

**EVERYTHING YOU WANTED TO KNOW ABOUT
DOGS, BUT WERE AFRAID TO ASK.....**



IN THE BEGINNING, SCOTUS SAID “LET THERE BE P.C....”

- “The alert of a properly trained and certified canine can establish probable cause...” SCOTUS
- All of this sounds good, but none of it is defined.
- Certified- A necessary box to check
 - Does not equal perfect
 - One day snapshot
 - No records review, no follow up

CERTIFICATION AUTHORITY

- “If a bona fide organization has certified a dog after testing his reliability in a controlled setting, a court can presume (subject to any conflicting evidence offered) that the dog's alert provides probable cause to search.” *Harris*, 568 U.S. at 246–47.
- Must be a “Bona Fide Organization” – What makes someone bona fide?
- Completely Unregulated
 - No Industry, state or federal standards they are required to follow.
- Determine their own criteria for pass/fail

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- Good organizations do exist, just their tests are not always realistic or difficult
 - Seen as low of a standard of 4 vehicles, 3 with drugs, go figure it out...
 - 75% chance of passing without a dog....
 - Hypothetically - Jerry Potter K9 Inc.... I can now start certifying police dogs....
 - They should not be self certifying, but many do....
 - They are not neutral or unbiased

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- Since there are no guidelines or requirements for a certifying entity, you will never win a fight over if a dog is “certified” or not.
 - A piece of paper that says they are is all it takes.
 - You can only counter the governments position of “They passed certification, they must be deemed reliable”
 - When you graduated law school, you passed certification. Were you perfect and ready to fight at the supreme court?

WHAT IS AN ALERT?

MATTER OF SEMANTICS

- No legal definition of what an “alert” is.
- Alert vs. indication/final response
- Subject to interpretation.
- Law enforcement often uses very subjective criteria to determine alerts.
- Only the handler can interpret them.

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- Canines are trained with an objective behavior.
 - Handlers can control and mold this behavior.
 - This is why training records are needed – determine what the dog does routinely.
 - Is the dog performing in the field the way they are trained.
 - Always sits in training, never sits in the field.

THE ALERT

A dog's trained indication can take one of two forms: an active/aggressive alert, or a passive alert.

1. An active alert is characterized by the dog digging or pawing to get to the source of the odor.
2. A passive alert is characterized by the dog sitting and staring at the location of the source of the odor.

- The handler is looking for the dog's trained indication to signify the probable presence of the source of the odor. Specifically, a canine providing its trained alert indicates that it has found the odor that it has been trained to detect.

WHAT IS SOURCE?


- Source to a dog is different that it is to a person
 - To a person, source is where the actual odor is emanating from.
 - To a dog, source is where they can detect the highest concentration of odor in a given area.
 - A door seam should be the source to a dog.
 - Dogs have no concept of there being a big area behind that door.

PROPERLY TRAINED

- Again, not defined.
- No legal requirements or definitions

STANDARD OPERATING PROCEDURES

- Only place where officers get specific guidelines they are required to follow
- No set national standards, few states set state-wide standards
- Industry standard is 16 hours training per month
- Handlers play loose with documenting training hours
 - At a training day for 8 hours, but only train for 30 minutes, but still take credit for 8 hours of training.



In the absence of SOP guidance

Recognized industry standard of 16 hours per month of training.

Supported by:

Scientific Working Group on Dog and Orthogonal Detector Guidelines (SWGDOG)

NNDDA

NPCA

USPCA

NAPWDA

Many more

MAINTENANCE / PROFICIENCY TRAINING

- Should be done on a regular basis
- Should be realistic – Dog should never know the difference between training and utilization.
- Only standards are what individual departments set.
- Industry standard is 16 hours per month
- **EXPECTATIONS OR STANDARDS FOR THE DOG IN TRAINING SHOULD BE THE SAME AS IN UTILIZATION!!!**

TRAINING RECORDS

- Verifies that training is being conducted in a realistic manner.
- SCOTUS states “Properly trained and certified” Only standard of properly trained is defined by individual departments.
- Absent a formal standard, it’s a question for the court to decide.
- Sometimes formal and computer generated, other times handwritten notes on a notebook.
- Validate if “blind training” is being conducted.
- Only way to determine reliability is to review the records.
- Need records to look for that conflicting evidence.



