II. Practice: IS THIS RELIABLE EVIDENCE?
by F. Hunter MacDonald, Esq.

1. K-9 CHECKLIST – Evidentiary Arguments

**RELEVANCE** – The fact that drug residue is virtually everywhere in the environment renders any particular alert irrelevant.

**FOUNDATION** - Individual dog training may not meet foundational standards for acceptance or reliability under either Daubert or Frye if the dog is not certified by a federal training agency because state/local certification standards often can not pass scientific muster for foundational purposes because they do not include:

1. double-blind testing,
2. third party evaluations, and/or
3. evidence preservation protocols.

➢ **Specific Subpoena Requests**

More detailed information is contained in the “Interviewing the Dog Handler” section. Please review that section in addition to the following information.

To evaluate your foundational arguments you should:

* **Review Training Records**

1. Check the training and lab records for conclusive evidence that:
   
   a. The dog was “imprinted” before he was certified and matched with a handler,
b. An objective, disinterested, unbiased third party verified the
dog’s performance during the testing process for certification,
especially the dog’s positive alerts, and
c. The samples upon which the dog registered positive alerts
were, in fact, narcotics and had not been cross-contaminated.

* Review the Dog Handler’s Records and Field Notes (See fn. 1)*

1. Check the dog handler’s notes or logs for:
   a. False alerts;
   b. Praise, affection, or rewards after false alerts;
   c. Malingering by the dog;
   d. Encouragement or rewards that are necessary to make the dog
      start or continue work.

2. False alerts, especially where they are rewarded, render a dog’s
evidence unreliable under *Daubert* and *Frye* because, even under a
*Daubert*-type theory, a scientific conclusion must be based on
reliable data and false alerts by the dog would render the data
unreliable.

3. False alerts mean the dog is alerting on anything just to get its
   reward, (usually a play toy or activity), because the reward is

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1 Some courts consider the dog handler’s logs and field notes to be personal possession since they are
often kept at the dog handler’s home, rather than in the ordinary course of business. Therefore, you should
serve the dog handler, personally, and the police department if you wish to obtain copies of his logs and
field notes.

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correlated with simply alerting, not alerting to the unique chemical compounds it should have been trained on.

* Review the Lab Records (or Don’t)

1. Subpoena any and all drug testing records for substances that the dog has alerted on.

2. If records showing perfect correlations cannot be produced, none of the dog’s positive alerts in the field can be used to establish the dog’s accuracy for foundational or testimonial purposes.

* Review the Dog Handler or Trainer’s Directions to the Dog

The issue of false alerts and malingering was covered above but also review whether the handler’s or trainer’s directions place the dog in danger during training or field work. One particular area of concern is if the handler or trainer directs the dog to place its nose directly into a bag or enclosed compartment without knowing what is inside. This action can kill or injure the dog if it inhales the substance directly. If the handler or trainer directs or teaches the dog to do this, any expert worth his or her salt will testify that such behavior indicates the handler or trainer is poorly trained and/or incompetent.

* Evaluate Weaknesses – Passive vs. Aggressive Responses

A passive alert is consistent with a dog’s resting behavior and may not indicate anything if the dog just sits down because it is tired.

An aggressive alert may expose the dog to danger and show incompetence on the dog handler’s part.
Other alerts may simply be ambiguous or entirely reliant upon the subjective opinion of the handler, e.g., the “change of behavior” or “casting” alerts.
**Preparation/Subpoena Requests**

1. Subpoena all records kept on the dog by the trainer, training agency, and K-9 Officer, including their Logbooks and/or Manuals.

2. During, or prior to, the interview, ask the trainer/handler who the dog’s veterinarian is and subpoena the veterinarian records on the dog.

3. Subpoena any records in the individual police department’s possession, but remember that there may not be very many records maintained by the individual police department because the training is often conducted at an outside facility. In addition, the individual police department may deny that they have any records at all or tell the K-9 Officer that he/she can not release them. At a minimum, though, the police department should have a file indicating the name, breed, and birthdate of the dog, as well as purchase information and the dog’s dates of service.

