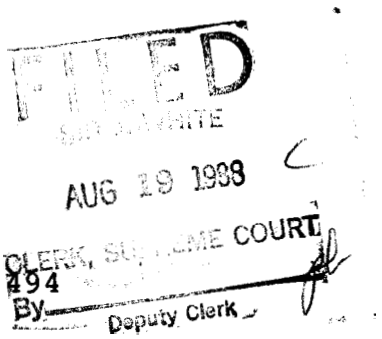
IN THE SUPREME COURT OF FLORIDA



TRAVIS HARRISON CRESSWELL,

Petitioner,

v. CASE NO. 72,494

STATE OF FLORIDA,

Respondent.
_____/

RESPONDENT'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

Respondent generally accepts petitioner's Statement of the Case and Facts, subject to the additions and clarifications which follow.

As to the course of proceedings below, respondent would simply note that the decision of the district court of appeal is now published. See, Cresswell v. State, 524 So.2d 685 (Fla. 5th DCA 1988). As should be clear, there is no majority opinion which discusses the issue which petitioner wishes this court to address. The one sentence opinion simply strikes the imposition of costs, and separate concurring and dissenting opinions present more detail; the certified question was added on rehearing.

As to the facts, respondent would amend petitioner's recitation as set forth below; respondent would particularly take issue with petitioner's representation as to the reasons for the detention.

Although petitioner was stopped at 1:55 P.M. on March 27, 1985, it took several minutes for Trooper Vogel to write a warning citation. During that time, and for the purpose of issuing the warning, Trooper Vogel obtained information regarding the petitioner, his Massachusettes driver's license, the car's Maine registration, and the car's current New York State registration inspection and insurance strickers. Also during the traffic stop, Trooper Vogel discussed with petitioner the car's

owner and determined that the car was not stolen.

During the course of the traffic stop, but not specifically related thereto, Trooper Vogel noted several significant circumstances about the petitioner and his vehicle:

> 1. Cresswell "appeared extremely nervous"; [h]is right hand was trembling.. .." (R 11).
> 2. There was a steering wheel lock visible beneath the driver's seat; Trooper Vogel found this "uncommon" (R 11, 41).
> 3. There was a clothing bag in the back seat (R 11).
> 4. On the rear floorboard, there was a box containing various items, i.e., a can of air to pressurize a flat tire, and tire cleaner; Trooper Vogel believed these articles to be of type normally kept in a vehicle's trunk (R 12, 22).
> 6. A CB radio was in the car and was on (R 16).
> 7. The ignition key was in the ignition; a separate key ring with the glove compartment/trunk key was in the glove box keyhole (R 17).
> 8. Cresswell was driving northbound on Interstate 95 (R 9).
> 9. Cresswell, a male, was alone in the car (R 8-10).
> 10. Cresswell had stated he was heading north from Miami (R 16, 59).
> 11. The vehicle, while bearing Maine license plates, and apparently having a Maine registration, also had current New York State insurance and inspection stickers (R 16, 17, 41); Cresswell, of course, had a Massachusetts driver's license.

Trooper Vogel further testified about his thirteen years of experience in law enforcement with the Florida Highway Patrol (R 6-7, **20-22).** Trooper Vogel related his experience regarding the transporting of drugs northbound on **1-95,** said experience being acquired through involvement in twenty-seven major drug cases prior to this case (R **20-21).** When asked about any similarities in those drug cases he was involved in, Trooper Vogel responded:

> Vehicle traveling northbound on Interstate **95.** The size of the vehicle, full-sized automobile equipped with a CB radio which is common but a mojor factor. A male traveling alone, usually one or two persons in the car, usually males. Vehicle registered in someone else's name, most always. Either that or rented in someone else's name. The vehicle displaying a tag from another state and the operator being licensed in another state other than what the tag displayed on the vehicle.
>
> The New York inspection sticker and registration on the windshield which shows us, at that point, we have three different states, New York, Maine and Massachusetts. Appeared to be a short stay in Florida. Clothing bag in the back seat which are normally found in the trunk... For hauling a large amount of cannabis there's usually not enough room in the trunk for those items.. . That particular type of vehicle has one of the largest trunks. Mercury, Grand Marquis and I think the Ford LTD are the two largest trunks (R **21, 22).**

