

CLIFTON JACKSON AFFIDAVIT AND APPENDIX OF EXHIBITS ARE NUMBERED (first two cover pages of affidavit unnumbered, iii-lxiii) IN ROMAN NUMERAL. EXHIBIT PAGES ARE CROSS REFERENCED AS APPENDIX (Appendix Pages are numbered 1-655) PAGES. AFFIDAVIT AND EXHIBITS ARE IN SUPPORT OF 26B MOTION TO REOPEN STATE OF OHIO v. CLIFTON JACKSON, CASE NO. 11CR083104, NINTH DISTRICT COURT OF APPEALS CASE NO. 14CA010555, Not Limited Too.

EXHIBIT

AAI

EXHIBITS A-AAA E IN SUPPORT OF CLIFTON JACKSON ENCLOSED AFFIDAVIT AND APPENDIX PREPARED MARCH OF 2016 OF A DETAILED TIME LINE OF FACTUAL EVENTS BETWEEN JUNE 14th, 2011 AND OCTOBER OF 2015 TO THE BEST OF MY LAYMEN LEGAL ABILITIES.
THIS EXHIBIT "AAI" IS REFERENCED IN ¶ 121 not limited too.

K9 CONSULTANTS OF AMERICA

OHIO V. ISAAC ANDERSON and IRA LEE

CASE # 12CR084573

Steven D. Nicely

9/20/2013

Report of Steven D. Nicely in the case of Ohio v. Isaac Anderson and Ira Lee – Case # 12CR084573 – Provided on 09/20/2013

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AUTHOR

My name is Steven D. Nicely. I am a professional dog trainer with over 30 years' experience in the police service dog field. I have trained approximately 750 dogs for police service, supervised the training of approximately 250 additional dogs, and since 1993, reviewed over 200 dogs for court purposes.

My career in the police working dog field began in 1973 while serving in the United States Marines, military police. After being honorably discharged in 1979, I began working as a civilian police officer handling and training canines in 1981. In August 1989, I became employed with Global Training Academy as a professional trainer of dogs, handlers, trainers, supervisors, and instructors for law enforcement and government agencies.

In the early 1990s, after being a member of two different K9 associations, I choose to move away from K9 associations because my experience with those associations demonstrated their training and certifications were stagnant. At that point, I began to interact with behavioral scientists, and subsequently began to apply the science behind training and testing of police service dog teams. After interacting with behavioral scientists I then began to formally study Behavioral Science.

In 2009 Mr. Fleck published an article in a police k9 magazine pointing out what I had discovered almost 20 years earlier. The police service dog profession was stagnant.

“Most of us use K-9 association or state K-9 standards for certifications. Unfortunately, most of those standards have not evolved with case law. As an example, California's state K-9 Standard was developed 24 years ago and has never officially been reviewed or updated. That is simply ridiculous. This is 2009. Tactics have changed, equipment has changed, and legalities have changed. Looking at both federal case law and expert testimony from bad-guy K-9 experts, we need to evolve into 2009Invalid source specified..

The importance of studying the science for the task you apply was published by the National Research Council.

Forensic science examiners need to understand the principles, practices, and contexts of scientific methodology, as well as the distinctive features of their specialty. Ideally, training should move beyond apprentice-like transmittal of practices to education based on scientifically valid principles. In addition to the practical experience and learning acquired during an internship, a trainee should acquire rigorous interdisciplinary education and training in the scientific areas that constitute the basis for the particular forensic discipline

and instruction on how to document and report the analysis. A trainee also should have working knowledge of basic quantitative calculations, including statistics and probability, as needed for the applicable discipline (National Research Council, 2009, p. 27).

I have an Associate of Arts Degree in Psychology from Austin Community College. Currently, I am a senior at Texas State University studying behavioral science (psychology). I am an internship away from earning a Bachelor's of Applied Arts and Sciences based upon Experimental Psychology.

As a police dog handler I have won several awards and trophies from competition against hundreds of other handlers. Also, as a police officer, I was awarded several forms of recognition for being an outstanding officer.

For more complete details of my experience and qualifications in the police service dog field review my attached curriculum vitae.

Reviewed Evidence

1. Video of K9 Argo's performance in the case of Ohio v. Anderson
2. Incident report related to the Anderson case.
3. Training Records relating to Trooper Trader and K9 Argo as a drug detector dog team.
4. Certification certificates relating to Trooper Trader and K9.
5. Pictures relating to this incident.

Purpose of This Report

The purpose of this report is to address issues discovered from the information provided to assist those responsible for making a legal decision if K9 Argo's claimed response in this incident was sufficient to produce probable cause.

This report follows the purpose of forensic psychology which is to analysis of behavior of a person (drug dog and handler as it relates to this incident) and its potential impact on existing law and court findings.

Behavioral Science Terms Used in This Report

PROMPT DEPENDENCY: Brought about by poor teaching, this refers to a condition wherein individuals do not respond to a **DISCRIMINATIVE STIMULUS** unless they receive prompts beyond what typically developing individuals require in order to respond. An example might be a student with developmental delays who waits to receive a physical prompt before he complies with a verbal instruction (**DISCRIMINATIVE STIMULUS**). Prompt dependency is generally created through poor execution of **PROMPT FADING** procedures. Newman, Bobby; Reeve, Kenneth F.; Reeve, Sharon A.; Ryan, Carolyn S. (2010-08-15). Behaviorspeak: A Glossary of Terms in Applied Behavior Analysis (p. 90). Dove and Orca. Kindle Edition.

ERRORLESS LEARNING: Gradual increase in difficulty during initial stages of training. For example, when teaching a drug detector dog to exhibit its trained response to the strongest point of the contraband drug odor it can physically reach such as being high or concealed on the interior of a vehicle and the dog is to respond exterior once the dog is responding without handler assistance when it reaches the source the substance is systematically moved away very slightly until a desired or needed level is obtained.

