE BOTTOM  
OF THE PASSENGER DOOR SEAM  
BECAUSE THE HANDLER'S PROCEDURE  
WAS TO POINT TO THE PART OF THE  
CAR HE BELIEVED WOULD BE A  
STRONGER CHANCE OF AN ODOR  
EMANATING.

AND THOSE PLACES WERE INDICATED  
TO BE THE BOTTOM OF THE  
PASSENGER DOOR AND THE REAR OF  
THE VEHICLE.

>> SO IT DID NOT ALERT WHERE THE  
DRUGS WERE FOUND.

>> NO.

>> ALL RIGHT.

TO ME WHETHER THAT'S AN AFTER  
THE FACT, THIS IS A DOG THAT'S  
ALERTING TO SOMETHING THAT IS  
NOT EVEN TRAINED TO -- WHICH IS  
WEAPONS -- AND DOESN'T ALERT TO  
THE ONE PLACE IN THE VEHICLE  
WHERE THE DRUGS IS FOUND.

>> CORRECT.

I DON'T THINK THIS RECORD EVEN  
ESTABLISHES THE RELIABILITY OF  
SIRUS, BUT EVEN IF YOU'RE

LOOKING AT IT, YOU KNOW --

>> LET'S GO TO THAT.

I THINK THAT'S REALLY THE HEART OF WHAT WE'RE TALKING ABOUT, AND WE'RE TALKING ABOUT THE PRACTICAL IMPLICATIONS HERE, AND THE STATE IS SAYING WE PUT ON, AND I THINK THE RECORD BEARS THIS OUT, THE CERTIFICATION AND THE TRAINING PROCESS, THE NUMBER OF HOURS, AND THEY'RE SAYING THAT THIS IS A PRIMA FACIE, WHICH IS HOW YOU ESTABLISH IN THE LAW A PRIMA FACIE BASIS FOR REALITY.

AND THEY GO ON TO SAY IF YOU WANT TO LOOK IN THE FIELD, THAT OUGHT TO BE A OBLIGATION OF THE DEFENDANT WHO'S SAYING THIS IS NOT RELIABLE, YOU'RE CHALLENGING IT.

SO LET ME ASK YOU THE QUESTION, WHAT IS THE PRACTICAL DIFFICULTY THAT IF YOU FILE ONE OF THESE MOTIONS THAT AT THE TIME YOU'RE GOING TO PRESENT THE CASE YOU SUBPOENA THE RECORDS THAT DEAL WITH THIS DOG TO BRING IT BEFORE THE JUDGE WHO'S GOING TO CONSIDER THAT MOTION AND LET THAT JUDGE -- YOU TALK ABOUT IT, AND YOU LOOK AT IT, AND I THINK THEY MAY DISAGREE, BUT IT BECOMES A PROCEDURAL STEP, AND THEN THE COURTS CAN MAKE WHATEVER DECISION THEY NEED TO MAKE BASED UPON THE TRAINING AND CERTIFICATION AND THE PERFORMANCE OF THE ANIMAL. WHAT IS WRONG WITH THAT AS JUST AS A PRACTICAL, PROCEDURAL STEP?

>> WELL, I BELIEVE THAT A COURT WOULD HAVE TO HAVE SOME RECORD OF PERFORMANCE.

>> WELL, THAT'S WHAT I'M SAYING.

WHY COULD YOU NOT, THE DEFENDANT, SUBPOENA THOSE RECORDS, WHATEVER THEY'RE CALLED?

THEY PROBABLY HAVE SOME KIND OF NAME, AND HAVE THOSE AVAILABLE AT THAT HEARING?

>> THAT GOES TO ONE OTHER

IMPORTANT PART IN THIS CASE  
BECAUSE ON THIS RECORD IN THIS  
CASE, WHEN THE OFFICER WAS  
ASKED, IS SIRUS 100 PERCENT  
ACCURATE, THE OFFICER SAID, I  
DON'T KNOW.

NOW, IF THERE WERE RECORDS AND  
HE COULD SAY, WELL, IF I COULD  
LOOK AT THE RECORDS --

>> WAS THERE DISCOVERY IN THIS  
CASE?

WAS DISCOVERY AVAILABLE TO THE  
DEFENDANT IN THIS CASE?