Based upon his experience and the information he acquired after the traffic stop, Trooper Vogel became suspicious that petitioner was involved in drug trafficking (R 17). After issuing the warning citation, Trooper Vogel decided to detain

petitioner for further investigation (R 16, 42). Trooper Vogel asked petitioner what was in the trunk and if he could look inside it (R 17, 22). Petitioner said that he did not have the key (R 22). Trooper Vogel realized this was not true as he had seen the glovebox/trunk key inserted in the glovebox inside the car. Trooper Vogel then told petitioner he was being detained while Vogel requested a narcotics sniffing dog (R 22).

At 2:05 P.M. Trooper Vogel radioed his dispatcher requesting that a dog handler be sent (R 23). While waiting for confirmation, Trooper Vogel filled out a consent to search form, which petitioner refused to sign (R 23). At 2:14 P.M., the dispatcher radioed back that there were no dog handlers on duty but that an off-duty dog handler was in route (R 23-24). During this interim period, petitioner changed his story about how he got the car; now, instead of borrowing the car from a George Thomas in Maine to drive to Miami to see his girlfriend, petitioner stated he had just picked the car up at the Ft. Lauderdale airport to drive back to Maine (R 16, 25).

The dog handler arrived at 2:47 P.M., forty two minutes after one was requested (R 26). The dog alerted on the trunk five minutes after it arrived. Believing he then had probable cause to search, Trooper Vogel obtained the glovebox/trunk key and opened the trunk, revealing thirteen bags (414 pounds) of cannabis covered with a tarp and the spare tire and scent-camouflaged by boxes of dry bleach (R 27-28).

SUMMARY OF ARGUMENT

This case is before this court on a certified question of great public importance. Respondent takes the unusual position of asking this court to decline to answer such question, because it is, in essence, inapplicable to the facts of this case, and because another case presently before this court, State v. Johnson, provides this court with a proper opportunity to resolve any question regarding the drug courier profile. Thus, while petitioner has presented myriad arguments against the usage of any such profile, these arguments are largely not to the point in this case. While the officer did testify that he utilizes a "profile" or "list of cumulative similarities", and did, indeed, in this case utilize at least some factors involved in such profile, it is clear from the record that the decision to detain petitioner was not based solely upon any "drug courier profile". Rather, it is the state's contention, that, following the valid traffic stop in this case, the trooper observed certain factors which would have alerted the suspicions of any officer in his position. Because it cannot be said that the detention in this case is premised solely upon the "profile", in contrast to the stop at issue in Johnson, the certified question should be left unaddressed, pending presentation of a case in which it is appropriate.

Assuming that this court wishes to otherwise review the result reached by the district court, respondent suggests that the affirmance of petitioner's conviction was in accordance with prior precedent. Considering all the facts known to the officer, and evaluating them in light of his knowledge and experience, reasonable suspicion existed to detain petitioner, following the valid traffic stop in this case. Further, while the detention did extend longer than it might have under other circumstances, given the fact that no "drug-sniffing" dog was immediately available, the length of detention was not such as to elevate it into an arrest without probable cause.

ARGUMENT

ISSUE ON CERTIORARI

THIS COURT SHOULD DECLINE TO REACH THE INSTANT CERTIFIED QUESTION, IN THAT IT IS INAPPLICABLE TO THE FACTS OF THIS CASE; SHOULD THIS COURT REACH THE QUESTION, IT SHOULD BE ANSWERED IN THE AFFIRMATIVE AND THE RESULT REACHED BY THE DISTRICT COURT BELOW APPROVED.