Lander County Sheriff's Office K-9 Training Log

K-9 Team: [REDACTED] & K-9 " _____ "

Date: 4/14/21 DNT: , RDO: , A/L: , C/T: , S/L:

Location(s): BMHS Helper(s): _____

Training Session: (Military Time) Begin Time: 1110 End Time: 1140 Approx. Temperature: 40 Approx. Wind Speed: _____

Lighting Conditions: Lighted: Low light: , No Light: Humidity: Low: , Med: , High:

Weather / Environmental Factors: Damp: , Dry: , Ice: , Snow: , Rain: , Wet: , Other: _____

Narcotics Session Hides: Known: Single Blind: Double Blind: Plant Time: 1110 Soak Time: 15 Total Search Time: 10

Narcotic(s) Sniff: Aircraft: , Box: , Building: , Ground Burial: , Line: , Locker: , Luggage: , Open Area Sniff: , Parcel(s): , Vehicle(s): , Other: _____

Levels of Sniff Covered: Low: , Eye level: , High: , Out of reach: Blank/Clean Area(s): BUS

Hide #1: BUS

Odor(s): Cocaine: _____ Hashish: _____ Heroin: _____ Marijuana: _____ MDMA: 59 Meth: _____

Alert(s): Bark: , Bite: , Change in Breathing: , Change in Posture: , Commitment to Source Odor(s): , Down Stay: , Nose Press: , Rapid Sniffs: , Scratch:

Sit: Stare: Vomeronasal: , Other Alerts: _____ Masking/Distracton Odor(s): _____

Notes: sat cushion

Hide #2: BUS

Odor(s): Cocaine: 39 Hashish: _____ Heroin: _____ Marijuana: _____ MDMA: _____ Meth: _____

Alert(s): Bark: , Bite: , Change in Breathing: , Change in Posture: , Commitment to Source Odor(s): , Down Stay: , Nose Press: , Rapid Sniffs: , Scratch:

Sit: Stare: Vomeronasal: , Other Alerts: _____ Masking/Distracton Odor(s): _____

Notes: Battery compartment

Hide #3: _____

Odor(s): Cocaine: _____ Hashish: _____ Heroin: _____ Marijuana: _____ MDMA: _____ Meth: _____

Alert(s): Bark: , Bite: , Change in Breathing: , Change in Posture: , Commitment to Source Odor(s): , Down Stay: , Nose Press: , Rapid Sniffs: , Scratch:

Sit: , Stare: , Vomeronasal: , Other Alerts: _____ Masking/Distracton Odor(s): _____

Notes: _____

Performed Exercises

Date	Location	Exercise Name	Type	Description
6/25/2019	MSP	drug detection	Detection	Room search for Drugs
6/18/2019	MSP	Demo/Policy Update	Other	Provided a K9 demonstration to a small gro...
6/14/2019	BPD RANGE	EOD explosive breaching trai...	Other	To familiarize canine with explosive breachi...
6/11/2019	New Range tra...	Door alert	Building Search	Dog is sent into a the training house to searc...
6/11/2019	New Range tra...	Life check	Other	Handler, dog and search team become invol...
6/11/2019	New Range tra...	Foot Pursuit	Criminal Apprehension /...	Muzzle. Handler and dog drive up behind se...
6/11/2019	New Range tra...	Passive decoy	Building Search	Muzzle. Dog and search team move room t...
6/4/2019		certification. spot check	Detection	Open Area search for Drugs (+14 more)
6/4/2019		Certification Spot check	Other	All handlers and dogs go through a patrol ce...
5/29/2019	BPD Range	DV Call/K9 on Perimeter	Criminal Apprehension /...	Scenario. K9 team is advised that Patrol is o...
5/29/2019	BPD Range	Building Search/Team Tactics	Building Search	Canine team is advised of two suspects insid...
5/29/2019	BPD Range	"No No" Decoy and Passive S...	Criminal Apprehension /...	Stationary decoy is placed in the middle of t...
5/23/2019	North Idaho	Day 3	Other	IPCA Day 3. Multiple scenarios were conduc...
5/22/2019	North Idaho	Day 2	Other	Day 2 IPCA. Night time scenarios were cond...
5/21/2019	North Idaho	Day 1	Other	IPCA Day 1. Multiple K9 scenarios in differen...
5/14/2019	Special Olympics	Bite Suit Control	Criminal Apprehension /...	Decoy is in bite suit. Handler works outs, re...
5/7/2019	Meridian PD	Off Line Open area search	Area Search for Humans	Decoy is hidden in an old box truck in the mi...
5/7/2019	Meridian PD	Attic deployment	Obedience	First few minutes was spent discussing tacti...
5/7/2019	Meridian PD	Building search	Building Search	Suited decoy is hidden in completely dark b...
4/23/2019	New Fire Train...	Building Search	Building Search	K9 Team is given a scenario as they approac...
4/23/2019	fire training ce...	weekly dope training 04/23/19	Detection	Parcel search for Drugs (+11 more)
4/16/2019	Ready Made P...	"Round Robin"	Criminal Apprehension /...	K9 Team is to start at an entry way. While u...
4/16/2019	960 E. Franklin...	show me the one time	Detection	Room search for Drugs (+3 more)
4/9/2019	Braniff	Building Search with Smoke f...	Building Search	In muzzle, utilizing team tactics in a smoke fi...
4/9/2019	Braniff	Vehicle Open Air Take Down...	Obedience	Utilizing two vehicle, suspect is walking thro...
4/9/2019	Braniff	SOU Building Search with Sm...	Criminal Apprehension /...	Acclimate K9s to a smoke filled environment...
4/9/2019	Braniff	Drug Odors	Detection	Open Area search for Drugs (+2 more)
3/26/2019	MSP	Stress Inoculation Revisited	Criminal Apprehension /...	Revisit the stress inoculation from last week...
3/26/2019	MSP	Under the Table Leg Bite and...	Criminal Apprehension /...	Suited decoy stands on other side of table....
3/26/2019	MSP	"Stress Bucket"	Criminal Apprehension /...	Suited decoy holds a large bucket with the b...
3/19/2019	MSP Classroom	Stress Inoculation #1	Criminal Apprehension /...	Slowly induce stress inoculation in dog by pl...
3/19/2019	MSP Classroom	Stress Inoculation #2 (stress li...	Criminal Apprehension /...	Dog is brought into room to work a "stress li...