>> YES.

I'M SURE IT WAS.

>> OKAY.

DID THE DEFENDANT TAKE THE  
POLICE OFFICER'S TESTIMONY --  
DEPOSITION?

>> I DON'T KNOW.

I DON'T HAVE THE DEPOSITION.

>> COULD THEY HAVE DONE IT, WAS  
THAT AVAILABLE TO BE DONE?

>> I'M SURE IT WAS.

>> OKAY.

BUT YOU DON'T KNOW WHETHER IT  
WAS DONE OR NOT?

>> I DON'T.

>> OKAY.

>> LET ME ASK JUSTICE LEWIS THIS  
QUESTION AND BREAKING IT UP A  
LITTLE BIT, WHAT'S WRONG WITH  
THE STATE'S ARGUMENT THAT ONCE A  
DOG HAS BEEN FULLY TRAINED AND  
CERTIFIED AND, FOR INSTANCE, WE  
END UP WITH A DOG THAT GRADUATED  
WITH HONORS, IT'S THE BEST DOG  
WE'VE EVER HAD IN THIS TRAINING  
PROGRAM, AND OBVIOUSLY THERE HAS  
TO BE A FIRST TIME, YOU KNOW,  
THAT THE DOG GOES OUT AND DOES  
ITS SNIFFING.

NOW THAT IT'S THE DOG THAT  
GRADUATED WITH HONORS, WHAT'S,  
WHAT'S ANY FLAW IN THE STATE'S  
ARGUMENT THAT THE COURT SHOULD  
ACCEPT ASSUMING THAT THERE'S A  
CERTIFICATION AND TRAINING  
PROGRAM THAT HAS STANDARDS AND  
THAT KIND OF THING, WHAT'S ANY  
FLAW IN THAT ARGUMENT?  
EVERYBODY'S GOT TO GO OUT THERE  
AND HAVE THEIR FIRST CASE OR

HAVE, THE DOG HAS TO HAVE ITS FIRST SNIFF AFTER IT HAS BEEN PROPERLY TRAINED ENOUGH FOR IT TO BE CERTIFIED, WHY SHOULDN'T THAT ESTABLISH A PRIMA FACIE BASIS TO ALLOW A SEARCH BASED ON THE POSITIVE REACTION OF THE DOG?

WHY SHOULDN'T WE ACCEPT THAT?  
>> BECAUSE PERFORMANCE COUNTS FOR SOMETHING IN EVERY PART OF LIFE.

>> WELL, WHAT ABOUT THE FIRST, OBVIOUSLY, THE DOG HAS BEEN SUBJECTED TO PERFORMANCE IN THE TRAINING, AND THE DOG HAS TO HAVE, LIKE I SAID THE FIRST TIME, SO ARE YOU SAYING THE FIRST TIME THE DOG GOES AND DOES A SNIFF ON A VEHICLE OR AN AIRPORT, NOPE, YOU CAN'T COUNT THAT FIRST TIME.

YOU HAVE TO WAIT UNTIL THE DOG DOES IT TEN TIMES?  
100 TIMES?

ISN'T THAT THE WHOLE PURPOSE OF THE CERTIFICATION, TO SAY THAT THE DOG HAS REACHED THE POINT WHERE WE CAN RELY, NOW, ON THE DOG OUT IN THE FIELD?

>> WELL, IN ORDER TO USE THE FIRST TIME, YOU WOULD HAVE TO KNOW WHAT THE CERTIFICATION PROCESS WAS AND WHAT HAD TO HAPPEN DURING THAT CERTIFICATION PROCESS.

>> WASN'T THAT PART OF THE EVIDENCE PRESENTED AT THE HEARING, THAT IS THAT THIS DOG WENT THROUGH THE TRAINING PROGRAM AND HAD TO, AND AS I RECALL HERE WAS IT SOMETHING LIKE 400 HOURS OF TRAINING THAT THE DOG HAD AND THE HANDLER HAD TOO?

WHAT WERE THE DETAILS OF THE TRAINING AND CERTIFICATION?

