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Darryl Moody vs State of Florida

MR. CHIEF JUSTICE: NEXT CASE ON THE COURT'S DOCKET IS MOODY VERSUS STATE. I THINK MR. LANDRY MUST HAVE STEPPED INTO THE HALL. OKAY. MR. NORGARD.

MAY IT PLEASE THE COURT. BOB NORGARD ON BEHALF OF THE APPELLANT DARRYL MOODY. ESSENTIALLY, THE PERTINENT FACTS OF THIS CASE IS THAT MR. MOODY WAS ACCUSED OF HOMICIDE OF A SCOTT MITCHELL. THE STATE'S THEORY AT TRIAL IS THAT THE MR. MOODY-SEW THAT MR. MOODY, ALONG WITH A -- IS THAT MR. MOODY, ALONG WITH AN UNKNOWN PERPETRATOR, WAS BURGLARIZING, HE ESSENTIALLY STEALING THINGS FROM A CAR IN AN ORANGE GROVE. THE CARETAKER OF THAT GROVE APPARENTLY CAME UPON THEM, CONFRONTED THEM AND WAS SHOT AND KILLED. AS A STARTING POINT, ONE OF THE CRITICAL ISSUES AS TO THE EVIDENCE PRESENTED AT TRIAL, IS EVIDENCE WHICH SHOULD HAVE BEEN SUPPRESSED BY THE TRIAL COURT. THE CIRCUMSTANCES OF THE SEIZURE OF SOME OF THE VERY SIGNIFICANT EVIDENCE IN THIS CASE WAS BASED ON AN ILLEGAL STOP OF MR. MOO -- MR. MOODY'S VEHICLE, THE CAR THAT HE WAS DRIVING. WHAT HAPPENED WAS THAT THIS AREA WAS A HIGH-CRIME AREA, A DRUG AREA, THE AREA WHERE HE HAPPENED TO LIVE, UNFORTUNATELY, HE WAS SEEN BY SOME UNDERCOVER OFFICERS WHO HAD KNOWN MR. MOODY FROM PAST CONTACT. IT HAD BEEN AT LEAST TWO YEARS, SINCE THE OFFICER WHO KNEW AFTER SUSPENDED DRIVER'S LICENSE ON HIS PART, HAD EVEN SEEN MR. MOODY. THE TESTIMONY AT THE SUPPRESSION HEARING WAS THAT IT MAY HAVE BEEN AS LONG AS FOUR YEARS, WHEN THIS OFFICER, THIS UNDERCOVER OFFICER, HAD ANY KNOWLEDGE ABOUT MR. MOODY'S DRIVER'S LICENSE BEING SUSPENDED. DESPITE THE --

YOUR ARGUMENT IS STALENESS, RATHER THAN ON THE BASIS OF PERTINENCE?

WELL, I THINK -- RATHER THAN ON THE BASIS OF PERK PINS?

I THINK PERKINS IS APPLICABLE APPLICABLE.

PERKINS WAS FACTUALLY DISTINGUISHABLE. IN PERKINS, THERE WASN'T ANY INDICATION THAT THE DRIVER'S LICENSE WAS SUSPENDED ON ANYBODY'S PART, UNTIL AFTER THEY DID THE STOP, AND THEY DID THE DRIVER'S LICENSE CHECK, CORRECT?

WELL, ESSENTIALLY, YOU KNOW, WHAT WE NEED TO DO IS WE NEED TO LOOK AT THE DIFFERENT LEVELS OF A BASIS FOR A POLICE STOP. CLEARLY THERE WAS NO PROBABLE CAUSE IN THIS CASE. THE NEXT LEVEL THAT WE NEED TO LOOK AT WAS THERE A REASONABLE SUSPICION? AND I THINK THAT IS THE KEY. PERKINS TURNED ON THE FACT THAT UNDER, YOU KNOW, THE FACTS PRESENTED IN PERKINS, THERE WAS NOT A REASONABLE BASIS TO BELIEVE THAT THE DRIVER'S LICENSE WAS SUSPENDED.

DIDN'T PERKINS, REALLY, TURN ON THE FACT THAT THERE WAS, THAT IT WAS, THERE WAS NO BASIS FOR THE STOP, PERIOD?

IN PERKINS, I BELIEVE THERE WAS A FAIR SUSPICION THAT HIS DRIVER'S LICENSE MAY HAVE BEEN SUSPENDED, ON THE PART OF THE OFFICER INVOLVED. HE WASN'T SURE BUT THOUGHT THAT HE DIDN'T HAVE A VALID DRIVER'S LICENSE, SO THE OFFICER WAS MAKING THAT DECISION ON AN ASSUMPTION ON HIS PART, BUT MY READING OF PERKINS WAS THAT HE HAD SOME IDEA THAT, MAYBE, THIS GUY DIDN'T HAVE A LICENSE, AND THAT PROMPTED THE STOP.

WELL, IF WE ASSUME, JUST FOR PURPOSES OF ARGUMENT, THAT THERE WASN'T ANY SUSPICION AT THE TIME THAT THE STOP WAS MADE BUT THAT ONLY AFTER THE DRIVER'S LICENSE WAS CHECKED BY THE COMPUTER, NOW THAT IS A DIFFERENT SITUATION THAN HERE, BECAUSE YOU DO HAVE TO CONCEDE THAT THERE WAS SOME SUSPICION, ON THE PART OF THIS OFFICER, BY REASON OF HIS PAST DEALINGS WITH MOODY.

AND THE CRITICAL ASPECT OF THAT IS, WAS IT REASONABLE? NOT JUST A BEAR SUSPICION, BUT IT WAS IT A REASONABLE SUSPICION? THE OFFICER TESTIFIED THAT HE HAD NOT HAD CONTACT WITH MR. MOODY FOR AT LEAST TWO YEARS, MAYBE AS MANY AS FOUR YEARS, UNLIKE SOME OF THE OTHER CASES INVOLVING STOPS, BASED ON CONCERNS ABOUT DRIVER'S LICENSE SUSPENSION. IT WOULD HAVE BEEN A DIFFERENT SITUATION, IF THIS OFFICER HAD STOPPED HIM BEFORE, WAS AWARE OF THE SUSPENDED LICENSE AND, SAY, HE HAD A FIVE-YEAR SUSPENSION AS A HABITUAL TRAFFIC OFFEND ERROR A LIFETIME SUSPENSION FOR DUI. CLEARLY UNDER THOSE FACTS, IF THE OFFICER EVEN, THEN, SAW HIM TWO OR THREE YEARS LATER, DRIVING, HE WOULD HAVE A BASIS TO MAKE A STOP, BUT EVEN THE TRIAL JUDGE IN THIS CASE COMMENTED ON THE FACT THAT THE NATURE OF THE SUSPENSION OF MR. MOODY'S DRIVER'S LICENSE WAS ONE THAT COULD HAVE BEEN CLEARED UP IN A MATTER OF DAYS. IT WASN'T A SUSPENSION THAT WAS BASED ON ANY SPECIFIC LENGTH OF TIME, WHETHER IT BE LIFETIME, FIVE YEARS, OR WHATEVER, AND THE IDEA --

HOW DOES IT, THE FACT THAT THE OFFICER TESTIFIED THAT HE HAD KNOWN MOODY FOR QUITE A WHILE DURING THAT WHOLE PERIOD OF TIME, AND MOODY HAD NOT HAD A LICENSE, COUPLED WITH THE FACT THAT THE OFFICER, ALSO, KNEW THAT MR. MOODY HAD GONE TO JAIL, HAD BEEN IN PRISON FOR SOME TIME DURING THIS TWO-YEAR PERIOD, ALSO? HOW DO THOSE PLAY INTO WHETHER OR NOT THIS WAS A REASONABLE SUSPICION?

THE BOTTOM LINE IS WE ARE DEALING WITH, AT THE MINIMUM, A TWO-YEAR PERIOD. THE OFFICER WAS UNAWARE OF HOW LONG HE HAD BEEN GONE. HE HAD BEEN TO PRISON. HE JUST KNEW SOMETHING ABOUT THE FACT THAT HE HAD GONE TO PRISON. THE OFFICER TESTIFIED THAT IT MAY HAVE BEEN AS LONG AS FIVE YEARS, PARDON ME, FOUR YEARS, SO WE ARE DEALING WITH A VERY INDEFINITE PERIOD, IN TERMS OF HIS KNOWLEDGE RELATE TO DO THAT SUSPENSION. THE IDEA THAT A POLICE OFFICER COULD, BASED ON INFORMATION THAT WAS TWO TO FOUR YEARS OLD, THAT A PERSON HAD A SUSPENDED LICENSE AT THAT TIME, TWO TO FOUR YEARS DOWN THE ROAD, STOP THAT PERSON, BECAUSE THEY KNEW THAT THEY HAD ONCE NOT HAD A VALID DRIVER'S LICENSE, IS UNREASONABLE. THE IDEA THAT A CITIZEN COULD HAVE A PRIOR ARREST FOR A SUSPENDED DRIVER'S LICENSE, I DON'T CARE IF IT IS THE OFFICER STOPPED HIM. HE HAD A SUSPENDED DRIVER'S LICENSE, HE ARRESTED HIM, IF THAT OFFICER SAW HIM FOUR YEARS LATER, DRIVING, OR TWO YEARS LATER, DRIVING, HOW IS THAT REASONABLE FOR HIM TO SAY, GEE, HE HAD A SUSPENDED LICENSE BEFORE. IT MUST BE SUSPENDED NOW?

BUT YOU DO AGREE THAT, UNDER CERTAIN CIRCUMSTANCES, THE OFFICER HAS KNOWLEDGE THAT A LICENSE HAS BEEN SUSPENDED, THAT THAT WOULD GIVE HIM REASONABLE SUSPICION TO STOP A DRIVER?

AND THERE ARE CASES WHICH SUPPORT THAT FACT, WHEN IT HAS BEEN A MATTER OF WEEKS. SHORTER PERIODS --

SO WHAT KIND OF RULE WOULD YOU HAVE US PROMULGATE THAT, HOW MUCH TIME OR HOW LITTLE TIME DOES IT HAVE TO BE, BETWEEN THE TIME THAT YOU KNOW THE LICENSE IS SUSPENDED AND YOU CAN STOP THEM AT SOME OTHER POINT?