4. It is important to order the veterinary and purchase information on the dog if you are planning to show that the dog is unqualified under the federal standards because federal agencies only purchase dogs of a certain breed and do an intelligence and health evaluation prior to training the dog. If the dog fails any of the criteria, it is not fit to be trained. Many state/local police agencies, however, do not maintain these standards and will train any dog.

5. For a more detailed description of the dog evaluation process, you should contact a dog training expert.

**Review the Police Reports for the Incident in Question**

1. Did the handler direct the dog to place its nose directly into a bag or closed container before the handler determined what was inside. [K-9 officers like to tell you that they never looked inside the bag so that they can avoid being accused of leading the dog, but this is a no-no because an unidentified substance can kill or injure the dog].

2. Did the K-9 officer file a report or keep notes of the individual incident? [Sometimes they don’t bother and will, therefore, have trouble with independent recall. It certainly is a good issue to bring up with a judge or jury as to whether to trust an officer on crucial questions which he/she did not deem important enough to memorialize.]
3. Did the K-9 officer make a timely notation in his/her logbook about the time/place/circumstances of the positive alert(s) for the incident in question? [If not, this is another credibility door-opener.]

4. Does the police department require the K-9 officer to write a timely report or make log entries for alerts by his/her dog?

5. If the dog alerted on a non-drug surface, like a bag or money, did the officer see any drugs or drug residue on the surface?

Look at Possible Human Interaction with Drug Evidence

1. If the dog alerts on a non-drug substance, ask if the bag/money/whatever has been handled by any other police officers prior to the dog alert. It is possible that the drug residue on the non-drug item may come from being touched by the fingers of a narcotics officer, among other possibilities.

2. Look at other cross-contamination issues.

General Questions

1. What substances is the dog trained to recognize?

2. Did the handler receive a training manual or did all of his/her training consist of field exercises?

3. Did the dog have any false alerts or finds during its training period?

4. Did the dog have any false alerts or finds during its working period?

5. Has the dog had changes of behavior for solvents, drain cleaners, and phosphorous? [Sometimes these odors may be confused with methamphetamine.]

6. If so, can the dog distinguish between cleaning agents and methamphetamine?

Performance Standards

1. Does the handler have to report false alerts or false finds to the police department?

2. Is there a performance standard within the police department that a dog must meet?

3. Is there a policy for taking the dog out of service?

Terms of Art
Ask the handler to define terms of art in this logbook, e.g.:

- presentation
- change in behavior
- pin point
- miss
- handler miss
- trainer redirect
- manipulate
- controlled environment
- inappropriate response
- false response
- false find
- training aids

If the logbook refers to any problems with any of the above issues, ask the handler to explain, in detail, what the problems were and how they were resolved.

**Basic Training**

1. How is the dog trained to respond to specific odor?

2. What are the containers for the training aids made out of? [There is no way to decontaminate most non-metal containers, but many state/local trainers and handlers use wood containers.]

3. [If the dog is trained with training materials by the handler, find out where he or she keeps them. Many times they are kept in the trunk of the handler’s car which opens them to cross-contamination.]

4. When and where is the dog rewarded for positive alerts? [If the dog is rewarded within the search area before the substance is confirmed to be an illegal narcotic, the dog may simply be alerting to get its award, because there is no way to determine if the dog has properly alerted until the substance gets to the lab. If the dog is continually rewarded after each alert in a series of searches all within the same area, the issue is further complicated as to whether it is alerting only on illegal substances or simply alerting to keep the alert/award cycle going.]

5. Has the dog ever been assigned to any other handlers?

6. Have you ever had problems with obtaining the dog’s cooperation? In other words, has the dog ever mangled or required special incentives to begin or continue work?

**Follow-Up or Additional Training**
1. What type of related educational or background training, if any, other than law enforcement training have you undergone?