>> THE OFFICER SAID, I HAD 400 HOURS OF TRAINING WITH THE DOG AT THAT POINT, AND THERE'S ANNUAL CERTIFICATION. DIDN'T SAY WHETHER THE DOG HAD BEEN RECERTIFIED AND AT THE POINT OF THIS SEARCH, IT HAD

BEEN NOT EVEN TWO YEARS THAT  
THEY HAD WORKED TOGETHER.  
SO THE MERE RECITATION THAT THEY  
HAD GONE THROUGH THAT PROCESS  
WITHOUT KNOWING WHAT THE PROCESS  
IS WOULD BE EQUIVALENT TO THAT  
I'M A LAWYER WITHOUT HAVING ANY  
CERTIFICATION THROUGH LAW  
SCHOOL.

>> SO WHAT'S THE CASE, I'M  
LOOKING AT 1982, THE 11TH  
CIRCUIT DEALT WITH THIS  
QUESTION, AND ACCORDING TO THE  
THE QUOTE FROM THE FOURTH DCA  
THAT TRAINING AND CERTIFICATION  
WITHOUT MORE IS SUFFICIENT PROOF  
OF THE RELIABILITY OF THE DOG IN  
ORDER TO MAKE A PRIMA FACIE  
SHOWING OF PROBABLE CAUSE.  
AND IN THAT CASE THE 11TH  
CIRCUIT, THE 6TH CIRCUIT, THE  
10TH CIRCUIT, THE 5TH CIRCUIT,  
ALL THE WAY BACK TO 1982 WHICH  
SAYS WHAT I JUST SAID.  
WHAT IS YOUR CASE SUPPORT FOR  
THE OPPOSITE RESULT?

>> MY CASE SUPPORT IS BASED IN  
THE TRIED AND TRUE FACTORS.  
THERE IS NO AUTOMATIC TEST FOR  
PROBABLE CAUSE.

THAT YOU CANNOT JUST HAVE --

>> LET ME NARROW THIS DOWN A  
LITTLE BIT.

DOG SEARCHES ARE DONE BY  
DIFFERENT JURISDICTIONS ALL OVER  
THE COUNTRY AND HAVE BEEN FOR I  
DON'T KNOW HOW LONG.

BUT FOR AT LEAST 40, 50 YEARS  
THEY'VE BEEN ACCEPTED BY THE  
FEDERAL CIRCUIT COURTS IN OTHER  
STATES.

WHERE IS YOUR CASE SUPPORT FOR  
YOUR POSITION THAT THERE HAS TO  
BE MORE THAN THE CERTIFICATION  
AT LEAST FOR THE PRIMA FACIE  
CASE?

>> THE CASE SUPPORT, I BELIEVE,  
IS IN THIS CASE, WHICH IS WHAT  
THIS COURT IS DECIDING, WHETHER  
THIS RECORD SHOWS THAT THERE WAS  
A PROPER TRAINING OR  
CERTIFICATION EVEN PROVEN.  
WE SAY IT DOES NOT.

>> YOU ARGUE THAT.

WAS THAT REALLY YOUR ARGUMENT IN THE TRIAL COURT, WAS THE ARGUMENT MADE TO THE TRIAL COURT, LOOK, THERE IS NO SHOWING THAT THIS DOG WAS PROPERLY TRAINED?

WE DON'T KNOW WHO TRAINED HIM, WE DON'T KNOW WHERE HE WAS TRAINED, WE DON'T KNOW IF THE TRAINING SET THE STANDARDS THAT WHATEVER STANDARDS ARE OUT THERE FOR TRAINING.

AS -- THAT KIND OF ARGUMENT WAS NOT MADE TO THE TRIAL COURT?

>> IT WAS, IT WAS MADE IN A MOTION.

IT WAS MADE, IT WAS FOCUSED IN THE HEARING ON THE PERFORMANCE ASPECT OF IT.

BUT THE COURT WAS APPRISED OF THE ERROR IN THE MOTION THAT THERE WAS A TRAINING AND LACK OF TRAINING AND CERTIFICATION.

THE PROBLEM IS THAT WHAT THIS IS A BROAD IDEA OF TRAINING AND CERTIFICATION AND WHAT IS PROPER.

AND IN THIS RECORD, THE STATE DOES NOT MEET THAT BURDEN.