Petitioner begins his brief on the merits by complaining that the district court below certified the wrong question. Respondent agrees, but for a different reason. The District Court of Appeal in this case certified a question of great public importance asking whether a drug courier profile can be relied upon as a basis for founded suspicion, justifying a brief investigatory detention, following a legitimate traffic stop. The petitioner, on the otherhand, argues that the court should have certified a question regarding whether he had been illegally seized and the state submits that there is no merit in that suggestion. The state would contend, with all due respect to the district court below, that the question actually certified is simply inapplicable to the facts of this case as more than just a drug profile was presented at the suppression hearing. While the certified question is one which in all likelihood should be answered, this is not the appropriate case in which to do so.

Because the district court's certification was essentially inappropriate, respondent would respectfully move this honorable court to vacate its granting of certiorari and dismiss the

instant proceeding. Cf. Garcia v. State, 476 So.2d 170 (Fla. 1985) (certified question inappropriate to case in which certified; district court's discussion of issue quashed); Brennan v. State, 447 So.2d 1353 (Fla. 1984) (following briefing and argument, the court concluded that no conflict of decisions in fact existed and dismissed proceeding for lack of jurisdiction). Should this court not be disposed to dismiss, respondent would suggest that the result below should be approved without resolution of the certified question, a practice which this court has adopted in the past under similar circumstances. See Tamer v. State, 484 So.2d 583 (Fla. 1986) (result reached by district court approved, while certified question left unanswered).

The reason that the state takes the above position is that, pure and simply, the is not a "pure and simple" drug courier profile case, petitioner's vehement arguments to the contrary not withstanding. Petitioner was stopped for a valid traffic infraction, i.e., following too closely. Following the stop, the officer in this case formed a reasonable suspicion that petitioner was engaged in a crime and, accordingly, detained him for such length of time as was necessary to secure a "drug-sniffing dog". Due to the fact that the stop occurred on a day when the police "dog handler" was not at work, it took a longer period of time than normal for the dog to be obtained. At the hearing in circuit court, the arresting officer was pressed

extensively as to the precise basis for his decision to detain petitioner. While the officer did state that Cresswell met certain characteristics of a drug courier profile, or cumulative similarities as the officer referred to them, it is also clear that such were not the sole, and perhaps not even the primary, basis for the detention (R 17, 55, 58-60).

Thus, Trooper Vogel did note, as he was entitled to do, and analyze, in light of his experience, such factors as the fact that Cresswell was in a vehicle travelling north from Miami on I-95 (R 17, 32, 60), that such vehicle bore an out of state license plate (R 32, 60), that Cresswell was alone in the vehicle (R 33), that the vehicle was a full-sized automobile with large trunk space (R 21, 22, 60), that the vehicle had a CB radio (R 21, 59), that the vehicle was registered to someone else out of state (R 21, 59), and that a number of items, such as tire-inflaters and materials to clean white walls, were in the back seat of the car, rather than the trunk (R 12, 21-22, 59). Trooper Vogel also noted, however, that the case did not fit the "cumulative similarities" in at least two respects-i.e., the time of day was not within that period within which most of the arrests occurred (R 8, 23, 32), and the fact that Cresswell, far from driving overly cautiously, had committed a traffic offense in the officer's presence (R 34-5). Further, the officer testified as to the existance of some factors which were never a part of any "profile", i.e., the presence of a steering wheel lock (R 41, 55-

9), as well as other factors, which, regardless of inclusion in any "profile" or list of "cumulative similarities", would have alerted the suspicions of any experienced officer in Trooper Vogal's position. These latter factors included Cresswell's extreme nervousness upon being stopped, i.e., the fact that his hand was trembling when he exhibited the driver's license and registration (R 11, 49), the fact that Cresswell, who had a Massachusetts drivers license, was operating a vehicle belonging to another, which had Maine license plates and, paradoxically, current New York state inspection and insurance stickers (R 16, 17, 41) and the fact that there was a single key in the ignition plus a keyring hanging from the open glovebox (R 17).[1] From the officer's testimony, it is impossible to determine the weight which was allocated to any single factor and/or whether the decision to detain would have been made in the absence of any particular one.