2. Do you have a college degree in any science or dog-related area? Any high school level courses?

3. What type of follow-up training, if any, does the dog undergo? How many hours, etc.

4. What type of follow-up training, if any, does the handler undergo?

5. When was the handler certified and by whom?

6. What kind of training and exams did the handler undergo to become certified?

**Records – Lab Results**

1. How many positive alerts has the dog had and who keeps those records?

2. Do you review the dog’s positive alerts with the lab records to ensure that it is not alerting falsely?
WHATCOM COUNTY SUPERIOR COURT
STATE OF WASHINGTON

STATE OF WASHINGTON,                      ) Case No. 04-1-00507-1
    Plaintiff,

v.                                                

XUANPHUONG TRAN,
    Defendant

The Unsworn Interview of K-9 Officer Rich Holdridge of
the Bellingham, Washington Police Department

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Unsworn Statement of Officer Richard Holdridge,
taken on behalf of the defendants in the above matter
at the conference room in the Bellingham Police
Department, City of Bellingham, County of Whatcom,
State of Washington,

MR. HINDMAN: For the record I'm Dennis
Hindman and I'm appearing here on behalf of Douglas
Tran in the matter of State of Washington Vs. Tran
and I have Officer Holdridge in front of me.

MR. HINDMAN:
Q What is your full name?
A Richard Holdridge.
Q And Officer Holdridge I have just handed you a letter
addressed to the Bellingham Police Department and you
on June 1st is that correct?
A Yes.
Q Did you receive this letter?
A Yes, and number three; all incidents in which the
Rookie has been involved in is not discoverable you
will have to go to court on that. Number six, reports on Rookie's performance from any source, vague, we will not be able to comply with that. Training records, we're not going to give you any training records that we kept on Rookie. Any and all dog handling, I don't understand that one either.

Q Did you read the letter?
A I did.

Q Did you ever return a phone call to my office.
A On your cell phone I believe.

Q When was that, do you know?
A The day after I received the letter.

Q Do you know the name of the dog's veterinarian?
A Village Veterinary is where we take him. There are a number of different veterinarians at that location.

Q And Village Veterinary is located where?
A Sehome Village in Bellingham.

Q And do you know who the doctor is that sees the dog?
A Not off hand.

Q And someone from the department takes the dog there?
A No, I take him.

Q And you don't remember any of the doctor's names?
A Not off hand, no.

Q Have you seen the dog more than once?
A No.
And I requested that you bring paperwork relating to records that have been kept on the dog. Did you bring any paperwork with you?

No. What kind of records? Can you be more specific on what you’re looking for?

First of all does the department keep any records on the dog?

I have a logbook for my training records.

Did you bring the logbook with you?

No.

Where would the logbook be?

In my vehicle.

Is your vehicle here?

Yes.

Can you please get that?

Okay, I can get that in a little bit down the line.

Is that log book the only records kept on the dog in the police department?

Yes.

So the police department has no records on the dog?

When you say records I guess I’m not sure what you’re asking.

So you don’t understand the word records?

What kind of records are you looking for is what I’m asking.
Q  I’m looking for any and all records that are kept on the dog Rookie.
A  That would be the logbook.
Q  And you know of no records that the police department keeps on the dog?
A  No.
Q  So, in other words, they don’t even have an information sheet to the best of your knowledge on the dog at the police department?
A  Right.
Q  The police department would not be able to tell me when the dog was born?
A  We have no idea. He’s a Golden Retriever but we have no idea how old he is. We got him from Rescue Training Facility and basically when we got him there were no records on the dog.
Q  Do you know when you got the dog?
A  Last April is when we started training him.
Q  So you actually got the dog in April?
A  Again training him, about mid May is when he was assigned to me.
Q  Do you know when you got the dog?
A  We got the dog in April.
Q  You got the dog at the Rescue Training Facility?
A  Yes.
Q And where is the Training Facility?
A At the department of corrections on McNeil Island.
Q Is that information in the logbook?
A Yes.
Q I think it would be appropriate if we take a look
at the book at this time.