AND IF YOU FIND THAT IT DOES MEET THIS BURDEN, THEN WHAT'S GOING TO HAPPEN IS WHAT YOU'RE HAVING HERE IS IT'S NOT THE DOG'S CREDIBILITY, IT'S THE HANDLER'S CREDIBILITY.

CAN THE HANDLER REALLY SAY AND BE REASONABLE, A REASONABLE PERSON WHO IS PRUDENT AND CAUTIOUS SAY THIS MEANS CONTRABAND?

>> ISN'T THAT A MATTER IN THESE MOTIONS TO SUPPRESS THAT WE REALLY HAVE TO LEAVE TO THE TRIAL JUDGE?

I MEAN, WHAT YOU APPEAR TO ME TO BE ARGUING IS A MATTER OF CREDIBILITY.

AND WHETHER THE DOG HANDLER IS CREDIBLE.

AND WHETHER THE TRAINING THAT THE DOG HANDLER TESTIFIES TO WAS CREDIBLE AND THAT THOSE ARE MATTERS WHICH WE SAY IN OUR

MOTION TO SUPPRESS LAW ARE LEFT TO THE TRIAL JUDGE'S DETERMINATION.

>> NO, THAT'S NOT WHAT I'M SAYING.

IT HAS TO MEET THE PROBABLE CAUSE STANDARD.

AND SO IT IS REASONABLE THAT THE PRUDENT PERSON BELIEVE THAT THERE WAS A CRIME BEING COMMITTED.

IF ALL THE PRUDENT PERSON IS WILLING TO TELL THE COURT IS, TRUST ME, I CAN'T PROVE THE DOG IS CORRECT BECAUSE IT'S NEVER HAD EVEN FIELD-NEUTRAL TESTING THROUGH THE CERTIFICATION PROCESS BECAUSE I HAVEN'T DESCRIBED IT, BUT JUST TRUST ME. MY DOG IS GOOD.

>> YOU WOULD SAY THAT WOULD BE LIKE, I GUESS, AND I JUST HAVE TO NOW FIGURE OUT HOW CORRECT YOU ARE.

IF YOU HAD A WARRANT ON A CONFIDENTIAL INFORMANT AND THE OFFICER SAID, I THINK THIS CONFIDENTIAL INFORMANT IS RELIABLE.

BUT THE PROBLEM, AND THIS IS WHERE I'VE GOT THE PROBLEM WITH THIS RECORD AND WHO HAS THE BURDEN, YOU KNOW, WE READ MATHESON, AND THERE WAS A LOT OF, THERE WAS EXPERT TESTIMONY IN MATHESON, AND YOU HAD, YOU LOOKED AT WHAT THE CUSTOM SERVICE DOES, AND YOU CAN SEE THERE'S ACTUALLY A PRETTY WIDE VARIATION ABOUT WHAT THESE DOGS ARE PUT THROUGH, AND THE FACT OF THIS CASE DOES GIVE ME PAUSE TO WONDER WHETHER THIS DOG IS PROPERLY TRAINED OR NOT.

THE QUESTION, AND I DON'T KNOW IF IT'S A POLICY QUESTION OR NOT, BUT NORMALLY IF I HADN'T READ MATHESON I'D SAY, WELL, SOMEBODY HAS 400 HOURS OF TRAINING AND IS CERTIFIED BY, NOT BY THE SAME AGENCY THAT IS DOING THE, YOU KNOW, HAS THE DOG THAT THAT ITSELF AT LEAST TELLS

ME THAT IT'S JUST NOT A DOG OFF THE STREET, THAT, HEY, COME ON, MO, LET'S GO SNIFF SOME VEHICLES.

SO FOR THE FACT FINDER, YOU KNOW, IT'S ALMOST AS IF THE RECORD SHOWED A REASON TO DOUBT THAT TRAINING AND CERTIFICATION ALONE COULDN'T ESTABLISH RELIABILITY, WE'D HAVE, YOU KNOW, ONE SITUATION.

BUT, AGAIN, LOOKING AROUND THE COUNTRY AND EVEN THOUGH THERE'S, YOU KNOW, IT LOOKS LIKE, KIND OF LIKE IT WAS WITH, YOU KNOW, HAIR ANALYSIS OR FINGERPRINTS.