ORIENTING RESPONSE: Reflexive behaviors exhibited when something of interest is detected and the organism attempts to locate the source. For a drug detector dog orienting responses are behaviors such as increased breathing; turning of the head; moving toward the perceived source; scratching and/or biting or barking when the source is reached. These behaviors cannot be relied on as likely only being caused by contraband drug odor because not everything in the world that could cause a dog to exhibit those behaviors has been identified and extinction training occurred.

INTERVAL SCHEDULE OF REINFORCEMENT refers to the time in which reinforcement is applied. For a drug detector dog the interval schedule reinforcement when the when the dog starts the search and when the dog exhibits its response. If this information is not recorded in the training records it cannot be eliminated as potentially causing false responses.

FREE OPERANT: The organism is free to respond to the discriminate stimulus each and every time it detects the stimulus. For a drug detector dog free operant is a critical issue, because contraband drugs can be in a location in which the handler does not suspect they are present and

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was not commanded to sniff search. Whenever a dog detects the odor is must be allowed to work without handler interruption to the odor source and respond.

Video Analysis

This video points out this dog's claimed trained response (scratching) was most likely caused by the handler's actions and not that of contraband drug odor.



Figure 1

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At 12:57:33 when the team first approached the vehicle you can see the dog sniffing the driver's door area and its foot being raised. At this point if the dog was truly onto the odor and was not prompt dependent (need of handler cues) the dog would have remained focused and would not have departed as easily as he did the handler passed by.

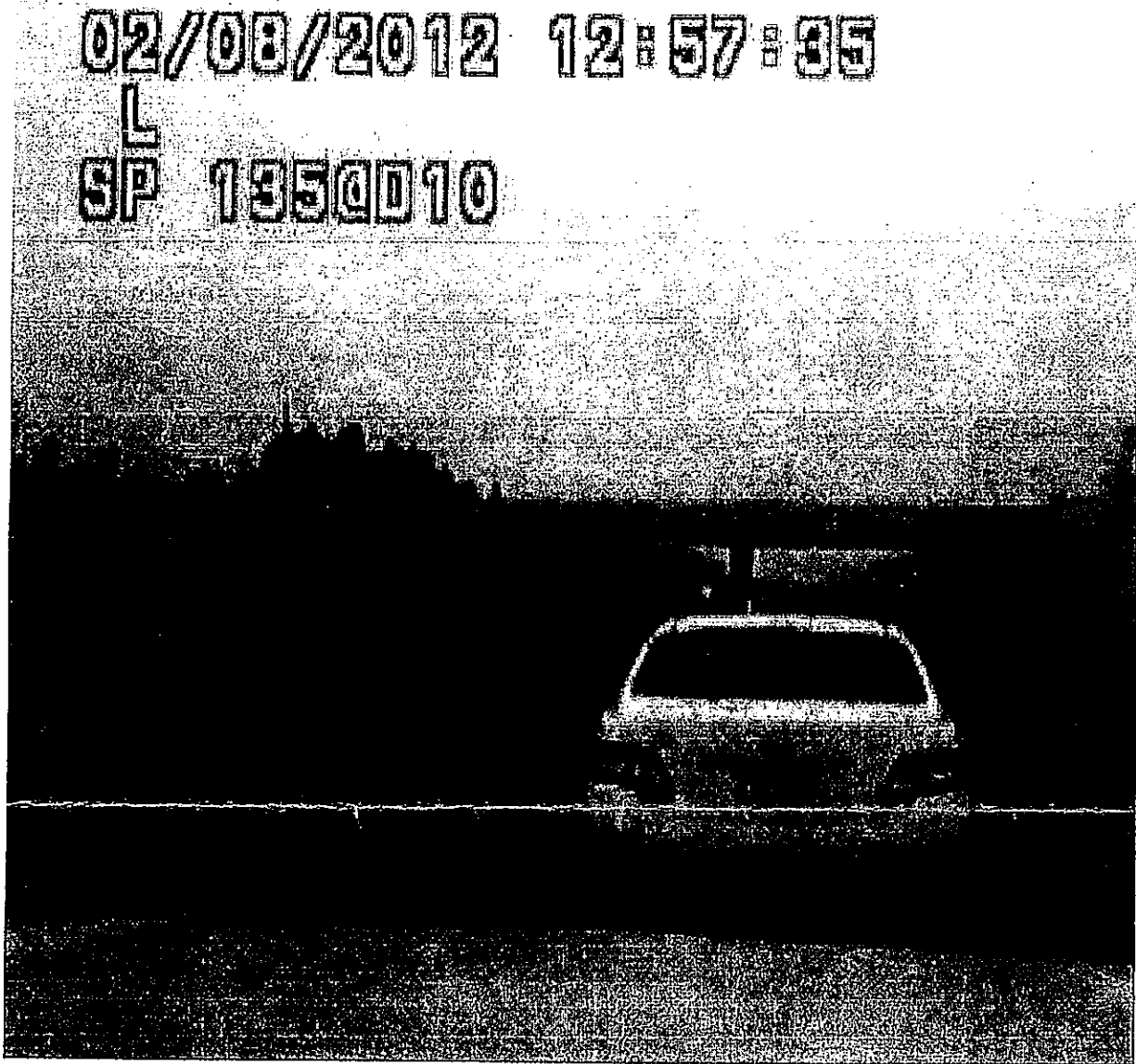


Figure 2

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Figure 1 Figure 2 the handler passed the dog and the dog turned and went with the handler. If the dog's exhibition of the orienting response was caused by drug odor it should not departed as it did.