I DON'T THINK THIS IS THE TYPE OF ISSUE WHERE A COURT CAN ADOPT A BRIGHT-LINE RULE. I THINK, YOU KNOW, FIRST OF ALL YOU WOULD HAVE TO LOOK AT THE TOTALITY OF THE CIRCUMSTANCES OF A PARTICULAR SITUATION, THE FACT IN THIS CASE, FOR EXAMPLE, THAT WE

ARE DEALING WITH NARCOTICS OFFICERS WHO ARE, YOU KNOW, DECIDING, ALL OF A SUDDEN, BECAUSE OF TWO-TO-FOUR--YEAR-OLD INFORMATION, WE ARE GOING TO HAVE A TRAFFIC OFFICER CALLED IN TO STOP HIM, WHERE THERE WERE NO TRAFFIC VIOLATIONS, JUST BASED ON A SUSPICION OF A SUSPENDED LICENSE, THOSE CLEARLY GO TO THE UNREASONABLENESS OF THE STOP HERE.

IS IT SIGNIFICANT -- SO THE PERIOD OF TIME IS ONE THING, BUT YOU SAID SOMETHING, WHICH IS THAT THERE COULD BE AN OFFICER THAT KNEW THAT, BECAUSE HE HAD ARRESTED HIM PREVIOUSLY FOR DUI AND THEN THE LICENSE WAS SUSPENDED, THAT THERE WAS A DEFINITE SUSPENSION.

RIGHT.

WHAT WAS THE SUSPENSION IN THIS CASE FOR?

IT IS MY UNDERSTANDING IT WAS SIMPLY A MATTER OF, LIKE, IT WAS NOT ANYTHING LIKE HABITUAL TRAFFIC OFFEND ERROR DUI LIFETIME SUSPENSIONS. IT WAS SOMETHING WHERE, IF HE HAD PAID MONEY TO CLEAR UP OLD TICKETS, THINGS LIKE THAT, IT COULD HAVE BEEN CLARIFIED.

DID THE POLICE OFFICER, IN TERMS OF WHETHER IT IS REASONABLE FOR THE POLICE OFFICER, IS IT IMPORTANT TO, THEN, HAVE QUESTIONED THE POLICE OFFICER AS TO WHAT HE KNEW ABOUT THE SUSPENSION? IN OTHER WORDS WHOSE BURDEN IS THAT, TO SHOW WHAT THE NATURE OF THE SUSPENSION WAS?

VERY SIMPLY PUT, THE RECORD IN THIS CASE, WHICH IS WHAT I AM LEFT, WHAT I HAVE TO DEAL WITH, IS THAT THE OFFICER DID NOT TESTIFY AS TO HIS KNOWLEDGE AS TO THE NATURE OF THE SUSPENSION. I MEAN, HE WAS EVEN VEGAS TO THE TIME FRAME. I MEAN, TWO-TO-FOUR YEARS IS A VERY BROAD TIME FRAME. HE JUST SIMPLY SAID DURING THE TIME FRAME HE KNEW HIM TO HAVE A NO-VALID LICENSE. THERE IS NO EVIDENCE AS TO WHETHER HE KNEW THE NATURE OF THE SUSPENSION, LENGTH OF THE SUSPENSION, THE CIRCUMSTANCES UNDER WHICH THE LICENSE COULD BE CLEARED UP, AND THAT IS PART OF THE REASON HE CAN'T HAVE A BRIGHT-LINE RULE, BECAUSE SAY AN OFFICER STOPS SOMEBODY FOUR YEARS AGO, AND SAW THAT THEY HA FIVE-YEAR SUSPENSION AND REMEMBERED THAT FACT AND THEN SAW THEM WITHIN THE FIVE-YEAR PERIOD, THAT WOULD CERTAINLY BE REASONABLE TO SUSPECT AND INVESTIGATE THIS. SO IN THIS SITUATION, WE HAVE A NARCOTICS UNDERCOVER OFFICER, WHO DECIDES TO STOP MR. MOODY ON THIS.

WHAT SIGNIFICANCE, IN LIGHT OF THE WREN CASE OUT OF THE UNITED STATES SUPREME COURT, CAN YOU PLACE ON OR CAN WE PLACE ON THE FACT THAT THIS IS A NARCOTICS OFFICER, SO I GUESS WHAT YOU ARE AT LEAST IMPLIEDLY ARGUING IS THAT THERE WAS ANOTHER MOTIVE FOR THIS STOP, OTHER THAN HIS GENUINE CONCERN THAT SOMEBODY WAS DRIVING WITHOUT A LICENSE. HOW DOES -- WHAT IS THE FACT THAT HE IS A NARCOTICS OFFICER HAVE TO DO WITH THE MIX OF REASONABLE SUSPICION?

I AM NOT ARGUING PRETEXT. WHAT I AM ARGUING IS THE CIRCUMSTANCES UNDER WHICH THE STOP WAS MADE. AND CLEARLY THE OFFICER INVOLVED WHO INITIATED THE PATROL OFFICER MAKING THE STOP, WAS NOT SOMEONE ROUTINELY ENGAGED IN THE ENFORCEMENT OF TRAFFIC OFFENSES, WOULD NOT HAVE THE LEVEL OF KNOWLEDGE AND PAY ATTENTION TO DETAILS RELATED TO DRIVER'S LICENSE, LIKE AN OFFICER, LIKE, SAY, SOMEBODY FROM THE HIGHWAY PATROL, WHOSE PRIMARY JOB IS THE ENFORCEMENT OF TRAFFIC VIOLATIONS. MY POINT IS THAT IT GOES TO THE FACT THAT THIS OFFICER HAD SOME GENERALIZED UNDERSTANDING THAT MR. MOODY MAY HAVE HAD A SUSPENDED DRIVER'S LICENSE, A GENERALIZED UNDERSTANDING THAT WAS UNRELATED TO HIS PRIMARY ROLE AS A POLICE OFFICER, A TIME FRAME WHICH HE CAN'T EVEN SPECIFY, BEING A TWO-TO-FOUR YEAR TIME FRAME, AND UNDER ALL THOSE

CIRCUMSTANCES, THOSE ALL GO TO THE UNREASONABLENESS OF THE STOP IN THIS PARTICULAR SITUATION.

THERE ARE CASES THAT HAVE BEEN CITED AND CASES FROM THIS STATE, WHERE SIMILAR STOPS HAVE BEEN UPHELD AS BEING BASED ON REASONABLE SUSPICION. ARE THERE ANY CASES WHERE THERE IS ANYTHING LIKE THIS, WHERE A COURT IN THE STATE OR OTHER STATES HAVE ACTUALLY SUPPRESSED, YOU KNOW, WHERE THERE IS SOME KNOWLEDGE THAT THE POLICE OFFICER HAS, THAT THE LICENSE HAD BEEN SUSPENDED IN THE PAST?

ACTUALLY IN TERMS OF A CAREFUL REVIEW OF THE BRIEFS, THE REPLY BRIEF, EVERY CASE CITED, WHICH UPHELD A STOP, BASED ON SOME TYPE OF KNOWLEDGE OF A DRIVER'S LICENSE SUSPENSION DOESN'T EVEN COME CLOSE TO THE TIME PERIODS THAT WE ARE DEALING WITH IN THIS CASE.

CAN YOU ADDRESS THIS ISSUE THEN? THE STALENESS, IF THIS WOULD HAVE BEEN A, TRYING TO GO GET A SEARCH WARRANT AND PROBABLE CAUSE, THE STALENESS WOULD BE AN ISSUE, BUT HOW DOES STALENESS, BECAUSE THAT, THERE HAS BEEN AN ARGUMENT MADE THAT STALENESS DOESN'T HAVE THE SAME SIGNIFICANCE FOR THE ISSUE OF JUST WHETHER YOU CAN HAVE AN INVESTIGATORY STOP, WHICH IS WHAT WE ARE DEALING WITH HERE. WHAT IS THE, AGAIN, IS IT JUST THAT IT GOES TO WHETHER THIS IS A REASONABLE SUSPICION, WHETHER IT IS REASONABLE UNDER THE CIRCUMSTANCES?

THE CASE SUGGESTED BY THE GOVERNMENT, WHICH THEY ARGUE CREATES A SITUATION WHERE STALENESS IS NOT AS RELEVANT IN THIS CONTEXT AS IT IS IN A SEARCH WARRANT CASE, WAS THE SITUATION INVOLVING CONFIDENTIAL INFORMANT THAT GAVE INFORMATION WHICH ULTIMATELY LED TO A SEARCH SEARCH. WHAT DISTINGUISHES THAT CASE FROM THIS CASE IS THAT, IN THE INTERIM PERIOD FROM OBTAINING THE INFORMATION FROM THE CONFIDENTIAL INFORMANT, THE POLICE OFFICERS MAINTAINED A PERIOD OF SURVEILLANCE, WHICH ADDED TO AND INCREASED THE INFORMATION AND KNOWLEDGE THEY HAD THAT LED TO THE STOP IN THAT PARTICULAR CASE. SO IT WASN'T, THERE WASN'T JUST A SITUATION WHERE HERE IS SOME STALE INFORMATION AND THEN A SEARCH DOWN THE ROAD. THERE WAS AN INTERIM PERIOD OF INFORMATION GATHERING. SO, I MEAN, MAYBE IT IS JUST ME, FOLKS, BUT YOU KNOW, YOU SEE SOMEBODY DRIVING TWO YEARS AGO, AND THEY HAVE A SUSPENDED DRIVER'S LICENSE. TWO YEARS LATER, HOW IS THAT REASONABLE TO BELIEVE THAT THEY STILL HAVE A SUSPENDED DRIVER'S LICENSE, AND THEN IN A TWO-YEAR PERIOD THEY HAVE NOT GONE OUT AND GOTTEN A DRIVER'S LICENSE?

SORT OF A FOLLOW-UP ON JUSTICE WELLS. YOU DO CONCEDE THAT THIS IS NOT EXACTLY PERKINS. THIS IS A LITTLE DIFFERENT CASE FROM PERKINS.

IT IS A LITTLE BIT DIFFERENT.

IN SOME NEIGHBORHOODS, THE POLICE KNOW MOST OF THE PEOPLE, ESPECIALLY THE PEOPLE THAT ARE GETTING IN TROUBLE. THEY SORT OF GROW UP AND THEY KNOW HIM THERE, AND THEY POSSIBLY KNOW, THEY SEE THEM EVERYDAY. THEY KNOW WHEN THEY ARE IN JAIL. THEY KNOW WHEN THEY ARE OUT OF JAIL AND THIS TYPE OF THING. I AM GETTING THE IMPRESSION THAT THIS IS WHAT THIS POLICE OFFICER WAS SAYING. I KNOW MOODY. WHAT IS HIS NAME? MOODY. AND HE HAS BEEN IN JAIL. HE HAS NEVER HAD A DRIVER'S LICENSE, AS LONG AS I HAVE KNOWN HIM, AND HE IS NOT THE KIND OF A GUY THAT WOULD WORRY ABOUT GETTING A DRIVER'S LICENSE.

THAT IS AN INFERENCE YOU HAVE ADDED TO THE CASE.