Ohio State Highway Patrol K9 Training Report

Report Number 2012012016837	Dog ID / Name Roy	Handler Unit # 0	Handler Name Ron A. Barst		
Start Date & Time 08/09/19 08:30:00	End Date & Time 08/09/19 09:30:00	Documentation Time	Total Time 60	Temperature 63	Overlapping Training Time <input type="checkbox"/>
Wind Direction & Speed North to South / Light	Weather Conditions Clear	Location Wreckers Tow Lot			

<input type="checkbox"/> Trainer Present	<input type="checkbox"/> Supervisor Present
Trainer Name	Supervisor Name
	Supervisor Unit #

Training Objective:
Conduct a vehicle sniff with multiple conflict odors and distractors present in the sniff area.

Narcotics Detection

Type of Scenario: Vehicles - Parked	Other 0	Number of Blanks: 0	Number of Vehicles 1
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Conflict/Distractors Present Within Sniff Area

Air Fresheners, Cellophane, Nylons, Animal Waste, Canvas, Carboard, Human Food, Animals, Socks, IsOther: parked cars, tall grass, trash, clothing, cigarettes
Location: In and around vehicle

Sniff Number	1 - 1	Vehicle Style:	Pick-up Truck	Location Known To Handler	Yes
Training Aid Used	Heroin - Powder	Enter measurable weight	Actual Weight: 5	Unit of Weight: Gram	
Packaging	Paper, Other:				
Hide Location	Middle of right side vertical door seam.				
	Height: 3:	Depth: :3	Set Time: 08:30:00	Run Time: 09:10:00	
Indications:	Change In Behavior, Canine Indication,				

Narrative: Canine [redacted] and I conducted a narcotic vehicle sniff on a parked mid-size pick-up truck. The vehicle was turned off, unoccupied and all windows were up. I brought Canine [redacted] up to the left side of the vehicle to begin the vehicle sniff. As we continued around the vehicle I observed Canine [redacted] head snap back to the right side vertical door seam. Canine [redacted] had a wagging tail as he squared his body to the vehicle and pressed his nose the vertical door seam. Canine [redacted] indicated to narcotic odor by scratching the lower half of the right side vertical door seam. Canine [redacted] was rewarded with

AST QUARTERLY - MAT-SU WEST 1124118 0945-1730

INDOOR/OUTDOOR - ON LEAD

9°

AWT LOT: EXTERIOR

6.9g H - Elect outlet on wall $\approx 2'$ H

10g M - Gas Compartment 4 wheeler $\approx 48"$ H

6.1g C - Tackle Box under shed $\approx 6"$ H

5.4g H - Behind tire on boat $\approx 13"$ H

6.6g M - Engine of Arctic cat $\approx 36"$ H

Distractions: other kg's, Animal odor

GOOD HUNT, CONTROL, AL, IND

INDOOR POST:

6.6g M - First aid kit on shelf 40x03

12.03g C - Screw box Under Work Bench - 00x01

4.5g H - Front of side by side

2.32g M - Big tool box 50x01

6.1g C - Under chain in garage 03x01

12.28g M - Flammable locker 40x01

6.91g H - Locker in garage 26x01

12.64g H - In life jacket 00x01

1.73g M - In box of binder clips 60x01

GOOD HUNT, CONT, AL, IND. SLOW ON SET

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- The handler cannot cue – deliberately or not – the canine’s alert. *Harris*, 133 S. Ct. at 1057-58 (“[E]ven assuming a dog is generally reliable, circumstances surrounding a particular alert may undermine the case for probable cause – if, say, the officer cued the dog (consciously or not).”).