(Off the record)

MR. HINDMAN: Back on the record
MR. CHAMBERS: We’re not going to let
you copy that.

MR. HINDMAN: Well, I need to take it
and make notes so I can ask him questions.

Q (By Mr. Hindman) So what is the dog trained to
recognize?
A Marijuana, crack, cocaine, methamphetamines, heroine.
Q What about black tar heroine?
A Yes.
Q And in your police records marijuana would be MJ and
back tar heroine would be BBT?
A No that’s only in my logbook. In the actual case
records I wrote—for the record I specified and spelled
out what the drug was, if it was known.
Q Now you indicated “on own”, what does that mean?
A The dog found it on his own without presentation.
Q And what does presentation mean?
It means I showed the dog where I want him to search.

And generally what does "change in behavior" mean?

Any noticeable change in behavior that the dog has, whether it's increased sneezing, change of ears, wagging of the tail, change of behavior in the dog when they get to the sent.

And pin point?

Got as close as he possibly could to the drug.

So if you used the word pin point the dog would have a response but he may not be on the drug?

No, a pin point is him getting as close to the drug as he can get to it, say put his nose on it. It would be the tip of a pin point.

On the actual drug itself?

Yes.

So, for example, you wouldn't use it if the dog was here and points in that direction, you wouldn't necessarily use the word pinpoint unless he puts his nose on something specifically?

Wherever the odor is coming out and the dog puts his nose, that's considered a pinpoint, meaning he is pinpointing and showing me the last place he put his nose is where the odor is coming from and that triggers me that I need to look there.

Automatic response?
He gets as close as he can get, a pinpoint and automatic response is what the dog is doing when he has found drugs.

And "told to respond"?

At the beginning of training we have to teach the dog to sit after a response. So at the beginning of training you have to tell him to respond once he gets to the odor.

And source?

Drug source, where the drug is coming from.

Assisted to source?

I assisted the dog to the source.

Is that used only in training or is that used when you work in the field?

Training only, correct.

Miss?

It means we searched somewhere and there wasn’t enough odor for him to get on it and he missed it.

When you miss does that mean he didn’t respond to react in any way?

Yes.

Handler miss?

It means I screwed up.

Trainer redirect?

If we’re doing a search and I don’t present the dog
where I need to the trainer can, during a training
scenario, put the dog back in the area you should have
put him in and that is considered trainer redirect.
Q That would be someone else working with you and the
dog?
A The trainer.
Q Handler error?
A Basically I screwed up.
Q Did not present?
A It means I didn’t put the dog where he needed to go.
Q Manipulative observes.
A Manipulate means he didn’t find the object.
Q In controlled environment?
A It means I controlled the environment.
Q What would you do to control the environment?
A It’s always sort of different. Turning the fan off,
shutting windows, closing doors, just anything to do
to help the dog.
Q Inappropriate response?
A If he does something he shouldn’t. Peeing in the room.
Q Just sat, walked.
A It means interested in something but he moved on
without continuing.
Q And false response?
A It means he did something he shouldn’t have.
Q: And dog miss?
A: It means he missed it.
Q: Training aid?

MR. CHAMBERS: You are not going to go through every single one of those are you Dennis?
MR. HINDMAN: I would have to look through these references about the dog, okay? You're saying that you're not going to make copies of anything there, so-

MR. CHAMBERS: These are meaningless.

A: Training aids are the aids they used to train the dog, substances of marijuana, crack, cocaine, black tar heroine, whatever it is. The same type of aids we use now and will continue to use through the life of the dog. Filling containers is all it is.
Q: Filling containers?
A: Containers with drugs inside the container.
Q: Is one of those containers a black leather bag?
A: Okay, yeah.
Q: How big is the bag?

MR. CHAMBERS: Where the heck are you going with this Dennis?
A: I have no idea how big the black leather bag was. It was a year ago.
Q: You have no idea? You don’t recall anything about
a leather bag, no recollection?