IT'S KIND OF JUST BEEN ACCEPTED THAT THIS KIND OF CERTIFICATION DOES AT LEAST RAISE SOME PRESUMPTION OF RELIABILITY.

AND WITHOUT THERE BEING SOMETHING OUT THERE TO SAY, NO, IT'S NOT, YOU KNOW, I'M SORT OF TORN ON THIS.

I DON'T LIKE THE WHOLE THING, BUT I'M NOT SURE THAT WE CAN JUST SAY THAT IT'S NOT ENOUGH TO ESTABLISH AT LEAST GET THEM BY THEIR BURDEN AND TELL ME AGAIN, YOU KNOW, AGAIN, THEY'RE NOT JUST SAYING, TRUST ME.

THE JUDGE MAY HAVE HEARD ABOUT DOG SNIFFS, JUSTICE BELL'S OBVIOUSLY HEARD WHEN HE WAS A TRIAL JUDGE THAT THEY'VE GOT OTHER BASIS.

IT'S NOT LIKE JUST HAVING A CONFIDENTIAL INFORMANT, THAT'S WHY SHOULDN'T THE TRIAL JUDGE TRUST THAT WHAT IS GOING ON WITH THESE LAW ENFORCEMENT AGENCIES IS DONE IN GOOD FAITH AND DOES GIVE SOME LEVEL OF RELIABILITY TO WHAT THEY'RE DOING?

>> WELL, THE BIG PROBLEM, I THINK, THAT'S PRESENTED IN THIS CASE --

>> THAT'S A LOT OF QUESTIONS, BUT YOU SEE WHERE WE'RE STRUGGLING.

>> THAT GOES TO THE CRUX OF THE MATTER BECAUSE WHAT CONCERNS ME IN THIS RECORD IS THE OFFICER SAYS, I CAN'T ANSWER THE

QUESTION.

I CAN'T TELL YOU THE PERFORMANCE HISTORY OF MY DOG, I CAN'T EVEN TELL YOU BECAUSE IF THE OFFICER COULD SAY, WELL, WE GO EVERY SO OFTEN, WHATEVER IT IS, WHATEVER'S ACCEPTABLE, AND WE HAVE TRIAL RUNS UNDER A NEUTRAL SETTING, THE STATE SAYS YOU CAN'T TELL IN THE FIELD.

IT DOESN'T COUNT.

WELL, THERE ARE OTHER CASES THAT DESCRIBE SITUATIONS WHERE THE DOG IS IN A NEUTRAL SETTING, THERE'S THE CASE, I CAN'T REMEMBER THE NAME BUT IT'S DESCRIBED IN MY BRIEF, WHERE THEY TAKE THE DOG TO A CAR THAT HAS NOTHING IN IT BEFORE THEY SHOW IT TO THE CAR THAT THEY SUSPECT DOES.

SO THERE THEY ARE, THEY'RE USING THE DOG AND ON A REGULAR BASIS SAYING, OKAY, THIS DOG IS WORKING.

DOGS GET TIRED, DOGS ARE CREATURES.

MAYBE THE DOG HAS BEEN USED TOO MUCH.

THE DOG IS, IN THIS CASE, IS ALERTING TO SOMETHING THAT'S NOT EVEN THERE WHICH RAISES A QUESTION, AS YOU SAY.

THE STATE IS SAYING WE WANT YOU TO TRUST THESE DOGS, AND THEY CAN COME IN AS A GENERAL MATTER, AND IT'D BE VERY EASY FOR THEM TO SAY THIS IS WHAT THIS DOG DOES.

TO PUT THE BURDEN ON THE DEFENSE, ALL THEY HAVE TO DO IS NOT KEEP A RECORD.

>> DID THE TRIAL JUDGE, LET'S GET BACK BECAUSE THERE ARE FINDINGS OF FACTS.

TRIAL JUDGE FOUND THIS ISSUE OF WHETHER THERE WERE FURTIVE MOVEMENTS DID NOT PROVIDE A BASIS TO PROLONG THE SEARCH.

>> RIGHT.

>> WHAT WERE THE FINDINGS OF THE TRIAL JUDGE ON THE RELIABILITY OF SIRUS AND/OR THE TRAINER? WERE THERE ANY FINDINGS?