IT'S A QUESTION FOR THE COURT TO RESOLVE

- Your clients must have an opportunity to challenge evidence of a canine's ability to provide probable cause.
- In the end, “[t]he question ... is whether all the facts surrounding a dog’s alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime.” *Harris*, 568 U.S. at 248.

IT'S A QUESTION FOR THE COURT TO RESOLVE

- A court cannot accept a handler's subjective determination that a dog has made some otherwise undetectable alert, which conclusion would be, for all practical purposes, immune from review. Given the nature of the constitutional right at issue, the Supreme Court has found this premise to be unacceptable. “If [an officer's] subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be ‘secure in their persons, houses, papers, and effects,’ only in the discretion of the police.” *Beck v. Ohio*, 379 U.S. 89, 97, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964). To allow a search predicated upon an officer's interpretation of the utterly minimalist lesser showing exhibited by the dog in this case would be tantamount to permitting law enforcement officers to issue their own search warrants based upon their own subjective analysis, something the Framers explicitly prohibited.



DISCOVERY – WHAT SHOULD YOU ASK FOR?

- (1) The K-9 certification for both the Officer and his K-9 partner;
- (2) Standard operating procedures enacted by the law enforcement agency with whom the K-9 is associated;
- (4) Documentation of any and all training received by the Officer and his K-9 partner;
- (5) Any and all reports maintained by law enforcement agency related to the use of the K-9, including any statistical reports or deployment records;
- (6) Any and all documentation related to the certification of the K-9 from the certifying agency.
- (7) **VIDEO VIDEO VIDEO!!!!** If they claim there is none, ask for department SOP on dash and body worn cameras.

DISCOVERY

YOU ARE ENTITLED TO THESE
RECORDS!

- In *United States v. Cedano-Arellano*, 332 F.3d 568 (9th Cir. 2003), the Ninth Circuit held that Federal Rule of Criminal Procedure 16 compels the government to disclose the “handler’s log,” as well as “training records and score sheets, certification records, and training standards and manuals” pertaining to the dog because these materials were “crucial to [the defendant’s] ability to assess the dog’s reliability, a very important issue in his defense, and to conduct an effective cross-examination of the dog’s handler” at the suppression hearing.
- The government’s failure/refusal to turn over “discovery to pursue a motion to suppress,” was not harmless error. *United States v. Thomas*, 726 F.3d 1086, 1096 (9th Cir. 2013)
- IV [7, 8] Because the government’s failure to turn over a full complement of dog-history discovery was an error that was not harmless, we reverse the district court’s denial of the motion to suppress and vacate Thomas’s conviction.



WHY DO DOGS DO WHAT THEY DO?

- Purely selfish reasons.

INITIAL TRAINING

- Identify reward
- Long, repetitive process
 - Smell the drug - Sit - Toy - Repeat over and over and over and over.....
- Where learning first occurs
- Verbal and physical cues are introduced.
- Once certified, maintenance and proficiency training begins.

REWARD

- Final step in the process for the canine
- The reason he is out there in the first place
- Most important thing to the dog, second only to air food and water
- Behavioral changes and excitements are the direct result of anticipation of the reward.
- Dog should resist leaving a legitimate alert without receiving reward.

**WE'RE GOING TO
DISNEYLAND!!!!**

WHAT CAUSES THESE PROBLEMS?

- Handler Ego!
- Lazyness
- Handler Bias
- Study at UC Davis by Lisa Lit, Julie B Schewitzer and Anita M Oberbauer (<https://pmc.ncbi.nlm.nih.gov/articles/PMC3078300/>)
 - **Handler beliefs affect scent detection dog outcomes**
 - On the surface, the study tested the abilities of fourteen certified sniffer dogs to find hidden "targets." The dogs' human handlers were also under the magnifying glass. They were led to believe there were hidden target scents present, when in fact there were none. Nevertheless, the dogs "alerted" to the scents multiple times – especially in locations where researchers had indicated a scent was likely.

CONCLUSION

- Many subtle nuances that go into a canines training and use
- Always consult with an expert
- Courts need to understand that todays police are mostly unregulated and unsupervised when it comes to the use of their canines
- Everything is open to their interpretation
- Prosecutors argue that Only the handler is able to interpret his/her dog, so no one can question, not even the court.

SPECIAL THANKS TO:

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- I stole many of these slides from them!!!!

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HAPPY TO ANSWER QUESTIONS BY PHONE OR EMAIL ANY TIME