A No.

Q The next category seems to be like wood, some brass, metal, copper tube. When you say cooper tube do you have any ideas what that constitutes?

A What does the entire line say Dennis?

Q It just says training aids.

A Copper tube?

Q Copper tube.

A A smoking device, marijuana pipe.

(Attorney MacDonald in Appearance)

Q Would that pipe have been a training aid including having a drug in the pipe?

A The pipe has been used for that.

Q Do all the training aides have marijuana—

A Everything here is substance weight, substance weight is what we’re talking about. That is how many gram substances are in it.

Q And the ones that just have an “x” there is no marijuana on it or in it?

A Yes.

Q And this is at the department of corrections?

A That is correct.

Q McNeil Island?

A Yes.
Q And it looks like the instructor was a Barbara Davenport.
A Yes it was.
Q And there is a notation here, it says WAC 13905915 and two hundred hours?
A Yes.
Q Would that be the work administrative code, requires a dog and handler have two hundred hours of training before he hits the road?
A Yes.
Q And did you have a training manual?
A No training manual, all hands-on.
Q So when did you attend the two hundred hours of training?
A April, May and June.
Q And did both you and the dog stay at McNeil Island?
A I stayed during the week and would come home on the weekends and the dog stayed there all the time.
Q And did you and the dog complete the two hundred hours of training?
A Yes we did.
Q And did you get a certificate for that?
A Yes we did, certified with Washington State and accredited through the WSPCA, which is the dog association.
Q  And do you have the certificate in this material?
A  No.
Q  Where would the certificate be?
A  At home.
Q  Okay, so the training certification certificates are at your home?
A  Yes.
Q  And the police department doesn’t have a copy of it?
A  No.
Q  And who signed that certificate, do you know?
A  Barbara Davenport.
Q  Is that all?
A  I don’t know who signed the Washington State one—
   MR. CHAMBERS:  We’re not going to go through the individual training sessions?
   MR. HINDMAN:  That’s fine. Let me take a quick look. Okay, I have some general questions. I have a life too Craig I’m not just—
   MR. CHAMBERS:  I have done officer interviews before and typically they went to the point.
   MR. MacDONALD:  We normally get the records in advance, too. It helps us prepare so we can get through a quick interview.
A  We’re not allowed to release the log books.
Q (By Mr. Hindman) And who was the person who told you that?
A Doll.
Q And he told you not to hand over the log books?
A Yep.

MR. CHAMBERS: We’re not going to go through the individual training sessions. You can ask general questions about the dog of course.
Q So these are just—I get the idea this is just your notes basically on the routine of what he had?
A Everything we did with the dog.
Q During the day?
A Yes.
Q And again, there is no information on the history of the dog or anything or even the age of the dog?
A No. You can contact Golden Retriever rescue and they might have a record of it but best guess, right around two years old.
Q Do you know where the Golden Retriever Rescue Group is?
A No.
Q And these are basically just exercises you are going through?
A Right.
Q In some of these notes you’re critical of your performance I assume?
A: Yes I am.
Q: In one notation it looks like he had a definite brain—

MR. CHAMBERS: I'd like to look at it.
MR. MacDONALD: With all due respect it's our interview.

MR. CHAMBERS: I understand what the rules of discovery are and what is material and what isn't material. This is a training exercise and those are the officers notes and he doesn't not need to respond to discovery which is not in a manner of professional conduct.

MR. MacDONALD: We're not going to be bullied here—

MR. CHAMBERS: You can do it according to the rules.

MR. MacDONALD: What rule are you citing?

MR. CHAMBERS: The criminal discovery rules and that does not mean you can ask any ridiculous questions.

MR. MacDONALD: We're making a record and we'll get the court reporter to produce the record and we can go in front of the judge.

MR. CHAMBERS: We can do that. You
shouldn't be asking irrelevant questions that are
asked in a meaningless and abusive, hostile tone
meant at embarrassing the witness.