What should have occurred is the dog should have struggled leaving the odor. Basically the handler should have been jerked back to the dog because the dog would not leave. This did not happen. Which also demonstrates the dog is not operating under free operant.

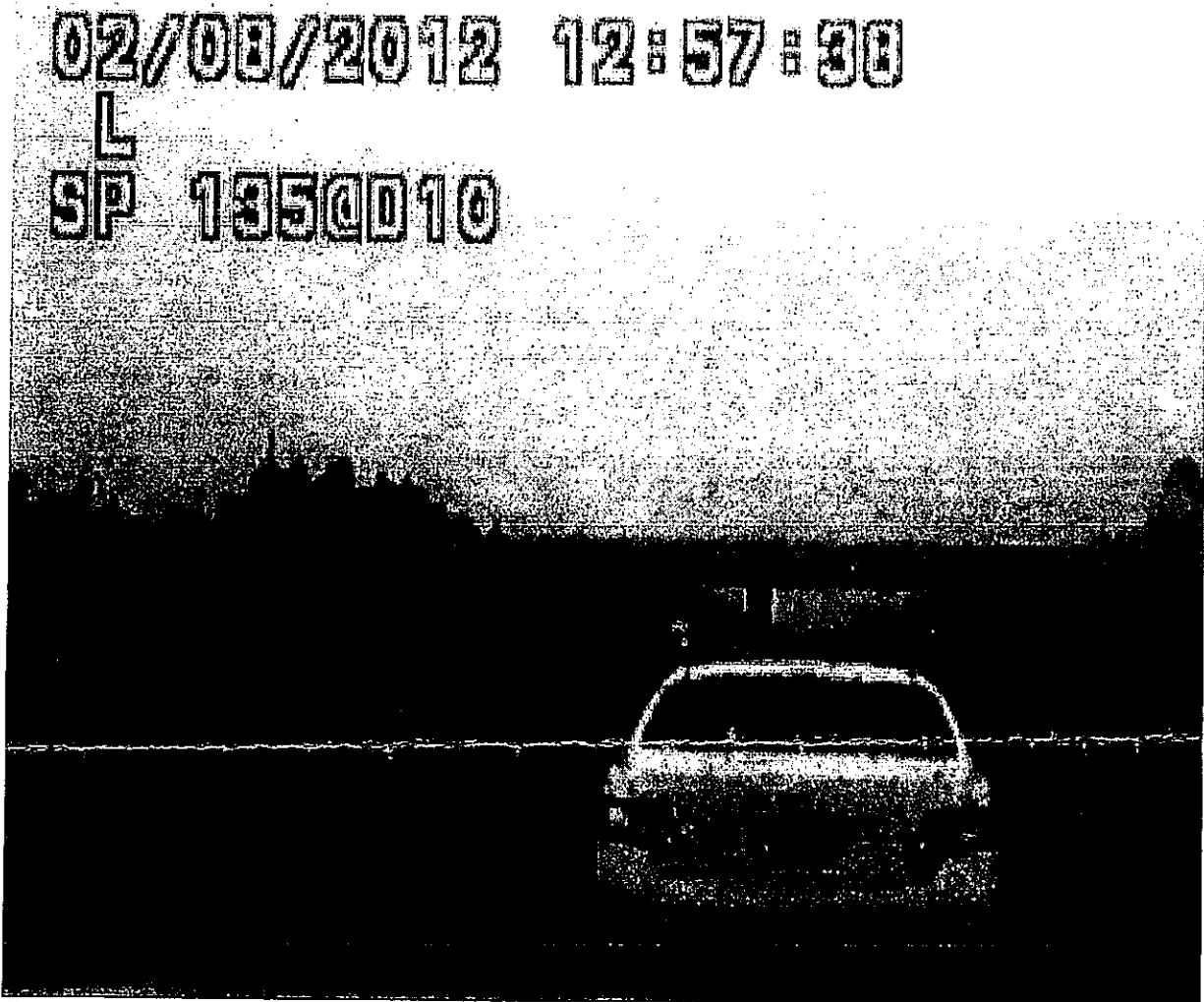


Figure 3

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At 12:57:38 the handler is now guiding the dog back to the driver's door area of the vehicle and is gesturing attempting to guide the dog to that area. It is apparent the handler perceived the orienting response was caused by drug odor and now is attempting to obtain a response.

When comparing the body posture of the handler this now increases the probability of cueing because the K9 can now see the difference in body positioning, as well as other potential behaviors that were not exhibited before.