CAN THAT BE FACTORED IN, OR IT HAS TO BE A LITTLE MORE CLINICAL THAN THAT? THIS TYPE OF STREET KNOWLEDGE BY THE POLICE OFFICER CAN, DOES THAT PLAY A ROLE IN IT AT ALL, AND HIM KNOWING HIS NEIGHBORHOOD AND THE PEOPLE THAT ARE OUT THERE?

FIRST OF ALL, THE INFERENCE THAT HE IS THE TYPE OF PERSON WHO WOULD NEVER GET A DRIVER'S LICENSE IS SOMETHING THAT IS NOT PART OF THIS RECORD AND IS PART OF YOUR QUESTION BUT NOT AS PART OF THIS RECORD.

HOW DO YOU FACTOR THAT TYPE OF THING IN?

VERY HONESTLY, YOUR HONOR, YOU HAVE GOT PEOPLE LIVING IN HIGH-CRIME AREAS WHO AREN'T NECESSARILY CRIMINALS. THEY MAY HAVE BEEN CRIMINALS IN THE PAST, BUT TO ASSUME THEY ARE ALWAYS GOING TO BE CRIMINALS DEITFIES OUR SYSTEM OF JUSTICE, AND I MEAN, THE IDEA THAT, BECAUSE THEY LIVE IN A HIGH-CRIME, HIGH-DRUG AREA, BECAUSE THEY ARE BLACK, BECAUSE THEY HAVE BEEN INVOLVED IN CRIMINAL BEHAVIOR BEFORE, TO ASSUME THAT, BECAUSE YOU HAVEN'T SEEN THEM IN TWO-TO-FOUR YEARS, THAT THEY ARE STILL DOING BAD THINGS AND ARE STILL A BAD PERSON, YOU KNOW, THAT IS NOT A REASONABLE SUSPICION.

I HAD A SUBSTANTIAL CRIMINAL PRACTICE, WHEN HE WAS PRACTICING LAW, AND I COULD ALMOST BANK ON SOME OF THIGH CLIENTS, WHAT THEY DID OR WHAT THEY DIDN'T DO OR WHAT THEY WOULD HAVE OR WHAT THEY WOULDN'T HAVE, AND I THINK THAT IS WHAT THE QUESTION THAT I HIM RAISING HERE. DOES IT PLAY ANY ROLE AT ALL?

ARE YOU SUGGESTING THAT THIS COURT --

IT MIGHT NOT. I AM NOT SAYING THAT IT DOES.

I MEAN, ARE YOU SUGGESTING THAT POLICE OFFICERS WHO KNOW THAT, SAY, A GIVEN INDIVIDUAL HAS BEEN IN TROUBLE BEFORE. THEY HAVE SOLD DRUGS BEFORE. THEY HAVE DRIVEN WITH THE BAD DRIVER'S LICENSE BEFORE. THAT A POLICE OFFICER, BASED ON THAT, CAN SAY, WELL, HE IS PROBABLY DOING SOMETHING WRONG NOW. LET'S STOP HIM. LET'S -- I MEAN.

I THINK THAT IS WHAT I AM ASKING.

I DON'T THINK THAT IS WHERE THIS COURT IS GOING. I DON'T THINK THAT IS WHERE ANY COURT SHOULD BE GOING. THE IDEA THAT, BECAUSE OF SOME PAST KNOWLEDGE OR PAST BEHAVIOR, THAT GIVES LAW ENFORCEMENT OFFICERS THE RIGHT TO STOP THAT PERSON, TO GO ON A FISHING EXPEDITION, TO SEE IF MAYBE THEY ARE DOING SOMETHING WRONG RIGHT NOW, THAT IS NOT SOMETHING THAT THIS COURT SHOULD ALLOW. MOVING INTO A DIFFERENT AREA, WE DEAL WITH THE ISSUE OF THE SUPPRESSION, BUT LET'S TAKE A LOOK AT THE ISSUES OF SUSPICION THROUGH THE EVIDENCE IN THIS CASE. IT IS MY POSITION THAT SOME OF THE EVIDENCE RELATED TO THE STOLEN PROPERTY FROM THE AUTOMOBILE THAT WAS IN THE GROVE THAT WAS BEING STRIPPED SHOULD BE SUPPRESSED AND SHOULD NOT HAVE BEEN A BASIS FOR THE EVIDENCE AGAINST MR. MOODY IN THIS CASE. WHEN YOU LOOK AT THE -- EVEN WHEN YOU LOOK AT THAT EVIDENCE IN THIS CASE, IT IS A CIRCUMSTANTIAL EVIDENCE CASE, WITH THE EVIDENCE BEING VERY EQUIVOCAL THAT MR. MOODY, DARRYL MOODY, WAS EVEN THE PERSON INVOLVED.

WELL, IF YOU START FROM THE PREMISE THAT THE MOTION TO SUPPRESS WAS PROPERLY DENIED, THEN WHERE IS YOUR SUFFICIENCY OF THE EVIDENCE ARGUMENT?

AS A STARTING POINT, I MEAN, YOU KNOW, I FEEL THIS IS A VERY STRONG SUPPRESSION ISSUE, WHEN YOU LOOK AT THE STALENESS OF THE EVIDENCE, AND THIS COURT, WITHOUT EQUIVOCATION, SHOULD GO BACK THERE 7-0 AND SAY THIS EVIDENCE GETS TOSSED. I MEAN, THAT IS HOW STRONGLY I FEEL ABOUT THAT ISSUE. EVEN IF THAT EVIDENCE IS IN, COMES INTO THIS CASE, LOOK AT THE TOTALITY OF THE CIRCUMSTANCES AS TO WHAT WAS PRESENTED, IN TERMS OF WHO THE PERPETRATORS WERE. THERE WAS EVIDENCE THAT DEXTER MOODY, DARRYL MOODY'S BROTHER, WAS INVOLVED IN THIS CRIME. THERE WERE SOME --

BUT ISN'T THERE, ALSO, EVIDENCE, THAT MR. DARRYL MOODY WAS INVOLVED? WASN'T HE THE ONE WHO HAD THE MURDER WEAPON AND SOLD IT TO SOMEONE ELSE?

OKAY. OKAY. YOU ARE ASKING ME TWO QUESTIONS AT ONCE, SO I WILL DEAL WITH THEM ONE AT A TIME. WITH RESPECT TO THE PROPERTY THAT WAS FROM THE VEHICLE THAT WAS BEING STRIPPED, THE P-380 GUN, WHICH WAS NOT THE MURDER WEAPON, SOME OF THE SPEAKERS, SOME OF THE THINGS LIKE THAT THAT WERE RECOVERED, A PAIR OF SHOES THAT WERE RECOVERED, THERE WAS EVIDENCE THAT DEXTER MOODY'S CAR WAS SEEN IN THE AREA OF THE CRIME. THERE WAS EVIDENCE THAT DEXTER MADE AND MR. MOODY SHARED RESIDENCES, PLACES. SOME OF THE EVIDENCE THAT WAS FOUND, WAS FOUND IN AN AREA THAT WAS MARKED "DEXTER'S PART OF THE ROOM." SO CIRCUMSTANTIALALLY IT IS REASONABLE THAT DEXTER MOODY WAS INVOLVED IN THIS CRIME, THAT THE FRUITS OF THE CRIME WERE IN AN AREA THAT WOULD BE, ALSO, WHERE DARRYL MOODY WAS, SIMPLY BY VIRTUE OF THE CLOSENESS OF THEIR RELATIONSHIP. THERE WAS EVIDENCE THEY EXCHANGED SHOES AND CLOTHING. THE PAIR OF SHOES THAT WAS IDENTIFIED AS BEING SHOE IMPRESSIONS SIMILAR TO THE ONES OUT AT THE CRIME SCENE, WERE SHOES THAT ESSENTIALLY WOULD HAVE FIT DEXTER MOODY BETTER THAN DARRYL MOODY. THEY WERE SIZE 9-E'S. MR. DARRYL MOODY WORRY A SIZE 9-C, IN TERMS OF HIS SHOE SIZE, BUT THERE WAS, ALSO, EVIDENCE THAT THEY EX-CHANGED CLOTHING ITEMS. THERE WERE WITNESSES WHO IDENTIFIED A BLACK MALE IN THE AREA OF THE GROVE WHEN IT HAPPENED THAT, DIDN'T MATCH DARRYL MOODY BUT WAS MORE SIMILAR TO DEXTER MOODY, AND SO WHEN YOU LOOK AT THOSE ASPECTS OF THE EVIDENCE, THERE CERTAINLY ARE REASONABLE HYPOTHESIS HOW IT COULD LOOK LIKE, MAYBE, DARRYL MOODY WAS INVOLVED BUT CONCLUDE THAT HE IS NOT. THE OTHER ITEM OF EVIDENCE THAT YOU ASKED ME ABOUT WAS THE ALLEGED MURDER WEAPON. THE WEAPON THAT WAS IDENTIFIED AS BEING ONE OF THE MURDER WEAPONS, BECAUSE THE PERSON WAS SHOT TWICE, WITH TWO DIFFERENT WEAPONS. THE EVIDENCE REGARDING THAT WAS THAT A WITNESS, MR. FOSTER, TESTIFIED THAT, AT A TIME PERIOD BEFORE THE HOMICIDE, HE HAD SEEN DARRYL MOODY WITH THAT GUN, AND AT A TIME PERIOD AFTER THE WHOM -- AFTER THE HOMICIDE, AND WHAT IS SIGNIFICANT HERE IS THAT IT WAS AT A TIME PERIOD AFTER MR. MOODY HAD BEEN STOPPED BY THE POLICE, THAT MR. MOODY HAD SOLD HIM THIS GUN AND MADE A STATEMENT THAT THE GUN HAD BEEN THROUGH A LOT. WHAT THIS COURT NEEDS TO LOOK AT IN TERMS OF ANALYZING THAT TYPE OF CIRCUMSTANTIAL EVIDENCE TO USE AN EXAMPLE, YOU KNOW, I HAVE GOT A COPY OF MY INITIAL BRIEF, HERE, WHICH, YOU KNOW, AT SOME POINT BEFORE THIS ORAL ARGUMENT, WAS IN MY POSSESSION. YOU KNOW, I GIVE IT TO MY SECRETARY. SHE PUTS IT IN A DRAWER. I DON'T KNOW WHAT SHE DOES WITH IT. I TELL HER TO, YOU KNOW, PULL THIS COPY OF MY BRIEF, YOU KNOW, SO I CAN TAKE IT WITH ME TO STUDY FOR MY ORAL ARGUMENT. CERTAINLY AT SOME POINT, BEFORE TRAVELING, BEFORE I GOT IT BACK INTO MY POSSESSION, SHE COULD TESTIFY MR. NORGARD HAD THIS COPY OF HIS BRIEF AND HE GAVE IT TO ME, AND THEN DOWN THE ROAD, I HAD NOTHING TO DO WITH IT, UNTIL LATER ON. NOW IT IS BACK IN MY POSSESSION. SO WHEN YOU, YOU KNOW, ANALYZE THE POSSESSION OF AN EVIDENTIARY ITEM LIKE THAT, THERE IS NO EVIDENCE AS TO WHAT HAPPENED TO THE GUN IN THESE INTERMEDIATE TIME PERIODS. AGAIN, THERE IS EVIDENCE THAT DEXTER MOODY HAD ACCESS TO THE THINGS THAT WERE DARYL'S. THEY SHARED THE SAME RESIDENCE. HE HAD ACCESS TO THING THAT IS BELONGED TO MR. MOODY, WHETHER IT BE CLOTHING OR WHATEVER, AND SO IT IS NOT A CONCLUSIVE PIECE OF EVIDENCE, WHICH DEMONSTRATES GUILT ON THE PART OF DARRELL -- DARRYL MOODY IN THIS CASE. THE ONE OTHER AREA THAT I WANT TO TOUCH UPON IS THE EVIDENCE RELATED TO THE AGGRAVATING FACTOR OF AVOID ARREST. WITH RESPECT TO THAT PARTICULAR AGGRAVATOR, IT IS CLEAR THAT THE ISSUE IS WHETHER OR NOT AVOID ARREST WAS THE DOMINANT MOTIVE. AGAIN, IN THIS CASE, THE EVIDENCE RELATED TO THAT MOTIVE IS CIRCUMSTANTIAL. THE EVIDENCE WAS THAT SCOTT MITCHELL WAS THE CARETAKER OF THIS PARTICULAR GROVE, THAT WHAT HAPPENED IS HE ENCOUNTERED SOMEBODY IN THE GROVE, STRIPPING A CAR. THE THEORY OF THE GOVERNMENT AND THE THEORY OF THE TRIAL JUDGE, IN FINDING AVOID ARREST AS AN AGGRAVATOR IN THIS CASE, IS THAT MR. MITCHELL WAS GOING TO REPORT THESE GUYS TO THE