MR. MacDONALD: You can go on with
another question.

MR. HINDMAN: Are you instructing the
officer not to answer the question.

MR. CHAMBERS: Are you asking about his
notation about the brain fart?

MR. HINDMAN: Yes. Are you instructing
him not to answer the question?

MR. CHAMBERS: Yes I already answered
that Mr. Hindman you don't need to ask several times.

MR. MacDONALD: Mr. Chambers you are
an attorney for the City of Bellingham?

MR. CHAMBERS: No I'm not.

MR. MacDONALD: Then you cannot instruct
him to do that he is an employee of the city. Are you
instructing him not to answer that question.

MR. CHAMBERS: I'll advise you that you
don't have to answer the question.

Q (By Mr. Hindman) Now during the training did you have
problems with cooperation from the dog?

A Problems with cooperation?

Q Yes, did you ever find that he didn't cooperate with
you in the training?

A Sure, we would have problems with the dog not cooperating..

Q And at least it looks like there is one note on August--

MR. CHAMBERS: You were provided this so you could ask general questions. I don’t think that is discoverable, all training records. We’re here so you can ask general questions.

MR. MacDONALD: You are not a representative of the City of Bellingham.

MR. CHAMBERS: I can manage the discovery on this case.

Q (By Mr. Hindman) Officer you’re just willing to listen to whatever the prosecutor has to say and respond to his responses is that correct?

A I’m here for myself. I’m taking it under advisement from Mr. Chambers.

Q So if he told you not to do something you would listen to his response?

A Yes.

MR. CHAMBERS: Are you going to ask some general questions?

MR. HINDMAN: Yes I am.

(Off the record)
MR. MacDONALD: Back on the record.

Q (By Mr. MacDONALD) Did the dog have some difficulty working with some of the aids that you gave the dog?

A No.

Q There is a notation that Rookie was having a hard time working two aids that are not a stable environment.

A Okay.

Q Is that correct?

A That is my logbook, that is training, that is actually the aid itself. No, if you are talking about the substance then no.

Q So part of the training is to see if the dog will give a false, what you call a false is that correct?

A Yes.

Q I'm assuming during the training the dog did a number of false?

A No.

Q Did he do any?

A He didn't do several he did a couple. I would have to look at my training record to give you the exact number.

Q Well, the notation is 5/6/03 and it just says Rookie gave two false in two areas.

A Okay.
Q  Is that correct.
A  I don’t know.
Q  You don’t know?
A  It was a year ago I’d have to look through my 
log book. You just can’t give a date and pull it out 
and say did he do so and so on this date.

MR. MacDONALD: Mr. Chambers wants to 
say something.

MR. CHAMBERS: I don’t believe the 
logbook is discoverable on the training of the dog. 
We have counsel’s representation that he was going 
to review those to see if he could ask some general 
questions about the dog’s background in training and 
he has since gone on to ask specific questions about 
specific notations and I don’t believe it’s 
discussable and I tried to assist him in formulating 
some general questions.

MR. MacDONALD: You just picked up the 
logbook and placed it back in front of Officer 
Holdridge is that correct?

MR. CHAMBERS: Correct, because you 
would not ask general questions.

MR. MacDONALD: Okay so I want to 
make a record here.

Q  (By Mr. MacDonald) Officer Holdridge would it be
helpful to you to refer to the logbook in terms of answering the questions?

At this time we do not need to go through individual questions of the logbook. If you have general questions about dog training but I don’t need to answer individual questions about individual training that happened a year ago.

What you’re saying is, during the interview you don’t intended to answer any questions about individual days in the logbook is that right?

Yes.

So just to have that on the record, that is your refusal because it’s essentially your answer to give?

Yes.

Has anybody instructed you to give that answer?

No.

And you have talked to the lieutenant—

I’m not giving you the logbooks to take with you. That is the instructions that I was given. You can look at that, which you did but I’m not giving them to you.

(Mr. Hindman) I’m not asking you to give them to me.