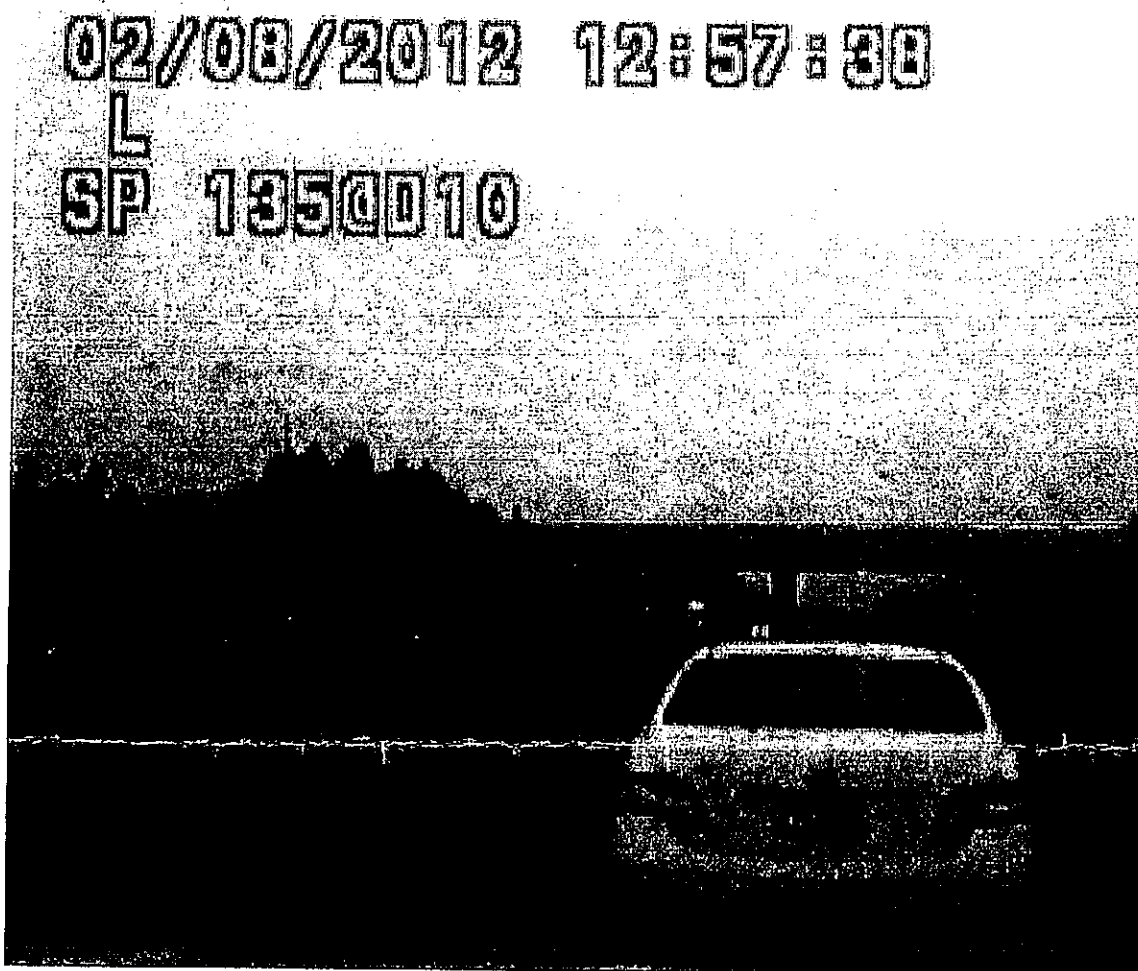


Figure 4

In Figure 4 you can see the K9 looking to the handler this is a sign of attempting to obtain a handler cue. A properly trained dog remains focused on the odor and does not look at the handler.

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Notes: K9 ARGO DID AN EXCELLENT JOB OF SNIFFING ALL PRESENTED AREAS. THIS WAS K9 ARGO'S FIRST FIND INSIDE A CLOSED REFRIDGERATOR, AND ALSO HIS FIRST FIND WITH AN ITEM IN THE FLOOR. K9 ARGO INDICATED TO THE ODOR OF NARCOTICS ON ALL FINDS BY SCRATCHING. K9 ARGO WAS SCRATCHING FOR A BRIEF TIME AND THEN LOOKING FOR HIS REWARD ON THE FIRST COUPLE FINDS. HANDLER NEEDS TO EXCITE K9 WHEN INDICATING TO THE ODOR TO KEEP HIM FOCUSED ON THE FIND. RATHER THAN LOOKING OVER HIS HEAD FOR THE REWARD. (Training Record dated 11/23/10)

Over a year before this incident occurred it was recognized this behavior needed to stop. The primary reason is the dog looking to the handler is a sign of potential prompt dependency. What this further demonstrates is corrective training did not occur which demonstrates that corrective training is not really a critical factor for those responsible for the training of this dog.