POLICE, AND THAT THESE GUYS KNEW HE WAS GOING TO REPORT THEM TO THE POLICE, AND SO THAT THERE FOR HE KILLED HIM. THERE IS NO EVIDENCE AS TO WHAT MR. MITCHELL'S MOTIVES WERE, WHEN HE CONFRONTED THE INDIVIDUALS IN THE ORANGE GROVE.

ISN'T THERE SOME CASE LAW OUT THERE, WHERE IT WAS HELD THAT, IF THERE IS NO OTHER REASON FOR A KILLING, IF THERE IS NO OTHER POSSIBLE WAY TO EXPLAIN WHY THAT HE WAS KILLED, AND HERE YOU HAVE THEM GOING INTO AN ORANGE GROVE, FINDING THESE TWO INDIVIDUALS STRIPPING THE CAR, AND THEY KILL HIM. WHAT OTHER REASON WOULD THEY KILL HIM, OTHER THAN TO AVOID ARREST?

THAT IS ONE POSSIBILITY. THE OTHER POSSIBILITY IS YOUR GARDEN VARIETY SITUATION, WHERE TRESPASSERS ARE ENCOUNTERED AT A PLACE THEY ARE NOT SUPPOSED TO BE, AND A PERSON IN CHARGE CONFRONTS THEM. MR. MITCHELL GOES INTO THE GROVE. HE SEES TWO PEOPLE WHO AREN'T SUPPOSED TO BE THERE, AND A VEHICLE THAT IS NOT SUPPOSED TO BE THERE. HE TELLS THEM TO LEAVE. THERE IS AN ARGUMENT. HE GETS SHOT DURING THE ARGUMENT ARGUMENT. THERE IS NO EVIDENCE THAT MR. MITCHELL, SEEING THESE PEOPLE IN THE GROVE, WAS AWARE THAT THEY WERE DOING ANY OTHER THING THAN BEING IN THE GROVE.

THE PHYSICAL EVIDENCE IS THAT YOU HAVE ONE LONG-RANGE SHOT AND ONE PISTOL SHOT UP CLOSE. IS THAT CORRECT?

LONG-RANGE MEANING AT A DISTANCE FROM MAYBE --

PROBABLY WHEN THEY FIRST SAW HIM AND THEN SOMEBODY SHOT HIM UP CLOSE, THAT, IS THAT PHYSICAL EVIDENCE?

WHEN YOU SAY LONG-RANGE SHOT, A DISTANCE DETERMINATION, THAT SIMPLY MEANS THAT IT IS BEYOND THE RANGE OF THE GUN -- IT COULD BE THREE-TO-FIVE FEET. BUT EVEN THAT SITUATION --

IS THERE ANY OTHER EVIDENCE RELATIVE TO ARGUMENTS OR DEFENSIVE WOUNDS OR ANYTHING ELSE? IS THAT PRETTY MUCH THE SUMMATION OF THE PHYSICAL EVIDENCE?

BUT ESSENTIALLY THE BOTTOM LINE IS THAT THE WHOLE POINT IS THAT THERE IS VERY LITTLE PHYSICAL EVIDENCE. THERE IS ABSOLUTELY NO EVIDENCE AS TO THE MENTAL PROCESSES OF THE PERPETRATORS OR MR. MITCHELL AND ALL THAT IS LEFT IS SUPPOSITION, BASED ON THE FACT THAT HE WAS KILLED UNDER CIRCUMSTANCES WHERE HE FOUND PEOPLE IN AN ORANGE GROVE. YOU KNOW, CERTAINLY A REASONABLE CONCLUSION OF A CARETAKER IS THAT THEY SEE SOMEBODY IN A GROVE. THEY CONFRONT HIM. GET OUT OF HERE. LEAVE FROM HERE. AND THERE IS AN ANGRY CONFRONTATION BETWEEN THE TWO. IN SELF-DEFENSE SITUATION OR IN QUASI-SELF-DEFENSE SITUATIONS, YOU VERY FREQUENTLY SEE A SITUATION WHERE THERE IS AN ARGUMENT. YOU KNOW, ONE OF THE PEOPLE IS ANGRY. THAT IS THE REASON WHY THE KILLING TAKES PLACE. THE OTHER PERSON TRIES TO RETREAT. THEY CARRY OUT THE, YOU KNOW, DEADLY FORCE, EVEN THOUGH THE OTHER PERSON IS RETREATING AND IT LOOKS LIKE THEY ARE TRYING TO ESCAPE OR GET AWAY. THAT DOESN'T MEAN THAT THE INITIAL CONFRONTATION WASN'T ANGRY, THAT, WHEN IT ESCALATED TO THE POINT OF VIOLENCE, THAT THE OTHER PERSON TRIED TO GET AWAY, BUT DURING THE COURSE OF AN ANGRY CONFRONTATION, WAS KILLED, AND THAT IS CERTAINLY A REASONABLE CONCLUSION, FROM THE FACTS PRESENTED IN THIS CASE. AN ANGRY CONFRONTATION BETWEEN A CARETAKER TELLING PEOPLE GET OUT OF THE GROVE THAT ESCALATES INTO VIOLENCE, THAT HE TRIES TO, AT THAT POINT, GET AWAY BUT WASN'T ABLE TO, AND THAT IS CERTAINLY A REASONABLE CONCLUSION, BASED ON THE CIRCUMSTANTIAL EVIDENCE IN THIS CASE, WHERE THERE IS NO EVIDENCE OF ANY STATEMENTS BY MR MR. MOODY, AS TO HIS INTENT, WHERE THERE IS NO EVIDENCE OF STATEMENTS BY A CO-PERPETRATOR. IN FACT THE CO-PERPETRATOR IS UNKNOWN IN THIS CASE, AND NO EVIDENCE FROM MR. MITCHELL, AS TO WHAT HIS INTENTIONS WERE, IN TERMS OF WHAT WAS GOING ON AT

THE TIME THE PEOPLE IN THE GROVE WERE CONFRONTED. SO I SEE MY LIGHT IS LOOKING AT ME.

THANK YOU.

THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS BOB LANDRY REPRESENTING THE STATE IN THIS APPEAL. WITH RESPECT TO THE FIRST ISSUE AS TO THE MOTION TO SUPPRESS EVIDENCE, WE THINK THAT JUDGE YOUNG CORRECTLY DECIDED THIS CASE. THIS IS AN INSTANCE IN WHICH ESSENTIALLY OFFICER DOWDY AND OFFICER BLI, AT LEAST DOWDY, ANYWAY, HAD PERSONAL KNOWLEDGE OF THE DEFENDANT. HE KNEW, FROM PAST EXPERIENCE WITH HIM, THAT HE HAD ALWAYS DRIVEN WITHOUT A LICENSE OR ON A SUSPENDED LICENSE. THERE WAS OBVIOUSLY NO PRETEXT PRETEXTULE SITUATION INVOLVED IN THIS CASE. HE WASN'T INVOLVED IN THE HOMICIDE OF SCOTT MITCHELL EARLIER. BASED ON HIS PRIOR EXPERIENCE WITH THE DEFENDANT, HE KNEW THAT HE ALWAYS WAS IN THE HABIT OF DRIVING WITHOUT A LICENSE, SO CONSEQUENTLY HE ACTED REASONABLY AS THE COURT --

HOW DO YOU JUSTIFY THAT STATEMENT? HE IS ALWAYS IN THE HABIT OF DRIVING WITHOUT A LICENSE? THAT IS A RATHER CAVALIER STATEMENT, OTHER THAN HE IS KNOWN, AT TIMES, THAT HE DID NOT HAVE A LICENSE. THE LICENSE HAD BEEN TAKEN SOME FIVE YEARS AGO. THAT IS QUITE DIFFERENT FROM KNOWING THAT HE NEVER HAD A LICENSE.

WELL, I THINK THE TESTIMONY OF DOWDY AT THE HEARING, AT THE SUPPRESSION HEARING, WAS THAT, FOR AS LONG AS HE HAD KNOWN HIM, HE NEVER KNEW HIM TO BE DRIVING LAWFULLY WITH A VALID LICENSE THAT HE HAD STOPPED HIM ON ONE OCCASION, HAD SEEN HIM ON ONE OCCASION RIDING A BICYCLE OR SOMETHING AND THE DEFENDANT HAD TOLD HIM THAT HE DIDN'T HAVE A DRIVER'S LICENSE. THAT WAS A PREVIOUS OCCASION. THE OFFICER TESTIFIED --

IS THERE ANY EVIDENCE THAT THE OFFICER WOULD CHECK HIM OUT PERIODICALLY, FOR A LICENSE, TO SEE WHETHER HE HAD A LICENSE, OR IS THERE EVIDENCE THAT HE KNEW THAT THE LICENSE HAD BEEN TAKEN, AT A CERTAIN POINT? IS THAT THE EXTENT OF HIS KNOWLEDGE?