(Mr. MacDonald) The question was—Mr. Chambers handed your logbook back to you and what you’re saying is that you’re not willing to answer any more questions
concerning the individual dates in the logbook during this interview?
A Right.
Q Okay, if I may, the logbooks, I understand they are kept by you personally?
A Yes, they are my logbooks.
Q And they're kept by you at home?
A Yes they are.
Q So they're not kept in the regular course of business with the Bellingham Police Department or any other police agency?
A They are my logbooks on the dog, both mine and his training records.
Q And as far as you know, those are the only training records that exist?
A Yes.
Q Okay and we're not going to strong arm you into turning over the logbook.
A That's fine.

MR. CHAMBERS: I don't think so
MR. MacDONALD: So Dennis if you have some other questions which you would like to ask but I want a chance to finish and I want to make that clear.
Q (By Mr. Hindman) Are there any other records in the logbook that don't involve training?
Yes, individual cases that the dog has been on, the training and records of everything Rookie has done. But no other records in the Bellingham Police Department?

No, these are them.

And are you refusing to let us look at the book as to his records of training and duty records?

You mean what we have been doing for the last 45 minutes is that what you're asking?

No.

What are you asking?

We have already talked about the training so that is finished, okay?

Okay.

What I'm concerned about is do you have other records which would show his performance on duty?

No it's in the logbook.

So there are no other records available, because you are saying you are not going to show us the logbook?

I the logbook I already showed you.

Is that the only training book?

These, my two training books, yes.

MR. MacDONALD:

The two logbooks are the only training books you have got?
A Right.

Q How many pages approximately are in each logbook?

A 160.

Q And the entries on there are on both sides of the page, right?

A Yes.

Q So 320 total entries on both sides of the page?

A Yes.

Q And when did you get those to Mr. Hindman to look at?

A About 8:10 this evening.

Q And the time is about 8:49 is that about right?

A Yes.

MR. HINDMAN:

Q What I'm interested in are the records on which the dog started service?

A And that would have been in the logbook that I have already given you.

Q Could you look at that, since the logbook was taken away by Mr. Chambers?

A Okay.

Q Because I no longer have it available so I can look at that logbook.

A What would you like to know?

Q My question is, when did the dog start his service?
Rookie started service with the Bellingham Police Department on June 10th, 2003.

Since June 10th of 2003 have you been the only handler for the dog?

Yes I have.

And how much of your time is assigned the K-9 position?

Twenty-four hours a day the dog is mine. I take him and he is with me wherever I go.

And you said you have certificates at home?

Yes.

I would like to see a copy of those. Could you provide us a copy?

Okay.

Now, he is accredited by the State of Washington?

He is certified by the State of Washington.

And you have that certificate?

Yes I do.

Is he nationally accredited?

He is accredited through the Washington State Police K-9 Association, so yes.

And that is a national accreditation?

Yes.

And there are certificates for that?

Yes, also a Washington State Criminal Justice
Training Commission Certification, which is through the State of Washington. This is a class certification that we finished the two hundred hours through WSPCA accreditation that we completed.

Q Okay and do you have annual training?
A A minimum of 16 hours a month.
Q And is the dog, as of today, current for each month on his training?
A Yes.
Q And where is that information?
A That would all be in the logbooks.
Q And how many years of K-9 experience do you have?
A I started April 1st, so just over a year.
Q When you say you started April 1st—
A I'm sorry, April 20th is when I started.
Q Not April 1st?
A No.
Q And I believer that is when the class started, correct?
A Yes.
Q So prior to last April you had no training with the dog?
A With an individual dog, no. With other dogs at the police department, yes I did.
Q What kind of training was that?
A Working with our trainers and acting as a quarry for
the other dogs.
Q And how long did you do that.
A About six months.
Q And that would be like assisting the trainer, just
assisting the handler?
A Yes.
Q Have you had to take any written tests relating to
your dog training?
A There was a written test to pass the class, the
original class.
Q And that is the one with three or two hundred hours?
A Two hundred, our class.
Q Okay and from the time the dog went in to service
how many cases have you handled?
A I don’t know the individual number of cases. I
can tell you how many finds we had if that will help
you. Lets see, I haven’t done the math yet. Through
the end of December, 2003 we hand 481 finds of
marijuana, 150 finds of black tar heroin, 189 of
cocaine, 145, crack, and 165 of Methamphetamines and
that is both training and actual application in the
field. And from January 1st to now, 163 finds of
marijuana, 52 finds of black tar heroin, 127 finds of
cocaine and 18 finds of crack, and 73 finds of
methamphetamines, both training and application in
the field.