>> NO.

>> IN THIS CASE, THEN, THE ISSUE REALLY IS THAT SINCE IT WAS RAISED AND QUESTIONED THAT THE PRIMA FACIE SHOWING WAS SORT OF QUESTIONED THROUGH THE CROSS-EXAMINATION, AND WITHOUT MORE THEY DIDN'T MEET THEIR BURDEN.

I MEAN, THAT'S ANOTHER WAY TO ARGUE WHEN THIS IS RAISED BECAUSE, YOU KNOW, WHY SHOULD YOU HAVE TO COME INTO COURT IF MAYBE SIRUS, NOW, HAS BEEN A DOG AND IT'S THE TENTH TIME SIRUS IS COMING, YOU'RE NOT GOING TO MAKE THE STATE DO IT TEN TIMES MAYBE. SO WON'T THAT BE A POSSIBILITY OF A MORE FLEXIBLE ROLE? IT'S BEEN RAISED, IT'S BEEN CHALLENGED, AND NOW THE STATE HAS TO DO MORE.

>> WELL, YOU COULD ALSO SAY THIS DOG, THE DOG -- THE HANDLER HAS TESTIFIED WITH THIS PARTICULAR DOG.

THERE ARE OTHER WAYS OF THE STATE MEETING THE BURDEN, BUT IT'S NOT MET IN THIS CASE.

I KNOW I'M ABOUT 20 SECONDS AWAY FROM RUNNING OUT OF TIME, AND I HAVEN'T ARGUED WHETHER THE COURT SHOULD ACCEPT JURISDICTION IN THIS CASE, AND I'VE MADE THAT ARGUMENT IN MY BRIEF, BUT I WOULD URGE THIS CASE TO EXERCISE DISCRETION AND NOT ACCEPT JURISDICTION IN THIS CASE BECAUSE THE COLEMAN AND LAVERONI CASES DO NOT ADDRESS THE ISSUE IN THIS CASE, ONLY TO SAY WE DON'T AGREE WITH MATHESON. IN THOSE CASES THERE WAS AN EVIDENTIARY ISSUE OF WHETHER THE STATE WOULD BE PERMITTED TO PUT THE K-9 RELIABILITY OR PERFORMANCE OR CERTIFICATION RECORD EVIDENCE IN.

SO YOU DON'T HAVE A TRUE CONFLICT HERE WHERE ON THE OTHER CASES THEY FLUSHED OUT A FACTUAL RECORD EVEN TO THE MINIMAL LEVEL THAT THIS CASE DOES. AND, THEREFORE, SORRY TO ARGUE

IT BACKWARDS.

>> TO MAKE A DECISION ON THE CASE THAT'S GOING TO HAVE SIGNIFICANT IMPACT, OUGHT WE NOT HAVE A FULLY-DEVELOPED RECORD TO INCLUDE, I MEAN, JUSTICE ANSTEAD'S ASKED SO MANY QUESTIONS THAT ARE UNANSWERED. YOU SEE THE NUMBER OF ISSUES THAT AREN'T ANSWERED WITH REGARD TO THIS.

MAYBE IT FALLS ON THIS SIDE, MAYBE IT FALLS ON THAT SIDE. BUT WOULDN'T IT BE A BETTER CASE IF WE HAD THAT KIND OF INFORMATION TO MAKE A DECISION ON AND THAT AT LEAST PRELIMINARILY THAT JUST FOR TO GET ACROSS, TO HAVE A PRIMA FACIE SHOWING UNLESS IT'S SHOWN OTHERWISE THAT THE RELIABILITY IS UNDERMINED IN SOME FASHION? WHY IS THAT NOT, AT LEAST AS WE STAND HERE TODAY, UNLESS OR UNTIL IT'S DEMONSTRATED THAT THE CERTIFICATION IS, I DON'T WANT TO USE THE WORD SHAM, BUT IT'S LESS THAN RELIABLE.

WHY SHOULDN'T WE DO THAT?

>> WHY SHOULDN'T --

>> WHY SHOULDN'T WE JUST ESTABLISH THAT MAYBE SOMETIME ON A FULL RECORD IT MAY SHOW THAT CERTIFICATION AND TRAINING IS NOT SUFFICIENT.