HE TESTIFIED, AT ONE POINT IN THE SUPPRESSION HEARING, THAT HE HAD HAD OCCASION, IN THE PAST, TO CHECK, AND WHATEVER THAT OCCASION WAS, HE HAD DETERMINED, HE HAD FOUND OUT THAT HE WAS --

NO EVIDENCE THAT HE WAS CHECKING HIM AT PERIODIC TIMES, TO SEE WHETHER HE HAD A LICENSE?

NO. I MEAN, HIS TESTIMONY BASICALLY WAS, YOU KNOW, I HAVE KNOWN HIM FOR A NUMBER OF YEARS, AND FOR -- DURING THAT PERIOD OF TIME, FOR AS LONG AS I HAVE KNOWN HIM, HE HAS ALWAYS HAD A SUSPENDED LICENSE OR AN EXPIRED LICENSE OR NO VALID LICENSE AT ALL.

THERE IS NO EVIDENCE AS TO WHEN THE LAST TIME HE HAD CHECKED, TO SEE IF HE HAD A LICENSE OR NOT, CORRECT?

NO EVIDENCE AS TO -- NO EVIDENCE AS TO THAT?

NO. I DON'T THINK THE OFFICER'S TESTIMONY WAS CLEAR, AS TO WHEN THE LAST TIME THAT HE HAD CHECKED ON THAT, BUT HE TESTIFIED THAT HE HADN'T SEEN HIM IN A WHILE. HE HADN'T SEEN HIM IN A YEAR OR TWO YEARS, BECAUSE HE DIDN'T KNOW WHEN HE HAD GONE INTO PRISON AND GOTTEN BACK OUT.

AND THE OTHER THING IS HE HAD YOU ANSWERED TO JUSTICE SHAW THAT HE HAD SEEN HIM IN THE PAST DRIVING, AND HE KNEW AT THE TIME HE WAS DRIVING, HE WAS DRIVING WITHOUT A

LICENSE. THERE IS NOTHING IN THE POLICE OFFICER'S TESTIMONY THAT HE, THAT THIS MAN WOULD DRIVE A VEHICLE WITHOUT A LICENSE. WHAT THIS OFFICER TESTIFIED IS HE KNEW, IN THE PAST, HE HAD HAD A SUSPENDED LICENSE, AND THAT HE THAT IS BECAUSE HE USUALLY WOULD SEE HIM WALKING AND NOT, IN FACT DRIVING.

HE HAD SEEN HIM WALKING IN THE PAST, AND WHEN HE TALKED TO HIM IN THE PAST ABOUT IT, THE DEFENDANT HAD TOLD HIM, APPARENTLY, THAT HE DIDN'T HAVE A LICENSE. I THINK THAT WAS PART OF DOWDY'S TESTIMONY.

BUT --

IS IT THAT EASY FOR THE STATE TO PROVE PROBABLE CAUSE, BY JUST PUT AGO OFFICER ON, BY SAYING "I HAVE NEVER KNOWN HIM TO HAVE A LICENSE"?

WELL, IF IT IS A SITUATION IN WHICH THE DEFENDANT --

SO I HAVE REASON TO STOP HIM, IF I SEE HIM IN A CAR.

THE RELATIONSHIP BETWEEN THE OFFICER AND THE DEFENDANT IS THAT I KNOW THIS DEFENDANT, AND I KNOW THAT IN MY PRIOR EXPERIENCE WITH HIM, HE HAS NEVER HAD A VALID DRIVER'S LICENSE OR HE HAS ALWAYS BEEN DRIVING ON A SUSPENDED LICENSE, THEN I SUBMIT, THAT GIVES, IS A REASONABLEARTIC AT SUSPICION FOR HIM, WHEN HE SEES HIM AT THE GIVEN TIME NOW, TO OCCASION TO STOP AND CHECK IT OUT, BECAUSE HE IS -- POSSIBLY THERE IS A REASONABLE PACES TO -- BASIS TO BELIEVE THAT THE DEFENDANT IS COMMITTING A CRIME IN HIS PRESENCE, ON THE BASIS OF DRIVING WITHOUT A LICENSE. THE QUESTION AS TO WHETHER OR NOT THE OFFICER'S KNOWLEDGE WAS STALE OR NOT, THE OFFICER TESTIFIED THAT HE HADN'T SEEN HIM FOR A YEAR OR TWO, AND I THINK THE EVIDENCE THAT CAME IN, THE DOCUMENTARY EVIDENCE INDICATED THAT THE DEFENDANT HAD BEEN IN PRISON FOR ABOUT A YEAR OR SO, SEVERAL MONTHS, ANYWAY, PRIOR TO THIS STOPPING. WE SUBMIT THAT JUDGE YOUNG CORRECTLY DECIDED THAT, BASED ON THE, CERTAINLY SOME OF THE OUT-OF-STATE JURISDICTION THAT IS HE RECITED IN HIS ORDER, THAT THERE REALLY IS NO BRIGHT-LINE TEST, IN TERMS OF THE TIME PERIOD, AND CLEARLY WHAT THE OFFICER HAD IN THE CIRCUMSTANCES WAS A REASONABLE ARTICULATE SUSPICION. THERE WASN'T ANY PRETEXT. HE WASN'T INVESTIGATING THE MITCHELL HOMICIDE. HE WASN'T TRYING TO HARASS THE DEFENDANT. AS A MATTER OF FACT, AS SOON AS THE OFFICER STOPPED THE CAR AND THEY CHECKED THE LICENSE AND DERLED THAT HE WASN'T -- AND DETERMINED THAT HE DIDN'T HAVE A VALID DRIVER'S LICENSE, THEY, THEN, CONFIRMED THAT OVER THE RADIO AND THE COMPUTER, APPARENTLY. AT THAT POINT IS WHEN THEY ARRESTED HIM MERELY FOR THE DRIVING WITHOUT A LICENSE.

WHAT IS THE CLOSEST CASE, WHEN YOU SAID THERE ARE A LOT OF OUT-OF-STATE CASES. WHAT IS THE BEST CASE FROM OUT-OF-STATE THAT WOULD MOST APPROXIMATE THE CIRCUMSTANCES IN THIS CASE?

WELL, I THINK THERE WAS ONE CASE, I THINK THERE WAS A 15- 15-MONTH PERIOD, I THINK IT WAS AN UTAH CASE THAT THE JUDGE CITED IN HIS ORDER, YOUTH AWE, A MINNESOTA -- AN UTAH, A MINNESOTA CASE.

THIS WAS THE CASE WHERE THE TROOPER HAD STOPPED THE DRIVER FOR DUI, KNEW THAT HIS LICENSE HAD BEEN SUSPENDED FOR A PERIOD OF TIME AND ACTUALLY HAD CHECKED ON IT, AND IN A PROCEEDING THERE IS ACTUALLY A QUESTION OF WHETHER IT IS THREE MONTHS OR 15 MONTHS, BUT THEY HAD VERY SPECIFIC KNOWLEDGE AS TO WHY THE LICENSE HAD BEEN SUSPENDED AND HAD BEEN THE ONE THAT ACTUALLY HAD ARRESTED HIM AND GOTTEN HIM SUSPENDED, HAD THE LICENSE SUSPENDED, CORRECT? SO I MEAN, THAT IS THE CLOSEST CASE TO THIS CASE?

WELL, YEAH. I THINK SO, AND I THINK THE SIMILARITIES OF THAT CASE TO THIS ONE ARE AMPLE THAT, THIS IS A CASE IN WHICH THIS OFFICER KNEW THIS DEFENDANT. HE KNEW WHAT HIS PRACTICE AND PRO CLIFT WAS. HE KNEW THAT -- AND PROCLIVITY WAS. HE KNEW THAT, IN HIS EXPERIENCE, HE HAD NEVER HAD A VALID DRIVER'S LICENSE THAT HE WAS DRIVING ON, AND SO HE KNEW, OBVIOUSLY UNDER THESE CIRCUMSTANCES, IT WAS OBVIOUSLY REASONABLE FOR HIM TO HAVE ANOTHER OFFICER, UNIFORMED OFFICER TO MAKE A QUICK STOP, TO DETERMINE --

DOES IT MATTER THAT, IN THIS CASE THAT THE LICENSE WAS IN INDEFINITE SUSPENSION BECAUSE OF YOU KNOW, AGAIN, MANY TRAFFIC OFFENSES, THAT APPARENTLY THIS IS JUST A SIMPLE MATTER OF DOING SOMETHING HE COULD HAVE GOTTEN HIS LICENSE BACK? AS FAR AS WHETHER IT IS REASONABLE TO SAY THAT A NARCOTICS OFFICER WHO ISN'T IN THE PRACTICE OF MAKING TRAFFIC STOPS COULD SAY THAT ANYTHING, YOU KNOW, THIS WOULD REALLY SAY ANY TIME, IT WOULD BE TWO YEARS AFTER, THAT THIS PERSON WAS SUBJECT TO CONSTANT STOPS BY THE POLICE, BECAUSE THEY HAD KNOWN IN THE PAST THAT HE DIDN'T HAVE A DRIVER'S LICENSE?

WELL, I DON'T KNOW IF THE COURT IS ASKING WHETHER OR NOT THIS OFFICER HAD A REASON TO STOP HIM REASON OR THOUGHT HE MIGHT HAVE BEEN INVOLVED IN DRUG USAGE OR DRUG --

NO. NO. NO. NO. WHAT I AM SAYING IS THE FACT THAT THIS POLICE OFFICER DIDN'T KNOW IF THIS WAS INDEFINITE SUSPENSION OR DIDN'T KNOW THE NATURE OF THE SUSPENSION AND, IN FACT, IT WAS A SUSPENSION THAT WAS NOT INDEFINITE SUSPENSION, SHOULDN'T THAT GO TO THE WHETHER IT IS A REASONABLE SUSPICION OR NOT, AS OPPOSED TO SOMEONE, YOU KNOW, AGAIN, AS MR. NORGARD SAID IF THIS HAD BEEN SOMEBODY WHO HAD BEEN, HAD A SPECIFIC SUSPENSION FOR FIVE YEARS, AND HE SEES HIM TWO YEARS DOWN THE ROAD, THIS IS A TOTALLY DIFFERENT CASE.