Petitioner vehemently urges this court to utilize this case as a means to disapprove usage of anything resembling a drug courier profile under any and all circumstances, claiming that innocent persons are being unconstitutionally stopped and

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[1] Cresswell claimed, when asked for consent to search the trunk, that he did not have the key; following the "alert" by the dog, Vogel used one of the keys hanging from this ring to open the trunk (R 22, 27).

detained on the basis of "mere hunches" by police officers, such hunches based on characteristics so general that most of the general public would fall under suspicion. These arguments would best be presented to this court in a case such as State v. Johnson, 516 So.2d 1015 (Fla. 5th DCA 1987), which is presently pending before this court on a certified question, concerning whether a drug courier profile can be relied upon to justify an investigatory stop. This case is vastly different from Johnson, in that, as noted, factors arguably a part of the profile may have been utilized by the officer in this case in his determination to detain, it is impossible to tell from the record just how subtantial a part they played. Johnson, in contrast, is a situation in which the stop at issue was premised solely upon the drug courier profile, and, thus, obviously presents the perfect opportunity for this court to resolve any question of law in regard to the profile.[2]

Further, the "sin" condemmed by those courts which have rejected drug courier profiles as bases for investigatory stops, See, United States v. Smith, 799 F.2d 704 (11th Cir. 1986), In Re Forfeiture of $6,003.00 in U.S. Currency, 505 So.2d 668 (Fla. 5th

[2] Johnson would likewise provide an appropriate oportunity for this court to address petitioner's suggestion that its prior precedent, Jacobson v. State, 476 So.2d 1282 (Fla. 1985), precludes any usage of a "drug courier profile" in Florida (Brief of Petitioner at 15).

DCA 1987), can hardly be said to have been "committed" sub judice. Travis Cresswell was not plucked from a sea of innocent and indistinguishable motorists as part of a "fishing expedition" or arbritary hunch by the arresting officer. Rather, he was properly stopped and given a valid traffic citation for an offense for which any member of the public could likewise have been subjected. It was this valid traffic stop which brought Cresswell and Trooper Vogel into contact. Once such contact was made, Trooper Vogel, as an experienced police officer, was entitled to make certain observations and to interpret them in light of all of his prior experiences. As will be argued below, under the totality of the circumstances, the detention following the stop was premised upon reasonable suspicion and for a reasonable duration. Thus, the legality of the detention in this case should simply be resolved in accordance with prior precedent assuming, of course, that this court wishes to continue its review of this case, after determining the applicability of the certified question, given the fact that, inter alia, the district court opinion does not expressly discuss this issue and fails to set forth any facts which it found persuasive.

Under prevailing case law, the question is whether following a valid traffic stop, Trooper Vogel had a founded suspicion to detain petitioner for the time in which it took to secure a drug-sniffing dog. In State V. Stevens, 354 So.2d 1244, 1247 (Fla. 4th DCA 1978), the court defined founded suspicion as that which

has some factual foundation in the circumstances observed by the officer, when those circumstances are interpreted in light of the officer's knowledge. In determining whether founded suspicion exists, one looks to such factors as the time, the day of the week, the location, the physical appearance of the suspect, the behavior of the suspect, the appearance and manner of operation of any vehicle involved and anything incongrous or unusual in the situation as interpreted in light of the officer's knowledge. Stevens is obviously compatible with any number of decisions of the United States Supreme Court, such as United States v. Cortez, **449** U.S. 411, **418, 101** S.Ct. **690,** 66 L.Ed.2d 621 **(1981),** in which the Court, while recognizing the difficulty of defining such terms as "articulable reasons" and "founded suspicion", stated that the essence of all that had been written was that the totality of the circumstances--the whole picture--had to be taken into account, the Court noting,

> The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; the jurors as fact-finders are permitted to do the same and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.