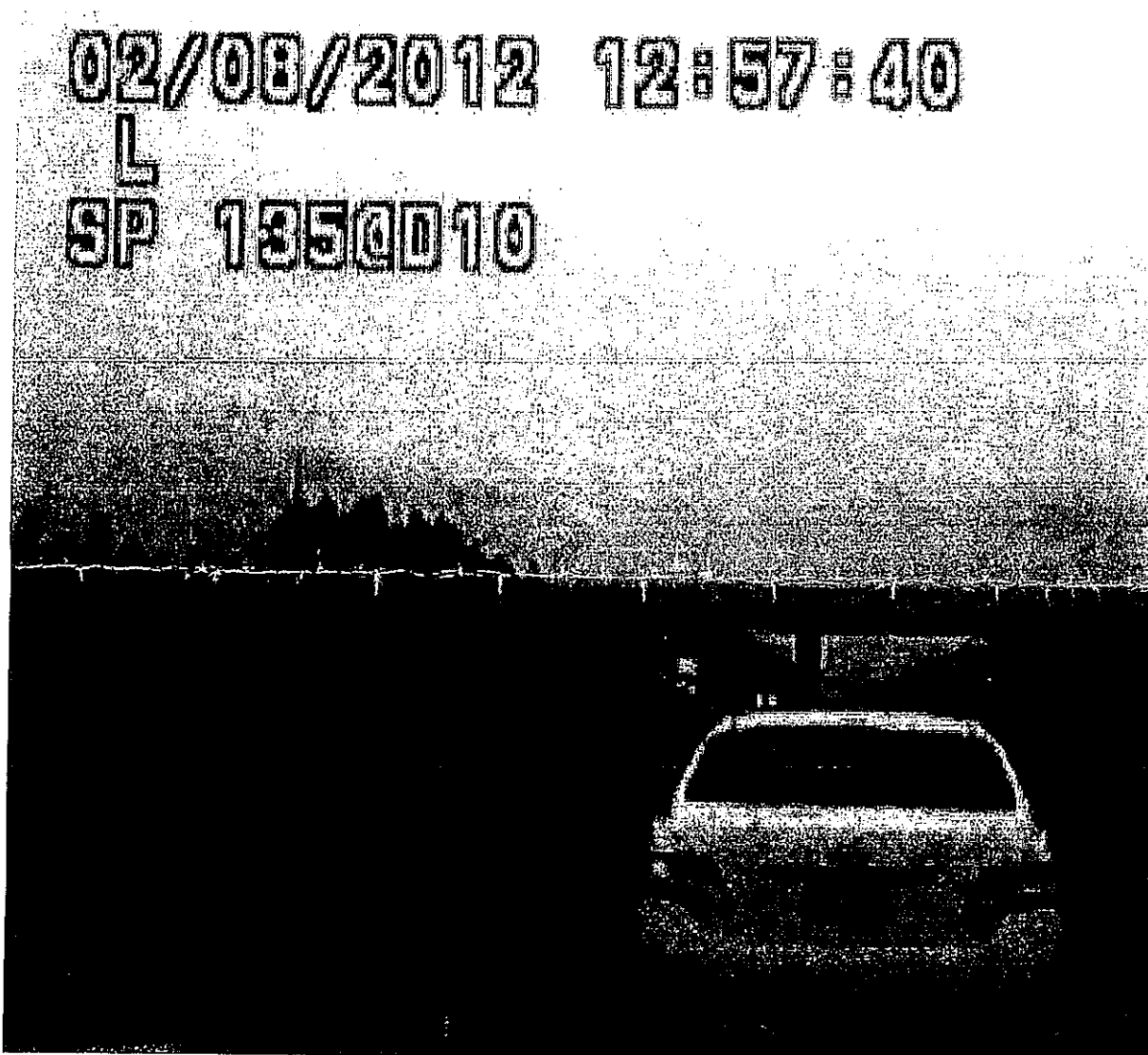


Figure 5

Figure 5 shows after the dog observed the reinforcer then it can clearly be seen scratching or slapping at the driver's door area. This further demonstrates this dog in this incident was not scratching based on the detection of contraband drug odor but because of the handler's actions.

Training Records Support that K9 Argo is Highly Prompt Dependent

RESPONSE INFORMATION 1st ENCOUNTER OF FIND AREA (BLIND)		RESPONSE PERCENTAGE
TRAINED RESPONSE WITHOUT HANDLER INFLUENCE	13	59.09%
TRAINED RESPONSE WITH HANDLER INFLUENCE	0	0.00%
ORIENTING RESPONSE BUT DID NOT EXHIBIT TRAINED RESPONSE	4	18.18%
NO RESPONSE	5	22.73%
HANDLER INFLUENCE NO RESPONSE	0	0.00%

Table 1

Table 1 was prepared from training session clearly identify the handler did not know the location of the items concealed for the dog to detect and respond. Based on the information provided only 22 times when the dog encountered contraband drug odors the location was Blind to the handler. According to the training records, that clearly identify as being Blind, the amount of odor ranges from 5 grams to 53 grams of substances. Placement of the finds for the amount of odor used is basically simplistic. A dog only detecting and responding to the substances on the first encounter 59.09% of the time demonstrates the dog was not properly selected or trained.

Based on the simplicity of the placement of contraband drug odor one would have expected the dog to have detected and responded to the contraband drug odor without handler influence at least 90% of the time. The fact that during the Blind sessions the dog only responded 59.09% of the time without handler influence demonstrates his dog's response abilities should not be accepted and this team should have not been in service at that time.

RESPONSE INFORMATION 1st ENCOUNTER OF FIND AREA KNOW OR NOT RECORDED		RESPONSE PERCENTAGE
TRAINED RESPONSE WITHOUT HANDLER INFLUENCE	76	66.09%
TRAINED RESPONSE WITH HANDLER INFLUENCE	6	5.22%
ORIENTING RESPONSE BUT DID NOT EXHIBIT TRAINED RESPONSE	16	13.91%
NO RESPONSE	16	13.91%
HANDLER INFLUENCE NO RESPONSE	1	0.87%

Table 2

Analysis of Know and Not Recorded was also conducted to determine if there was a significant difference between the dog's performances of the 1st encounter of contraband drug odor. The results of the date in Table 2 revealed there was no significant difference in the dog's performance as in Table 1 . [$X^2 (2, N=137) = 0.397$, p. >.05]

While there is no significant difference in the dog's performance based on Unknown and Know or Not Recorded this further supports that K9 Argo was not a properly selected dog or the training was not properly conducted. In any event the performance of K9 Argo in a controlled setting should not allow him into service in the real-world.

Further review of the training records reveals actions are not properly taken to attempt to eliminate K-9 Argo's obvious prompt dependency. What should be seen in the records is sessions taking the dog back to the basics of training. The fact this dog is claimed to be an aggressive response dog, report states it scratches at the source of contraband drug odor, records should have shown the application of such things as scratchboard which are used in the early stages to teach the dog to exhibit it's scratching behaviors to contraband drugs.

Example of Improperly Dealing with Prompt Dependency and Potential False Responses

12/01/2010

Notes: K9 ARGO PERFORMED A FREE AIR SNIFF ON TWO VEHICLES ON THE ROAD BEHIND THE ACADEMY. K9 ARGO SHOWED A STRONG CHANGE IN BEHAVIOR ON THE FIRST CAR'S PASSENGER SIDE AND WAS ALLOWED TO WORK INDEPENDENTLY. K9 ARGO INDICATED TO THE ODOR OF NARCOTICS COMING FROM THE PASSENGER FRONT DOOR SEAM BY SCRATCHING. I THEN PRESENTED THE PASSENGER FRONT WHEEL WELL AND K9 ARGO INDICATED BY SCRATCHING (HIDE WAS IN FENDER). THE WHEEL WELL WAS PRESENTED TO GET K9 CLOSER TO SOURCE...