WELL, I THINK IN THE OFFICER'S MIND, HE HAS A, THE KNOWLEDGE THAT HE HAS FROM DEALING WITH THIS INDIVIDUAL, IS THAT HE HAS NEVER HAD -- HE HAS KNOWN HIM SINCE EITHER 1976 -- EITHER 1987 OR 1989. THIS IS A STOP AND FOR WHATEVER PERIOD OF TIME THAT THAT IS, HE HAD NEVER KNOWN HIM TO BE DRIVING WITH A VALID LICENSE. HE HAD HAD PREVIOUS EXPERIENCES WITH HIM. HE HAD HAD OCCASION IN THE PAST TO CHECK OUT HIS DRIVER'S LICENSE SITUATION, AND I THINK THAT WHAT HE DID WHAT IS IMMINENTLY REASONABLE UNDER THE CIRCUMSTANCE.

A NEBULOUS STANDARD SUCH AS THAT, IS THAT A STANDARD THAT A STATE OUGHT TO BE PROMOTING AS GROUNDS FOR REASONABLE SUSPICION THAT I KNOW THE PEOPLE IN THIS NEIGHBORHOOD, AND I KNOW THIS GUY, AND I KNOW HIS LICENSE WAS TAKEN AROUND FIVE YEARS AGO, AND I SUSPECT THAT HE IS DRIVING WITHOUT A DRIVER'S LICENSE. IT IS EASY TO SAY THAT, BUT THE ONLY OBJECTIVE THING HE HAS SAID IS, HIS BASIS IS THAT I KNEW HIS LICENSE WAS TAKEN ABOUT FIVE YEARS AGO. OTHER THAN THAT, IT IS JUST A GRATUITOUS STATEMENT THAT, WITH NO BASIS WHAT THE THING IS.

WELL, I DON'T KNOW THAT -- WHAT PART IS GRATUITOUS. HE IS INDICATING THAT HIS OVERALL EXPERIENCE WITH THIS DEFENDANT IS -- WOULD WHAT WAS HIS OVERALL EXPERIENCE THAT IS ARTICULATED IN THIS RECORD?

THAT HE KNEW THE DEFENDANT, MR. MOODY. KNEW HIS BROTHER, AS WELL, AND THAT HE HAD STOPPED HIM IN THE PAST. HE HAD CHECKED HIS LICENSE IN THE PAST, AND IN HIS EXPERIENCE OVERALL, IT HAD BEEN THAT THE DEFENDANT, IN ALL THE TIME PERIOD THAT HE HAD KNOWN HIM, NEVER DROVE ON A VALID LICENSE. HE ALWAYS DROVE ON A SUSPENDED --

WHEN WAS THE LAST TIME HE CHECKED HIM?

HIS TESTIMONY ISN'T CLEAR. HE SAID HE COULDN'T RECALL THE LAST TIME HE HAD CHECKED IT,

BUT HE SAID IN THE PAST THAT HE HAD CHECKED IT, AND HIS PREVIOUS CONFRONTATIONS WITH THE DEFENDANT, HE HAD SEEN HIM, I GUESS, WALKING AROUND A BICYCLE OR SOMETHING OF THAT NATURE AND THE DEFENDANT HAD TOLD HIM AT THAT TIME.

WHAT DID HE KNOW SPECIFICALLY? IN OTHER WORDS DID HE SAY THAT, BASED ON HIS CONTACTS WITH THE DEFENDANT, HE KNEW THAT THE DEFENDANT HAD BEEN CHARGED WITH DUI AND HAD HAD HIS LICENSE SUSPENDED FOR A PERIOD OF TIME BECAUSE OF THAT? WHAT, IN OTHER WORDS, WAS HIS SPECIFIC KNOWLEDGE ABOUT THE DRIVING LICENSE STATUS OF THIS DEFENDANT? DID HE HAVE ANY SPECIFIC KNOWLEDGE?

WELL, HIS TESTIMONY WAS THAT HE WAS, OFFICER DOWDY SAID HE SAW THE DEFENDANT DRIVING THE YELLOW FORD STATION WAGON THERE, IN LAKE WALES, AND HE TURNED TO HIS PARTNER, OFFICER BLI, AND SAID -- OFFICER BLIGH, AND HE SAID WE NEED TO STOP THIS GUY. WE NEED TO GET A UNIFORMED OFFICER TO OCCASION A STOP.

IN OTHER WORDS WHAT DID HE ARTICULATE? WHAT WAS THE LICENSE SUSPENDED FOR?

HE DIDN'T TESTIFY ALONG THAT GROUND. AT THE SUPPRESSION HEARING, HE HAD SIMPLY SAID THAT HE HAD ALWAYS KNOWN HIM TO BE.

SO HE DIDN'T HAVE ANY SPECIFIC KNOWLEDGE ABOUT THE DRIVER'S LICENSE STATUS OF THE DEFENDANT?

JUST IN GENERAL HIS OVERALL PAST EXPERIENCE WITH HIM.

BUT HE DIDN'T KNOW WHETHER THE LICENSE HAD BEEN SUSPENDED, WHETHER HE JUST DIDN'T HAVE IT, OR IN OTHER WORDS WHETHER HE HAD A LICENSE AND DIDN'T CARRY IT WITH HIM.

WELL, HE DIDN'T --

HE WASN'T ABLE TO ARTICULATE WHAT THE STATUS OF THE DRIVING PRIVILEGES OF THE DEFENDANT WERE.

NOT WITH ANY GREAT SPECIFICITY. HE SAID THAT, IN ALL THE TIME PERIOD HE HAD KNOWN HIM, THAT HE HAD HAD, HE NEVER DROVE WITH A VALID LICENSE OR SUSPENDED LICENSE. I THINK THE DOCUMENTARY EVIDENCE INTRODUCED AT THE SUPPRESSION HEARING --

HAD HE ARRESTED THE DEFENDANT BEFORE?

I THINK HE HAD ARRESTED HIM, PERHAPS, ON A DRUG CHARGE.

WHAT ABOUT THE DRIVER'S LICENSE? DRIVING WITHOUT A LICENSE?

I THINK HE SAID HE HAD PREVIOUS CONTACTS WITH HIM AND HAD PREVIOUSLY ARRESTED HIM. I DON'T KNOW EXACTLY WHAT THE OFFENSE WAS FOR THE, THAT HE HAD PREVIOUSLY ARRESTED HIM FOR.

HE TESTIFIED THAT HE HAD ARRESTED HIM FOR NOT HAVING A DRIVER'S LICENSE?

MY RECOLLECTION SEEMS TO BE THAT HE SAID HE MADE, HE HAD PREVIOUSLY ARRESTED HIM. I DON'T KNOW IF IT WAS FOR DRIVER'S LICENSE OR IT MIGHT HAVE BEEN A DRUG SITUATION THAT HE HAD PREVIOUSLY --

WAS THERE ANY EVIDENCE PUT ON ABOUT WHAT THE ACTUAL STATUS OF THE DRIVER'S LICENSE WAS? IN OTHER WORDS WHAT THE RECORD WAS THAT SHOWED WHAT HAD HAPPENED IN THE PAST?

YEAH. I THINK THERE WAS DOCUMENTARY EVIDENCE INTRODUCED AT THE SUPPRESSION HEARING THAT SAID THAT HIS LICENSE EXPIRED IN 1977 AND THEN THERE WAS A SUSPENDED LICENSE THEREAFTER, IN 1984. I DON'T KNOW WHAT --

LET ME JUST, IN OTHER WORDS, IT HAD EXPIRED IN '77?

RIGHT.

AND THEN HE APPARENTLY GOT IT BACK?

APPARENTLY, AND THEN IT WAS SUSPENDED IN 1984.

FOR WHAT?

THAT IS ALL IT STATED IN THE JUDGE'S ORDER, JUDGE YOUNG'S ORDER, I THINK IT IS.

I AM NOT TALKING ABOUT HIS ORDER. I AM TALKING ABOUT THE EVIDENCE.

I THINK THAT HE IS PARAPHRASING WHAT THE DOCUMENT STATED.

MR. NORGARD RELATED TO THE FACT THAT THERE WAS SOME EVIDENCE THAT THERE WAS SOMETHING THAT COULD EASILY BE CORRECTED, AFTER IT WAS SUSPENDED IN '84. IS THERE ANY EVIDENCE OF THAT?

WELL, YOU KNOW, I DON'T KNOW HOW EASILY IT COULD HAVE BEEN SUSPENDED.

NOT -- CORRECTED. REINSTATED.

I DON'T KNOW IF -- I DON'T KNOW IF THERE IS ANY TESTIMONY ABOUT THAT. THE JUDGE --

WE DON'T KNOW WHY IT WAS SUSPENDED, AND SO WE DON'T KNOW HOW IT COULD BE REINSTATED?

I DON'T BELIEVE SO, UNLESS THERE IS MORE SPECIFICITY STATED IN THE DOCUMENTS AT THE SUPPRESSION HEARING.

THE POLICE OFFICER DIDN'T SAY WHY IT WAS SUSPENDED.

NOT. HE DIDN'T ARTICULATE ANY REASON WHY HE KNEW AT THAT PARTICULAR TIME. HE JUST SAID TO HIS PARTNER THAT WE NEED TO GET A UNIFORMED OFFICER TO STOP THE CAR AND CHECK ON IT, AND UPON CHECKING, THEY FOUND EVERYTHING IN THERE.

GO AHEAD.

WOULD YOU GIVE US YOUR VERY BEST VERSION OF THE EVIDENCE, AS TO THE BASIS FOR THE STATEMENT "HE NEVER HAD A LICENSE"? BECAUSE YOU HAVE GIVEN US KIND OF A NEBULOUS CONCEPT OF, WELL, WE SAW HIM WALKING A COUPLE OF TIMES OR A BICYCLE, BUT COULD YOU GIVE US JUST VERY BEST ARTICULATED REASONS.

WELL, I THINK DOWDY TESTIFIED THAT, AS LONG AS HE HAD KNOWN HIM, AND HE HAD KNOWN HIM SINCE 1987 OR 1989, HE STATED THAT HE HAD NEVER KNOWN HIM TO DRIVE A VALID LICENSE, AND THAT HE HAD A PROCLIVITY OR A TENDENCY, WHATEVER HE WAS DRIVING, TO BE DRIVING ON A SUSPENDED LICENSE.

I UNDERSTAND THAT CONCLUSION. WHAT ARE THE FACTS THAT PRODUCED THAT CONCLUSION?

WHAT ARE THE VERY BEST FACTS THAT YOU HAVE THAT PRODUCED THAT CONCLUSION?

WELL --

IS THAT ALL THERE IS?

WELL, YOU HAVE OFFICER DOWDY'S TESTIMONY THAT HE HAD PREVIOUSLY HAD OCCASION TO DEAL WITH THE DEFENDANT. THAT HE HAD SEEN HIM IN THE PAST WHEN HE WASN'T DRIVING, AND THE DEFENDANT HAD TOLD HIM THAT HE DIDN'T HAVE A VALID LICENSE OR THAT HIS LICENSE WAS SUSPENDED.