Thus, the fact that any one of the factors relied upon by Trooper Vogel may, standing alone, be insufficent to support a

finding of reasonable suspicion, as petitioner argues, is largely irrelevant, in that it is the totality of the circumstances which must be considered. Accordingly, petitioner's reliance upon State v. Anderson, 479 So.2d 816 (Fla. 4th DCA 1985), would seem misplaced, inasmuch as in such case, it would not seem that the circuit court, whose order of suppression was essentially adopted by the appellate court as its opinion, applied this standard. Additionally, the circuit judge's conclusion in Anderson, that it was not unusual that the driver of the vehicle involved could not remember the address of the real owner, would not seem to be greatly persuasive, in that it is premised upon the circuit judge's observation that, were he driving a vehicle belonging to any one of the other county judges, he would not be able to remember the owner's address either. Respondent knows of no legal standard in which a presiding judge is to interpret the officer's observations in light of ~~his own~~ experience. Further, from the facts set forth in the opinion, it would certainly appear that Anderson was not as extremely nervous as Cresswell, at the time of the stop, inasmuch as there was no evidence that his hand trembled when he handed over the required documents, nor would there seem to have been the unusual number of jurisdictions involved in relation to the vehicle, ~~i.e.~~, the fact that in this case the car bore Maine license plates and registration, while apparently simultaneously having New York State insurance and inspection stickers. Neither, would it appear, was the

background of the arresting officer in Anderson considered by the court.

The other cases relied upon by petitioner are similarly distinguishable. In Carter v. State, 454 So.2d 739 (Fla. 2nd DCA 1984), the arresting officer essentially conceded that he had had no more than a "hunch" or a "feeling" that the law was being violated, at the time he made his investigatory stop, whereas in Currens v. State, 363 So.2d 1116 (Fla. 4th DCA 1978), the officer's decision to investigate was premised solely upon the fact that the defendant made one furtive movement upon seeing the police. While Kayes v. State, 409 So.2d 1075 (Fla. 2d DCA 1981), does discuss and condemn a "drug courier profile", it precedes Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319 75 L.Ed.2d 229 (1983) and United States v. Sharpe, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2 605 (1985), and pertains to a situation in which the defendants simply drove out to a warehouse which the police suspected contained marijuana. The vehicle was stopped solely on that basis and, unsurprisingly, such basis was later adjudged insufficient. Finally, it would also seem questionable whether Oesterle v. State, 382 So.2d 1293 (Fla. 2d DCA 1980) would still be decided the same way, following Sharpe; to the extent that discussion is necessary, it would appear that Oesterle involved the stop of a truck which was simply found in some proximity to an area in which a drug plane had allegedly landed. The district court concluded that suppression was warranted, given the fact

that it had never been even shown that the truck had been proceeding in the direction which would have taken it toward the plane.

Each case must, in any event, be decided upon its own facts. The state submits that Travis Cresswell was lawfully detained following the traffic stop at issue. Cresswell was so nervous upon being stopped that his hand trembled when he was required to hand over the required documents. His "ties" to the vehicle involved would seem highly tenuous. He was operating a Maine vehicle with a Massachusettes driver's license on a Florida highway, with the vehicle, inexplicably, bearing New York State inspection and insurance stickers. He claimed that the car had been loaned to him by a friend, for approximately three weeks, so that he could visit a girlfriend in Miami. At the time of the stop, Trooper Vogel observed a number of items which struck him as either incongruous or unusual, in light of his experience, or as evidence of the ongoing commission of a drug-related offense; these items included the steering wheel lock, the C.B. radio, the single key in the ignition and the key ring in the open glove compartment, as well as the presence of a box of items in the back seat, which logically should have been found in an automobile trunk. Such items included tire-inflators, a towing rope and material to clean whitewalls. Further, there were other characteristics observed by Trooper Vogel which, in his experience, and when read in conjunction with the above factors,

weighed in favor of detention, at least until his suspicions could be allayed; such factors included the fact that Cresswell was alone and operating a vehicle northbound on 1-95 from Miami, such vehicle having an extremely large trunk capacity. Taking all of these facts together, as viewed by an experienced police officer, clear justification existed for the detention sub judice. See, Tamer v. State, supra; Codie v. State, 406 So.2d 117 (Fla. 2d DCA 1981).