In this situation the handler presenting the area where the contraband drugs are further increases prompt dependency. The handler should have done nothing and allowed the dog to work to the source on it's on. By ignoring the dog and requiring it to work to the source on its own will help the dog understand once it detects the odor it is its responsibility to work to the odor source.¹

Additionally K9 Argo and another dog responded where contraband drugs had not been intentionally placed in this training session.

K9 WAS THEN WALKED AROUND SECOND VEHICLE. WHEN K9 GOT TO THE FRONT PASSENGER SIDE OF THE VAN HE INDICATED BY SCRATCHING ON THE DOOR SEAM. THERE WAS NO DRUGS HIDDEN INSIDE THE VAN AND K9 WAS CORRECTED OFF THE VEHICLE. 3 OF THE 5 DOGS INDICATED ON THE VEHICLE,

THE FOURTH DOG DISPLAYED A SIGNIFICANT CHANGE OF BEHAVIOR (ONE DOG SHOWED NO INTEREST). THIS WILL BE AN UNKNOWN INDICATION.

The fact that K9 Argo now responded to the passenger side of the van increases the probability of K9 Argo scratching at the door to the other vehicle away from the odor source was not caused by the odor itself but was caused by some form of expectation. Review of the records demonstrates insufficient data was collected to attempt to accurately reproduce this incident to determine if this type of situation would cause K9 Argo's to false response.

What should've been seen immediately following this incident was training procedures to ensure the response was not a false response. Handlers who do not record sufficient information to accurately reproduce scenarios or to make accurate analysis are not exhibiting behaviors consistent with having a strong incentive to produce an accurate drug detector dog. Also, they are not taking actions to reduce unnecessary risk of invading the privacy of an innocent person or wasting limited time and resources by searching when contraband drugs are not present.

"After all, law enforcement units have their own strong incentive to use effective training and certification programs, because only accurate drug-detection dogs enable officers to locate contraband without incurring unnecessary risks or wasting limited time and resources" (Florida v. Harris, 2013).

¹ It must be understood that dogs are predators (natural hunters). When a hunting dog detects prey it does not look to the hunter for guidance to the prey. In drug detector dogs a dog's natural hunting abilities are used to locate the odor source. When a drug dog looks to the handler after it perceives to detect the odor of contraband drugs this demonstrates the dog has been conditioned away from its natural abilities into prompt dependency to the human.

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Review of K9 K9 Argo's training records has reveal this is not the only time the situation has occurred. Also, the records do not reveal any attempts to correct this problem of prompt dependency and potential false responses.

Why Is Blind or Double-Blind First Encounters Of Contraband Drugs the Most Accurate for Proficiency Assessment of A Drug Detector Dog Performance in Training

The first encounter of contraband drug odors in performance of a drug detector dog on his first encounter of contraband drugs is the most accurate because it greatly reduces the probability of handler influence. Even when the training session starts out as blind and the observer or trainer advises the handler to take the dog back to a particular area and search the area again now takes away true blindness and the handler's actions can change which can influence the dog's performance. As a result this can cause the dog to respond when the handler takes it back to an area it has recently searched. Even though the training records shows that the handler took the dog back to areas in which contraband drugs had not been placed and had the dog searched him again is not the same as when it is known as the dog failed to detect contraband drug odor. Again, the handler's mental set can be different and as a result impacts the performance of the dog. Taking the dog back to sniff an area in training scenarios when it is known the substance was present also increases the probability of the dog responding in real-world conditions when the handler has developed expectations that something is present. The reason is in both the training and real-world scenario it is obvious the handler has expectations and is exhibiting behaviors based on expectations.

Can Field (Real-World) Record Analysis Help Establish the Team's Performance

Real-world records can help establish the team's performance in real-world. When properly recorded the data can increase the accuracy of reproduction of non-productive responses that occurred in real-world for testing in a controlled setting to determine if the results can be reproduced.

There are a variety of reasons why real-world records must be analyzed in order to help establish the team's performance. One of the primary reasons is pointed out in research conducted in the

Industrial/Occupational Psychology field. Research as revealed that training and testing in a controlled setting does not always carry over into real-world settings. The main reason is humans have a tendency to perform better when they know they are being tested or observed for evaluation purposes than in real-world.

The act of observing people in an experiment can interfere with or change the behavior that is being studied...

“Some studies must be conducted in artificial settings. Management may not allow psychologists to disrupt production by experimenting with various work procedures on the assembly line or in the office. As a result, research may have to be conducted in a simulated job environment. In such cases, research results will be based on performance in a situation that is not identical to the job environment in which the findings are to be applied. This artificiality may reduce the usefulness to of the research findings. A comparison of several hundred studies of performance of work teams in organizations found that research carried out in laboratory settings yielded results that differed from research conducted in field or on-the-job settings, even though all the research programs were studying the same variables. Thus, where the research was done affected the outcome (Bell, 2007) (Schultz & Schultz, 2010, p. 26)

The Supreme Court has also recognized that field (real-world) records can provide be relevant to assessing the accuracy of the dog's performance.

Indeed, evidence of the dog's (or handler's) history in the field, although susceptible to the kind of misinterpretation we have discussed, may sometimes be relevant, as the Solicitor General acknowledged at oral argument (Florida v. Harris, 2013).

Unfortunately, the may reason field performance records appear to be misinterpreted is the majority of handlers do not keep detailed records to allow an accurate assessment of the team's performance. The apparent reason handlers do not keep records properly is because most trainers and instructors for drug detector dogs are following learning acquired during an internship and has not acquired formal education of scientific area related to the training and analysis of behaviors.