DO WE KNOW WHEN THAT OCCURRED?

NO. THE OFFICER COULDN'T RECALL WHEN THAT HAD OCCURRED, AND THAT THE OFFICER SAID THERE WAS ONE OCCASION PREVIOUSLY, WHERE HE HAD CHECKED. HE HAD CHECKED THE DEFENDANT'S DRIVING STATUS, AND FOUND OUT THAT IT WAS SUSPENDED OR DIDN'T HAVE A VALID LICENSE. I AM NOT SAYING THAT THIS WAS THE OCCASION WHEN THE STOP WAS MADE, BUT THE OFFICER COULDN'T RECALL ANY PARTICULAR, WHAT THE TIME FRAME WAS THAT HE HAD PREVIOUSLY DONE SO.

LET ME MOVE YOU TO THE OTHER ISSUE MR. NORGARD RAISED WITH US AND WHAT IS THE EVIDENCE HERE HERE, THAT LINKS THIS DEFENDANT TO BEING IN THE ORANGE GROVE, AT THE TIME THAT THIS WAS COMMITTED AND SECONDLY, TO ACTUALLY HAVE FIRED THE SHOTS?

YOU HAVE THE TESTIMONY OF, I BELIEVE IT IS REATHA COTTON. REATHA COTTON AND HER HUSBAND, JOHNNY COTTON, HAD APPARENTLY SEEN THE TWO CARS DRIVE INTO THE ORANGE GROVE AREA. ONE WAS THE SILVER CADILLAC, WHICH TURNS OUT TO BE THE DEXTER MOODY CADILLAC, AND WE HAVE THE TESTIMONY, AND THAT WAS FOLLOWED BY THE GREEN BUICK, WHICH WAS THE UPSHAW GREEN BUICK THAT WAS STOLEN FROM ORLANDO EARLIER THAT MORNING. AND SHE, ALSO, TESTIFIED THAT SHE THOUGHT SHE HEARD A GUNSHOT IN THAT AREA, AFTER THE TWO CARS WERE PARKED. WE HAVE THE DEFENDANT IN POSSESSION --

NOW, SHE JUST TESTIFIED AS TO THE VEHICLES.

VEHICLES DRIVEN BY TWO BLACK MALES. RIGHT.

AND TWO BLACK MALES.

RIGHT.

BUT THAT IS AS MUCH SPECIFICITY AS SHE GAVE. AND THAT SHE HEARD A GUNSHOT.

RIGHT. NOW, THE OTHER EVIDENCE CONCERNS THE TWO GUNS THAT WERE OBTAINED. ONE WAS THE ROSSI .38, WHICH IS THE FATAL GUNSHOT WOUND AT SHORT RANGE, EXECUTION STYLE TO THE FORWARD, AND THAT IS A GUN THAT MR. MOODY HAD, BOTH PRIOR TO THIS CRIME, THIS WAS STOLEN FROM THE THERESA CARMICHAEL CADILLAC, ON APRIL 10, AND THAT IS A GUN THAT MOODY SOLD TO BRUCE FOSTER, AFTER HE GOT OUT OF -- LEFT THE POLICE STATION AND MONEY TO IMPOUND, GET THE CAR OUT OF IMPOUND.

IS THERE ANY EVIDENCE AS TO, ONE, THIS DEFENDANT ACTUALLY TAKING THE CAR ON APRIL 10, OR A CHAIN OF WHO HAD CUSTODY OF THAT WEAPON, FROM APRIL 10 UNTIL THIS MURDER OCCURRED?

WELL, I THINK THERE IS TESTIMONY THAT ONLY DARRYL MOODY WAS IN POSSESSION OF THE ROSSI ROSSI.38. LET ME CORRECT. BRUCE FOSTER TESTIFIES THAT HE HAD SEEN THE DEFENDANT

WITH THIS GUN AT THE CONVERSATION CLUB. HE AND TWO OTHER WITNESSES, COLEMAN, I THINK, AND CRAWFORD AND DUDNEY SEE THE DEFENDANT WITH A .38. WHEN FOSTER BUYS A GUN --

WITH A .38.

YEAH. I DON'T KNOW IF ONE OF THEM SAID LOOK, SIMILAR TO THIS GUN THAT IS INTRODUCED INTO EVIDENCE, BUT WHEN MOODY SELLS THE GUN TO BRUCE FOSTER, FOSTER SAYS THIS IS THE SAME GUN THAT YOU HAD AT THE CONVERSATION CLUB. I REMEMBER IT. I RECALL IT. AND THE DEFENDANT TELLS HIM BE CAREFUL ABOUT THIS. THIS GUN HAS BEEN SEEN A LOT. IT HAS BEEN THROUGH A LOT. SO YOU HAVE THE DEFENDANT, ONLY THE DEFENDANT IS IN POSSESSION, BY ANY OF THE WITNESSES, WITH THAT GUN. THE DEFENDANT IS, ALSO, IN POSSESSION OF THE .380 DAVIS SEMIAUTOMATIC IN THE UPSHAW VEHICLE, WHICH OFFICERS DOWDY AND BLIGH RECOVER AT THE TIME OF THE STOP. AND MOODY IS TELLING A NUMBER OF WITNESSES FOSTER AND A COUPLE OF OTHER PEOPLE, THAT HE IS VERY CONCERNED THAT THE POLICE HAVE RETRIEVED A GUN, WHEN THEY TOOK HIS AUTOMOBILE INTO CUSTODY OR AT THE TIME OF HIS STOP, SO HE IS SELLING THE GUN, THE MURDER WEAPON, THE .38, TO BRUCE FOSTER AFTER HE STOPPED --

IS THERE ANY PHYSICAL EVIDENCE THAT TIES THIS PARTICULAR DEFENDANT, TO THE CAR THAT WAS BEING STRIPPED?

OH, YEAH. ALL OF THE AUDIO AND STEREO EQUIPMENT BELONGING TO UPSHAW, WHICH WAS A GREEN STOLEN BUICK THAT WAS LEFT AT THE SCENE OF THE HOMICIDE, THIS MATERIAL IS FOUND, BOTH, IN THE DEXTER CADILLAC AND IN THE DEFENDANT'S YELLOW FORD STATION WAGON. THAT IS HOW I UNDERSTAND THE EXHIBITS, AND THERE IS ADDITIONAL EVIDENCE THAT, IN THE -- THERE IS NO -- THERE ARE BULLETS FOUND, ALSO, IN EITHER THE DEFENDANT'S VEHICLE OR IN HIS HOME, AND THERE WAS NO .38 BULLETS FOUND IN ANY OF DEXTER'S PROPERTY. NOW, YOU KNOW, DEXTER MAY HAVE BEEN A COPARTICIPANT. THERE WERE TWO GUNS INVOLVED IN THE KILLING.

WHAT I AM WAITING FOR IS, ARE THERE ANY PRINTS? ARE THERE ANY HAIR OR ANY TYPE OF PHYSICAL EVIDENCE?

WELL, IN ADDITION, YOU HAVE THE SIERRA BOOTS, WHICH THERE IS TESTIMONY THAT SIERRA BOOTS MAY HAVE LEFT THE FOOT IMPRESSION AT THE SCENE BY THE DOOR OF THE VICTIM, WHERE THE VICTIM WAS SHOT APPARENTLY, AND THOSE BOOTS ARE FOUND IN THE ELWIN LEAKS APARTMENT. SHE IS A SISTER OF SHARETA LEAKS WHO IS THE DEFENDANT'S GIRLFRIEND, AND FOUND IN THE BEDROOM WHERE THE DEFENDANT PERIODICALLY STAYED. HE STAYED THERE, LIKE, FOUR OR FIVE DAYS A WEEK, IS MY UNDERSTANDING OF THE TESTIMONY, AND THOSE BOOTS ARE FOUND, AND THERE IS ADDITIONAL SPEAKERS, SPEAKERS FROM THE UPSHAW VEHICLE WHICH ARE FOUND IN THAT BEDROOM, AND THERE IS TESTIMONY THAT DEXTER DIDN'T STAY IN THAT BEDROOM. DEXTER, ON THE ONE OCCASION OR ONE OR TWO OCCASION THAT IS HE STAYED AT THE LEAKS'S APARTMENT, STAYED ON THE COUCH IN THE LIVING ROOM.

HOW DO WE KNOW THAT IT WAS THIS DEFENDANT THAT ACTUALLY FIRED THE SHOTS?

WELL, WE KNOW CIRCUMSTANTIALALLY, WE KNOW THAT HE IS THE ONLY ONE IN POSSESSION OF THIS GUN, BOTH BEFORE AND AFTER.

BUT AS I UNDERSTAND IT, THERE IS NO EVIDENCE OF POSSESSION OF GUN IN THE GROVE.

PARDON ME?

THERE WAS NO EVIDENCE THAT HE WAS IN POSSESSION OF THE GUN IN THE GROVE. WHILE THEY

WERE STRIPPING THE CAR. I MEAN, THERE REALLY, THE RECORD IS SILENT ON THAT.

YEAH. THERE IS NO TESTIMONY THAT THIS PARTICULAR INDIVIDUAL IS ACTUALLY SEEN IN THE ORANGE GROVE, BUT OBVIOUSLY HE HAD, YOU KNOW, GREAT MOTIVATION, YOU KNOW TO HAVING PARTICIPATED IN THIS BURGLARY OF THE CONVEYANCE OF THE AUTOMOBILE, AND SINCE HE IS THE ONE IN POSSESSION OF THIS GUN, WE KNOW, BOTH BEFORE AND AFTER THE INCIDENT, TO DRAW THE CONCLUSION THAT HE IS THE ONE THAT HAS A MOTIVE TO KILL THE VICTIM FORM EVEN IF -- VICTIM. EVEN IF THE PREMEDITATION WOULD BE LACKING, IF THE COURT WERE TO HOLD THABS, THEN YOU STILL HAVE THE PERPETRATION OF A FELONY MURDER THAT THE HOMICIDE IS OCCURRING WHILE THE GREEN BRUCK IS BEING -- BUICK IS BEING STRIPPED FOR THE PROPERTY THAT IS CONTAINED THERE IN AND SUBSEQUENTLY SHOWS UP IN HIS POSSESSION.