BUT AT LEAST NOW WHAT WE HAVE ON THIS RECORD, WE DON'T KNOW THAT THE TRAINING AND CERTIFICATION IS UNRELIABLE.

IT'S NOT BEEN DEMONSTRATED, SO WHY SHOULD WE NOT FALL ON THAT SIDE IN SAYING RIGHT NOW UNDER FLORIDA LAW THAT CERTIFICATION AND TRAINING, THAT TESTIMONY AS LONG AS IT'S UNREFUTED IS PRIMA FACIE EVIDENCE TO ESTABLISH A REASONABLE, ARTICULATE BASIS TO PERMIT THE SEARCH WITHOUT OTHER EVIDENCE DEMONSTRATING THAT THAT CERTIFICATION AND TRAINING IS BY OPERATION OR BY IN THE FIELD IS DEMONSTRATED TO BE INSUFFICIENT? WHY WOULD THAT NOT BE THE BEST APPROACH RIGHT NOW?

BECAUSE THAT LEAVES THE DEFENSE  
THE OPPORTUNITY TO ADDRESS THOSE  
THINGS, IT GIVES US A BASIS.

SO WHY SHOULD WE NOT DO THAT IN  
THIS CASE?

>> BECAUSE IN EVERY OTHER ASPECT  
OF LIFE, PERFORMANCE COUNTS FOR  
SOMETHING.

IT'S NOT JUST TRAINING OR  
CERTIFICATION.

>> THE QUESTION IS THE BURDEN.  
WE'RE NOT SAYING THAT IT'S NOT  
PERFORMANCE.

I THINK YOU'VE HEARD TODAY THAT  
PERFORMANCE, THE COURT DOES  
BELIEVE IT HAS A ROLE.

BUT THE QUESTION IS WHOSE BURDEN  
IS IT TO INITIALLY DEMONSTRATE  
THAT PERFORMANCE?

>> THE STATE IS THE PROPONENT OF  
THE ERROR, AND THEY'RE THE  
PROPONENT OF THE EVIDENCE IN THE  
MOTION TO SUPPRESS TO SHOW  
PROBABLE CAUSE.

THE BURDEN SHOULD BE ON THEM TO  
SHOW THAT THEIR HANDLER WAS  
REASONABLE IN BELIEVING THAT  
THIS DOG WAS ALERTING TO  
CONTRABAND.

THEY BEAR THE BURDEN.

TO PUT THAT ON THE DEFENSE,  
YOU'RE GOING TO HAVE AN  
ASSISTANT PUBLIC DEFENDER HAVE  
TO HIRE VETERINARIANS, EXPERTS  
TO COME IN AND SAY WE'VE TAKEN  
APART ALL THESE DIFFERENT  
CERTIFICATION PROCESSES, AND  
THERE ARE DIFFERENT ONES FOR  
DIFFERENT LAW ENFORCEMENT  
OFFICERS, FOR DIFFERENT  
CERTIFYING PLACES AND THEN GO  
PIECE BY PIECE BY PIECE.

>> WASN'T THAT DONE -- I MEAN, I  
GUESS IN MATHESON THE DEFENSE  
DID DO THAT, AND THAT'S, THE  
MATHESON COURT'S, THE ONE WE'RE  
RELYING ON, SO WE REALLY NEED TO  
LOOK AT THAT RECORD.

THEY FOUND AS A MATTER OF LAW  
THAT THESE CERTIFICATIONS WERE  
SORT OF, NOT A SHAM, BUT THEY  
WEREN'T RELIABLE.

>> RIGHT.

AND I THINK ANOTHER PROBLEM IS

THIS RECORD REALLY DOESN'T FULLY  
FLUSH OUT THOSE KINDS OF FACTS.  
YOU HAVE TO ASSUME A LOT OF  
THINGS.

IF I HAD TO MAKE A DECISION ON  
THIS SCANT RECORD ABOUT ANY OF  
THIS.

I THANK YOU FOR YOUR TIME AND  
ASK YOU TO AFFIRM THE DECISION  
OF THE SECOND DISTRICT.

>> YOU HAVE EXHAUSTED YOUR TIME,  
BUT I'M GOING TO GIVE YOU A FEW  
MINUTES FOR REBUTTAL.