Before turning to the issue of whether the length of detention was excessive, assuming that such question must be reached, another case, State v. Cohen, 711 P.2d 3 (N.M 1985), cert. denied, 476 U.S. 1158, 106 S.Ct. 2276, 90 L.Ed.2d 719 (1986), from a foreign jurisdiction is brought to the Court's attention. In that case, the defendants were stopped for speeding by a state policeman. When the officer decided to give Cohen, the driver, a ticket, he noted other factors which concerned him. These included the fact that the automobile was an out-of-state rental paid for with cash for a one way trip between Florida and California, that the car did not seem to have much luggage for a cross-country trip, and that both occupants appeared to be foreigners and "more concerned about the stop than was ordinarily encountered in stops of this kind." As the officer wrote out the ticket and waited for computer verification as to whether the car was stolen, Cohen got out of his vehicle and went to speak with the officer, asking that the process be

expedited; Officer Summers noted that Cohen seemed nervous and anxious and further noted the extremely cold conditions at the time. Summers considered these facts which he observed in conjunction with information which he had received at seminar concerning "common factors in narcotics trafficking cases in New Mexico ('profile' factors)". Having done so, Summers then concluded that he had reasonable suspicion to investigate further, and called for a back-up. Eventually the car was searched, and cocaine was found.

The trial court had suppressed the cocaine, on the grounds that Cohen had been illegally detained following the valid stop, and the district court of appeal affirmed this finding. The Supreme Court of New Mexico, however, granted certiorari and quashed these holdings. In making its decision, the court looked to the United States Supreme Court decisions in United States v. Sharpe, supra, as well as in United States v. Hensley, **469** U.S. 221, **105** S.Ct. **675, 83 L.Ed.2d 604 (1985),** noting that a court must consider the law enforcement purpose to be served by detention as well as the time reasonably needed to effectuate these purposes. The court concluded that Summers' observations, in conjunction with "the number of these factors that the officer had been told previously were common in cases involving recent drug arrests in New Mexico", had provided reasonable suspicion for the detention. While this is obviously a precedent from another jurisdiction, it is not without persuasiveness. It

represents an instance in which a police officer utilized "profile" information as a basis for forming reasonable suspicion to detain, following a valid traffic stop. In contrast to the case at bar, the officer in Cohen would seem to have relied solely upon such profile factors as a basis to detain, and, further, would not seem to have had as strong a basis for reasonable suspicion as did Trooper Vogel in this case. Cohen obviously represents an example of a state supreme court balancing the competing interests, and concluding that the "governmental interest in stopping drug trafficking" justified the brief intrustion suffered the defendants. A similar conclusion is warranted sub judice, and the certified question, if reached, should be affirmatively answered.

The only matter which remains, although, inexplicably, petitioner has not addressed it, is whether the length of the detention, approximately forty-seven **(47)** minutes, was excessive. In his concurring opinion below, Judge Cobb indentified this as the issue before the court. See, Cresswell, **524** So.2d at **685** (Cobb, J.; concurring) [the question is whether the length of time involved elevated the detention into an arrest without probable cause, thereby invalidating the search. (citations omitted)]. There is, of course, no "brightline" rule in this regard. Rather, a court must look to the law enforcement purposes to be served by the stop, as well as the time reasonably needed to effectuate these pruposes, considering especially

whether the police diligently pursued a means of investigation that was likely to quickly confirm or dispel their suspicions during the time it was necessary to detain the defendant. See, United States v. Sharpe, supra.