IF WE AGREE WITH THE DEFENDANT, THAT THE STOP IS ILLEGAL, AND EVIDENCE FLOWING FROM THAT STOP SHOULD BE SUPPRESSED, WHAT OTHER EVIDENCE IS LEFT BY THE STATE, AS SORT AFTER FOLLOW-UP ON JUSTICE --

I THINK THE ONLY EVIDENCE THAT FLOWS FROM THAT IS THE PROPERTY SEIZED PURSUANT TO THE SEARCH WARRANT, WHICH FOLLOWED AFTER OFFICER DOWDY'S SEIZURE OF THE SEMIAUTOMATIC, WHICH LED TO THE SEARCH WARRANTS. I THINK THAT BRUCE FOSTER TESTIMONY AND EVIDENCE COMES IN AS INDEPENDENT. FOSTER CAME FORWARD, AFTER THE DEFENDANT WAS ARRESTED FOR POSSESSION OF STOLEN PROPERTY, AND HE COMES FORWARD, FINALLY, AND, AFTER FINALLY PUTTING TWO AND TWO TOGETHER OR ELSE BEING TOLD BY ANOTHER FRIEND OF HIS, THAT THIS GUN WAS USED IN A HOMICIDE, SO HE COMES FORWARD AND FURNISHS THAT GUN TO THE POLICE. CERTAINLY THE POLICE DID NOT EXPLOIT ANY ILLEGALITY IN OBTAINING BRUCE FOSTER. FOSTER'S EVIDENCE AND TESTIMONY. AND THAT, PLUS THE WHATEVER EVIDENCE THAT CAME IN, IN THE SEARCH OF THE ELWIN LEAKS APARTMENT. THAT WAS GIVEN PURSUANT TO CONSENT, WHEN THE POLICE ARRIVED AT THE SCENE, SO WE SUBMIT THAT THAT WOULD BE INDEPENDENT EVIDENCE AS WELL. CERTAINLY ONCE BRUCE FOSTER COMES FORWARD AND SAYS THIS IS THE GUN THE DEFENDANT TOLD ME, SOLD TO ME AND TOLD ME TO LOOKOUT, BECAUSE IT HAD SEEN AN AWFUL LOT, AND ONCE THE BALLISTICS DETERMINED THAT THAT IS A MURDER WEAPON, ONE OF THE MURDER WEAPONS, CERTAINLY THE OFFICERS WOULD HAVE HAD PROBABLE CAUSE AT THAT POINT, TO GET SEARCH WARRANTS AND SEARCH THE PROPERTY OF MR. MOODY AND RECOVER WHATEVER EVIDENCE THAT WAS THERE. THIS IS ALL VERY RAPID. THIS ALL OCCURRED WITHIN TWO OR THREE DAYS. SO WE STILL SUBMIT THERE WOULD HAVE BEEN SUFFICIENT EVIDENCE FOR WHICH TO SUSTAIN A CONVICTION ON THAT. WITH REGARD TO THE OTHER ISSUE AS TO AVOID ARREST AGGRAVATOR, WE THINK THE EVIDENCE WAS QUITE AMPLE ON. THAT THE CASE LAW OUT OF THIS COURT IS CLEAR THAT THE STATE HAS TO SHOW THAT THERE WAS A SOLE OR DOMINANT MOTIVE TO KILL. MR. MITCHELL WAS NOT KILLED FOR ANY ROBBERY REASONS. HE HAD MORE THAN \$300 IN HIS POCKET. HE HAD A WATCH. HE HAD A CELL PHONE. HE HAD A GUN IN THE TRUCK. NONE OF THAT WAS TAKEN. THE ONLY MOTIVE, THE ONLY ONLY REAL REASON FOR HIM BEING KILLED IS BECAUSE MR. MOODY WAS ON CONTROLLED RELEASE, KNEW OBVIOUSLY THAT HE WAS GOING TO GO BACK TO JAIL, IF HE WAS CAUGHT IN THE PERPETRATION OF A BURGLARY, AND THAT IS WHY HE WAS IN ESSENCE, EXECUTED. WE THINK THAT IT CERTAINLY SATISFIES THE STANDARDS OF THIS COURT, IN DEMONSTRATING THAT IT WAS THE SOLE OR DOMINANT MOTIVE FOR HIS BEING KILLED.

WHY DOESN'T THAT REQUIRE SPECULATION? THAT IS THAT -- AS YOUR OPPONENT POINTS OUT, SOMETIMES YOU HAVE CRIMES LIKE THIS THAT WE HAVE SEEN, WHERE THERE SIMPLY ARE ANGRY CONFRONTATIONS BETWEEN A PROPERTY OWNER OR A HOMEOWNER OR WHATEVER AND A SHOOTING OCCURS.

WE HAVE MORE THAN. THAT WE HAVE THE PHYSICAL EVIDENCE AS TO THE VICTIM'S APPARENT ATTEMPT TO ESCAPE THE SCENE. HE DRIVES UP, APPARENTLY, AND STOPS BEHIND THE GREEN BUICK, AND THEN THE PHYSICAL EVIDENCE DEMONSTRATED THAT HE ATTEMPTED TO BACK UP

AT A VERY RAPID SPEED AND ABRUPTLY COMES TO A HALT AFTER HE HAS BEEN SHOT. HE BACKS UP, LIKE, 57 FEET OR SOMETHING ALONG THAT LINE, AND THERE IS MOUNDS OF DIRT IN THE BACK WHEELS, INDICATING THAT IT WAS KIND OF AN ABRUPT STOP TYPE OF THING, SO IT IS NOT A -- THERE WERE AT LEAST FOUR GUNSHOTS THAT WERE FIRED AT THE VEHICLE. ONE BULLET BOUNCED OFF THE WINDSHIELD, I GUESS, OR THE FRONT FENDER. A SECOND BULLET LODGED IN THE DOOR ON THE DRIVER'S SIDE AND WAS RECOVERED, AND THEN THE LAST TWO BULLETS HIT THE VICTIM IN THE HEAD, SO I MEAN, IT WAS JUST NOT A -- CERTAINLY WOULDN'T HAVE BEEN ANY, YOU KNOW, PROVOCATION BY THE VICTIM IN THIS CASE. I MEAN, HE WAS -- THE PHYSICAL EVIDENCE CLEARLY DEMONSTRATES THAT HE WAS SIMPLY ATTEMPTING TO GET AWAY, ONCE HE HAD SEEN WHAT HE HAD SAW, WHICH IS THAT A BURGLARY WAS GOING ON, ON THE PROPERTY THAT HE MANAGED. SO, AGAIN, WE SUBMIT THAT THE EVIDENCE THAT CLEARLY DEMONSTRATES THAT THE AVOID AVOID-ARREST AGGRAVATOR WAS THE SOLE OR DOMINANT MOTIVE IN THIS CASE. IF THE COURT DOESN'T HAVE ANY OTHER QUESTIONS, WE WOULD ASK THIS COURT TO AFFIRM THE LOWER COURT'S JUDGMENT AND SENTENCING ORDER AND WE WOULD RELY ON OUR BRIEF FOR THE OTHER ISSUES. IF THIS COURT HAS ANY PARTICULAR QUESTIONS? THANK YOU.

JUST A FEW ADDITIONAL POINTS.

MR. NORGARD, WHAT WOULD YOU CONCEDE TO BE THE EVIDENCE THAT WOULD PUT YOUR CLIENT AT THE SCENE OF THIS MURDER?

MY ARGUMENT, BASED ON A REASONABLE INTERPRETATION OF THE CIRCUMSTANTIAL EVIDENCE, IS THAT THERE IS NONE TO PUT HIM THERE.

WHERE WERE THESE BOOTS FOUND? THE BOOTS WERE FOUND LATER?

THE -- IN PAGE 60 OF THE BRIEF, OF MY BRIEF, IS A VERY EXPENSIVE DISCUSSION OF THE -- EXTENSIVE DISCUSSION OF THE BOOTS. AGAIN, SOMETHING THAT WAS FOUND AS THE FRUIT OF THE STOP, WHICH I HAVE ARGUED IS ILLEGAL, BUT ESSENTIALLY A PAIR OF SIERRA SHOES WERE FOUND IN THE BEDROOM OF ELWIN LEAKS' APARTMENT. MR. MOODY, ON OCCASION, WOULD SLEEP IN THAT BEDROOM WITH SHARITA LEAKS. THE SHOES WERE SIZE 9-E, AND THEY FIT MR. MOODY, BUT ALTHOUGH HAD HE A "C" WIDTH, THE SHOES ALSO FIT DEXTER MOODY, WHO WAS A 9-E. THERE WERE STATES THAT DEXTER MOODY HAD STAYED IN THAT APARTMENT AS WELL, THAT HE AND DARRYL MOODY WOULD EXCHANGE SHOES AND CLOTHING, THAT THE SHOES WERE THE SAME SIZE AS SHARITA LEAKS WORRY, THAT THERE WAS EVIDENCE THAT THE PERSON WHO WORRY THE BOOTS HAD AN ENLARGED RIGHT METATARSAL AND MR. MOODY DID NOT HAVE AN ENLARGED RIGHT METATARSAL.

WAS THERE ANYBODY WHO SAID I SAW YOUR CLIENT WEAR THESE BOOTS?

THAT IS IT RIGHT THERE.

WHAT IS YOUR INTERPRETATION OF THE STATEMENT THAT HE MADE TO FOSTER?

WELL, AGAIN, BEING OF A CIRCUMSTANTIAL EQUIVOCAL NATURE, IT COULD MEAN A LOT OF THINGS. IT COULD MEAN THAT HE KNEW THE GUN HAD BEEN STOLEN FROM A CAR, BUT THAT HE DIDN'T KNOW IT HAD BEEN USED IN A MURDER. THAT HE KNEW HIS BROTHER HAD USED IT IN A MURDER, AND HE WAS GETTING RID OF SOMETHING FOR HIS BROTHER.

COULD YOUR ARGUMENT BE THE SAME THAT, IF THERE WAS A PROSECUTION FOR THE BURGLARY OF THE VEHICLES, THAT THERE IS THERE WAS INSUFFICIENT -- THAT THERE IS INSUFFICIENT EVIDENCE TO ACTUALLY LINK HIM WITH THE BURGLARY WHERE THE --

CERTAINLY. THE ONLY EVIDENCE THAT CONVICTED HIM OF THE BURGLARY OF THAT CAR IN THE GROVE WAS THE SAME EVIDENCE I AM SAYING IS DEFICIENT HERE.

PRIOR BURGLARIES OF VEHICLES.

THERE WAS NO PROSECUTION OF MR. MOODY FOR THE, YOU KNOW, BURGLARY OF THE CAR WITH THE P P-.380. THERE WAS NO EVIDENCE THAT HE BURGLARIZED THAT OTHER CAR. IT IS ONE OF THESE SITUATIONS THAT THIS COURT FACES ON OCCASION, OF CIRCUMSTANTIAL EVIDENCE OR REASONABLE CONCLUSIONS, AND IN THIS CASE NEED TO GO MY WAY.

YOUR TIME IS UP, MR. NORGARD. THANK YOU VERY MUCH, COUNSEL, FOR YOUR ASSISTANCE.

I ENJOY BEING HERE AND YOU GET TO SEE MY BETTER HALF NEXT.

THANK YOU.