>> THANK YOU, YOUR HONOR.

I JUST WANT TO MENTION ON  
RECORD, PAGE 105, IN THE  
SUPPLEMENT AND 106, HE DIDN'T  
SAY, THE OFFICER DIDN'T SAY HE  
DIDN'T KNOW THE DOG'S ACCURACY.  
WHAT HE SAID WAS HE COULDN'T  
ANSWER THAT, AND SPECIFICALLY  
WHAT HE SAID WAS EVERY TIME THE  
DOG ALERTS, DOES THAT MEAN HE  
DETECTS AN ODOR OF ILLEGAL  
NARCOTICS, AND HE ANSWERED, YES,  
IT DOES.

SO I JUST WANTED TO CLEAR THAT  
UP.

HE DIDN'T ALERT TO THE FIREARM  
IN THIS CASE, HE ALERTED TO  
DRUGS.

>> HE ALERTED TO THE TRUNK.  
WERE DRUGS FOUND IN THE TRUNK?

>> HE ALERTED TO THE TRUNK AND  
THE PASSENGER DOOR.

>> I'M JUST ASKING YOU THAT  
QUESTION.

>> NO.

>> WERE DRUGS FOUND IN THE  
TRUNK?

>> NO.

>> SO HOW, THEN, IS THAT  
STATEMENT -- ISN'T IT DIRECTLY  
REFUTED BY WHAT'S HAPPENED IN  
THIS CASE?

>> NO.

AND LET ME TELL YOU WHY.

DOGS ARE NOT TRAINED TO DETECT  
WHERE DRUGS ARE OR DRUGS -- THEY  
ARE TRAINED TO DETECT THE ODOR  
OF NARCOTICS.

DRUGS COULD HAVE BEEN IN THAT  
TRUNK FIVE MINUTES BEFORE HE

STOPPED HIM IN THIS CAR, MAYBE AN HOUR BEFORE HE STOPPED HIM HE MADE A DRUG BUY, AND DRUGS WERE REMOVED.

ALSO IF DRUGS ARE IN THE GLOVE COMPARTMENT OF THE VEHICLE, THE AIR FLOWS THROUGH THE VEHICLE AS IT'S TRAVELING DOWN THE ROAD.

IT CERTAINLY PASSES THROUGH THE SEAMS OF THE VEHICLE, AND THAT'S WHY THE OFFICER AND THE DOG GO AROUND THE VEHICLE, AND THE DOG ALERTS TO THOSE SEAMS, TYPICALLY THE TRUNK.

IT DOES NOT MEAN THAT THE DRUGS WERE NOT THERE.

DOGS ALERT TO RESIDUAL ODORS AND NOT TO DRUGS IN ITSELF.

>> IF THEY'D USED THE COCAINE IN THE CAR.

>> PARDON ME?

>> IF COCAINE HAD BEEN USED IN THE CAR ON THE TRIP DOWN OR WHATEVER --

>> ABSOLUTELY.

>> PARTICLES WOULD BE THERE, WHICH WOULD INCLUDE THE TRUNK.

>> IF A HUMAN OFFICER SMELLS COCAINE, OR SMELLS MARIJUANA, EXCUSE ME, THAT GIVES HIM PROBABLE CAUSE TO SEARCH THAT CAR.

HE MAY NOT FIND THAT MARIJUANA. THAT DOESN'T MEAN HE DID NOT HAVE PROBABLE CAUSE TO SEARCH THAT CAR, AND WE WOULD SUBMIT IT'S A SIMILAR ANALOGY.

I KNOW I'VE USED UP MY TIME.

WE WOULD ASK THAT THIS COURT ALIGN ITSELF WITH THE FOURTH AND FIFTH DISTRICTS AND ALSO EVERY JURISDICTION IN THIS NATION AND FIND THAT A TRAINED DOG GIVES AN OFFICER PROBABLE CAUSE TO SEARCH A VEHICLE.

THANK YOU.

>> THANK YOU VERY MUCH.

THE COURT WILL TAKE THE CASE UNDER ADVISEMENT, AND WE WILL STAND IN RECESS UNTIL TOMORROW MORNING.

>> PLEASE RISE.