In calling for a drug-sniffing dog, it is clear that Trooper Vogel had chosen the least intrusive means possible of allaying or confirming his suspicion. It would simply be necessary for the dog to get close enough to the vehicle to either "alert" or fail to do so, in which instance either an arrest would be made or petitioner would be immediately released. The officer did not have a narcotics dog with him at the time of the stop which is, of course, now quite regrettable in hindsight, but, additionally, would have been highly impractical. A state trooper, who is essentially based in his patrol car and who must proceed wherever his job requires him, can hardly be expected to carry a trained narcotics canine, accompanied by an equally trained dog handler, in his vehicle for use at all times. Cf., State v. Cobbs, 411 So.2d 212 (Fla. 3d DCA 1982). What this case would really seem to boil down to is whether petitioner is to be discharged because he had the good fortune to bring four hundred and fourteen pounds of cannabis into Volusia County on a day that the dog handler was not at work.

Respondent can see no reason, constitutional or otherwise, for such windfall. While it did take forty-seven minutes for the

dog to be brought to the scene and to "examine" the car, there has been no showing that, under these particular circumstances, the police did not act diligently. In State v. Nugent, **504 So.2d 47** (Fla. 4th DCA 1987), the Fourth District found that a thirty minute detention, which, as here, followed a valid traffic stop and was for the purpose of securing a drug-detecting dog, was not unreasonable, given the fact that the dog had been requested "in the middle of the night from the turnpike". Trooper Vogel cannot be charged with lack of diligence in failing to anticipate petitioner's arrival and have the dog in place. Cf., United States v. Place, **462** U.S. **696, 103** S.Ct. **2637, 77** L.Ed.2d **110 (1983)** (Ninety minute detention too long, where officers knew of defendant's arrival time at airport several hours beforehand, but failed to arrange for presence of canine). Under all the circumstances of this case, it cannot be said that the police acted unreasonably in failing to recognize or pursue any "more speedy" alternative means of achieving their objective.

Finally, it should be noted that, even if this court were to conclude that while some detention was proper, but the overall length was excessive, two events occurred during the detention which could only have had the effect of increasing the officer's founded suspicion. Apparently close in time to the officer's decision to detain, but prior to the summoning of the dog, Trooper Vogel asked petitioner for consent to search the trunk. Petitioner did not directly decline. He answered that he did not

have the key to the trunk, even though, at such time, the key was hanging in plain fiew from the glove compartment (R 17, 27, 44-47, 52). Cresswell also told Trooper Vogel that the trunk was filled with clothing belonging to the owner, rather unlikely in that, at that point, Cresswell's story was that the owner had loaned him the car some three weeks ago (R 51, 16). Additionally, while the two were awaiting the arrival of the dog, Cresswell changed his story, claiming that he had only picked the car up that morning at the airport in Ft. Lauderdale and was bringing it home to its owner (R 16, 25).

No competent police officer could be expected to ignore these inconsistent statements and obvious falsities, cf., Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), and such obviously contributed to the officer's reasonable suspicion, if, in fact, they did not serve to elevate such to probable cause to arrest. Because it should be clear that the officer's initial decision to detain was proper, it cannot be said that Trooper Vogel acted unreasonably in continuing to detain petitioner until the dog arrived and "alerted". Assuming that this court wishes to review the correctness of the decision below, the result should be approved.

CONCLUSION

For the aforementioned reasons, respondent moves this Honorable Court to dismiss the instant proceeding, in that the district court of appeal has, essentially, certified a question of great public importance which is inapplicable to the facts of this case: assuming that this court wishes to review the decision at all, the result should be approved, while the certified question, or one similar, should be resolved in *a* case more appropriate to such purpose, such as one presently pending before this court, State v. Johnson, Florida Supreme Court Case Number 71,631.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished by mail to Mr. Alan E. Weinstein, counsel for petitioner, at 1801 West Avenue, Miami Beach, Florida 33139, this 19th day of August, 1988.

Of Counsel