Insufficient Education and Training

Forensic science examiners need to understand the principles, practices, and contexts of scientific methodology, as well as the distinctive features of their specialty. Ideally, training should move beyond apprentice-like transmittal of practices to education based on scientifically valid principles. In addition to the practical experience and learning acquired during an internship, a trainee should acquire rigorous interdisciplinary education and training in the scientific areas that constitute the basis for the particular forensic discipline and instruction on how to document and report the analysis. A trainee also should have working knowledge of basic quantitative calculations, including statistics and probability, as needed for the applicable discipline (National Research Council, 2009, pp. 26-27)

While it is true when a dog responds to a vehicle to provide probable cause to search and nothing is seized the dog could have responded to residual odor caused by contraband drugs, but it is also possible the dog exhibited a false response. Analysis a drug dog's performance based on properly maintained training, certification, and field performance records can help determine if there are correlations between the dog's performances in each situation.

Comparison of Response Locations and Results

In this case the dog responded to the driver's door. What is the most likely cause of the response was it because it had detected contraband drug odor or was it for a different reason. With field performance records comparative analysis of the dog's response to the doors on the driver's side and doors on the passenger's side can be conducted. Statistically there should be no significant difference in the results.

DRIVER DOOR V.PASSENGER DOOR RESULTS			
	NON-TRACE AMOUNTS	NON-PRODUCTIVE	TOTALS
DRIVER SIDE	21	47	68
PASSENGER SIDE	37	11	48
TOTALS	58	58	116

The above table is an example of data extracted from field performance records which reveals when the dog responds to a door on the driver's side the probability of Non-Trace Amounts is 30.88% and when the dog responds to a door on the passenger's side the probability of Non-Trace Amounts is 77.08%. This supports there is a significant difference. An Independent Chi-square statistical analysis is conducted and the results supports there are a statistical significant difference in the results. [$X^2 (2, N=116) = 24.02$, $p. <.001$) in other word the probability the difference occurred by chance is less than 1/1000. While this does not tell us what is causing the difference it does point the difference is most likely a problem and the dog's response to the driver's side door should not be relied on as being accurate.

One of the elements that could cause this is when drugs are normally concealed inside a vehicle the person concealing the drugs is usually lingering at one of the doors which can make the person's body odor increased than simply walking by. Because this is a repeated occurrence and as a result is associated with the location of contraband drugs a dog may develop a relationship

between the increased human odor and the presence of contraband drugs. In the example the dog responded to the driver's side more than the passenger's side. If sufficient data was provided and the records revealed the majority of times when the handler or other officers contacted a vehicle they approached to the driver's door and conducted contact this provides support the difference in performance is caused by increased human odor. The dog could exhibit false respond based on the odor, or it could exhibit orienting responses because of interest and investigating and the handler who suspected contraband drugs was present could now exhibit behaviors which causes the dog to perceive it is to exhibit its trained response.

Another cause of the difference in the results of the dog's responses could be caused by training. If the training records revealed the majority of time when drugs were concealed in or on a vehicle the odor would be detected on the driver's side this increases the probability of responses on the driver's side of a vehicle is caused by expectations.

There are a host of comparative analysis that can be made from real-world records that can help support or rebut the dog's potential reliability for example are the significant difference in the probability of seizing non-trace amounts of contraband drugs based on the dogs response when:

1. Known rental vehicles vs. personally owned vehicles are sniff searched?
2. Out of state vehicles vs. in state vehicles are sniff searched?
3. When the handler receives information to develop expectation vs. simply taking the dog around a vehicle as allowed by (Illinois v. Caballes, 2005)?
4. The driver and occupants are White, Black, Hispanic, etc.?

Also, when the dog responds to a vehicle was the dog on the upwind or downwind side of the vehicle. For example, say drugs were concealed in the trunk of a vehicle with the wind blowing from the front to the rear of the vehicle and the dog is said to have responded at the front of the vehicle. Odor from the trunk would not been going against the wind to the front. Something other than the drugs in the trunk caused the dog to respond. This now makes that response reasonably questionable and should not be considered accurate.

Probability of the Seizure of Non-Trace Amounts of Contraband Drugs Based on the Drug Detector Dog's Response

One of the first things that should be done is determine a dog team's performance baseline in real world. Establishing the baseline of performance can help determine if a change in training, certification, or real-world deployment procedure have an impact in reducing unnecessary risks of invading the privacy of an innocent person, as well as wasting limited time and resources.

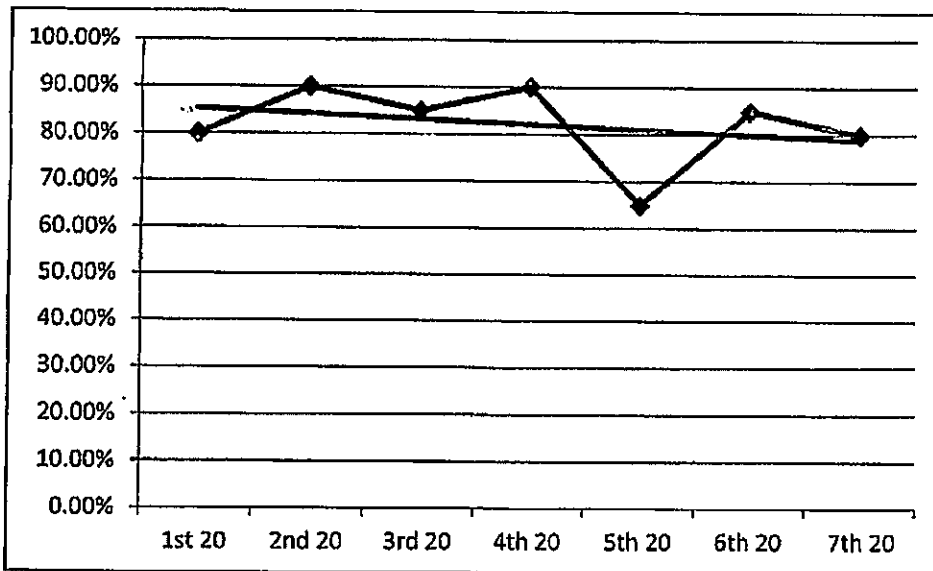


Table 3

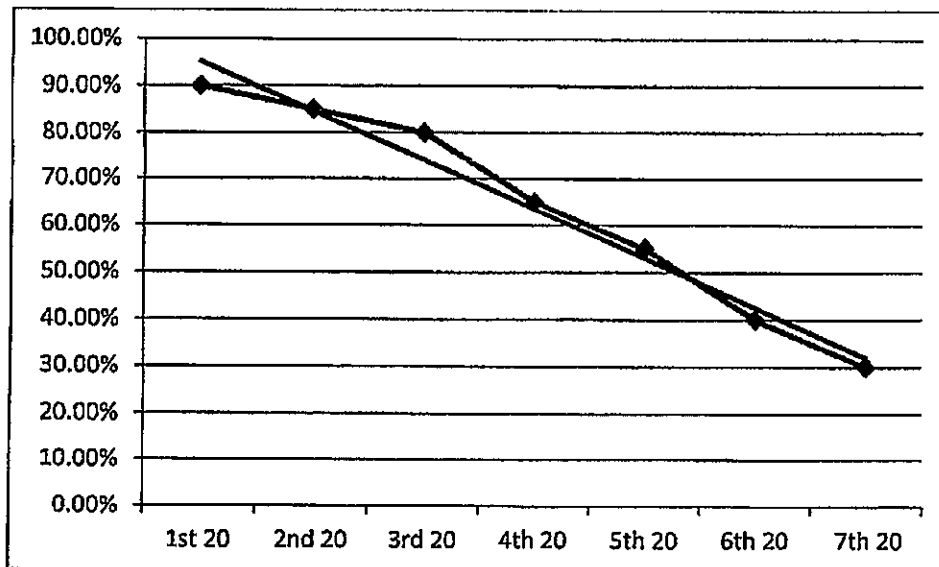


Table 4

Table 3 and Table 4 two are examples of field performance of a drug detector dog's responses broken down into groups of 20. In Table 3 the dog's performance is fairly consistent even though it had an incident where the probability of non-trace amounts greatly dropped (5th Group) the performance came back up in Group 6. Why the decrease occurred cannot be determined by review of the table what can be established is it is apparent the cause went away. During the time of the decrease a case was before the court the decrease is something that may cause the court to determine the dog not reliable. Performance after the 5th Group greatly increases the probability of the court finding the dog reliable. Maybe those responsible found the cause and took corrective action. If so it should be recorded in the training records.

The handler who identifies problem areas and documents the corrective action taken will likely find a more receptive audience on the bench" (Medema, 1995, p. 10).

Mr. Medema (Deceased) was an attorney for the Drug Enforcement Administration who created a publication for handlers to attempt to improve performance and reduce being challenged in court.

Table 4 clearly demonstrates there is a problem with the dog's performance in real-world. It further demonstrates the problem is consistently increasing and no action was taken to correct the problem. It is clearly obvious is those responsible for the training, and supervision of the dog team has no incentive to produce an accurate dog or avoid unnecessary risks of invading the privacy of innocent people or attempt to avoid wasting limited time and resources.

Had real-world records been provided relating to this team it could have been determined if sufficient data was being collected to help identify potential causes of non-productive response which could provide insights to needed actions to attempt to eliminate or greatly reduce non-productive responses. Real-world records must provide sufficient data to help increase the accuracy of the interpretation of the dog's performance. Because the handler is the person present at the scene and is a public servant it is the handler's responsibility to ensure the data is properly collected. If the data is not properly collected it supports the handler has no desire to avoid non-productive responses or the handler is poorly trained and supervised.

If properly recorded real-world records had been provided for analysis the determination if those responsible for K9 Argo's

Certifications of Trooper Trader & K9 Argo for Drug Detection

The information relating to the certification of Trooper Trader and K9 Argo has no value.

In *United States v. Cedano-Arellano*, 332 F.3d 568 (9th Cir. 2003), we held that when a defendant requests dog-history discovery to pursue a motion to suppress, 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. *Id.* at 570–71. These materials were held to be “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. *Id.* at 571. These disclosures are “mandatory” when the government seeks to rely on a dog alert as the evidentiary basis for its search. See *United States v. Cortez-Rocha*, 394 F.3d 1115, 1118 n.1 (9th Cir. 2005).

A unanimous Supreme Court echoed this in another recent dog-sniff case. See *Florida v. Harris*, 133 S. Ct. 1050, 1057 (2013) see (US v. Jonathan Michael Thomas, 2013).

Without the certification standards and the score sheet relating to the certification an accurate assessment as to potential faulty and lax procedure cannot be accurately determine.

Does Trooper Trader Follow Training Standards and Departmental Policies as it relates to a Drug Detector Dog

What cannot be determined at this time is the training, certification, and deployment procedures as it relates to a drug detector dog for the State of Ohio being followed by Trooper Trader. Perhaps K9 Argo’s high prompt dependency is the result of failure to follow department standards.

Also, review of the departmental standards could help determine if the Ohio Highway Patrol as it relates to drug detector dogs have a strong incentive to produce an accurate drug detector dog and attempt to avoid unnecessary risks of invading the privacy of innocent people.

Conclusion

Based on the records provided this team should not been in service because the dog has a high potential of being cued by the handler. Also, it is apparent in the video provide the more likely cause of K9 Argo scratching at the driver's door is the handler's actions and not the odor of contraband drugs.

This report is true and correct to the best of my abilities.

Steven D. Nicely

Works Cited

Illinois v. Caballes, 543 U.S. 405 (United States Supreme Court 2005).

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