Q What were those numbers again, January 2004–
A January 2004 thorough now is that what you’re asking?
Q Right.
A 163 marijuana, 52 of black tar heroin, 127 cocaine,
18 of crack, and 73 of methamphetamines.
Q And can you tell me which ones were training and
which ones he found in the field?
A Not at this time, no. I would have to go through the
logbook for each individual case.
Q Do you know whether it was fifty/fifty or sixty/
forty?
A I have no idea.
Q No idea whatsoever?
A No.
Q Okay, during—well, from the time he went into service
until I guess now did he have any false finds?
A No false finds.
Q From the date of service and I’m talking about the
Bellingham Police Department.
A Are you talking about field finds or training finds?
Q Both.
A In the initial training, yes.
Q And do you have any idea how many he had?
1 A No.
2 Q Now, in the field since he went into service, has he
3 had any false finds?
4 A No.
5 Q So the dog has been one hundred percent, not made one
6 mistake in the field?
7 A No I'm saying he hasn't had a false find.
8 MR. MacDONALD:
9 Q What is a false find?
10 A He hits on something not there.
11 Q He hits on something which was subsequently tested
12 and there were no drugs or drug residue?
13 A Right.
14 Q So how has the dog been trained to hit on something?
15 A Well, in the initial two hundred hours training you
16 introduce him to an odor for a reward.
17 Q What is the reward?
18 A A toy.
19 MR. HINDMAN:
20 Q So how many seizures has the dog been involved in
21 since his start of duty?
22 A I don't have that number.
23 Q You don't keep that number?
24 A I don't know it offhand.
25 Q Have you observed, since the beginning of training,
a false alert?

No.

So in your opinion, since the beginning of duty with
the dog, the dog basically has really made no mistakes?
I’m not saying he hasn’t made a mistake.

So the dog has made some mistakes?

There are mistakes.

What mistakes has the dog made from the beginning of
duty?

He can miss an odor. If he does not feel like working
he doesn’t work, just like anybody else. The dog is
not perfect.

Are there days when the dog doesn’t want to work?

I haven’t come across that, no.

If the dog does give a false alert does the department
have a policy on that?

No.

So there would be no record kept of that?

If he did a false alert I would be in my logbook.

But there is no policy with the department and you
are not responsible with the department for that?

No.

Does the department— does anyone in the department
monitor your logbooks or check them out?

No, not at this time.
Q Are you required to write a report each time the dog is rewarded?
A Every time the dog finds something you write a report.
Q Where is the report written?
A At the Bellingham Police Station.
Q So the report would not be in your logbook it would be a written report in the Bellingham Police Station?
A There is both. I write a report for the department and then I keep a log of everything the dog does, whether he finds something or not.
Q What is the breed of this dog?
A Golden Retriever.
Q Is the veterinarian part of the certification process?
A No.
Q And you’re the only officer that works with the dog?
A Yes.
Q And the dog is only trained for narcotics detection or is the dog trained for tracking?
A For narcotics only.
Q And you have already listed the kinds of drugs that he is trained for?
A Yes.
Q You indicated the dog and you train 16 hours a month?
A Minimum.
Q Would this dog have trained more than 16 hours a
month?

A Some months, yes.

Q Do you train with someone else with the dog?

A It depends on when it is, yes we do.

Q Who would the people be that training with you and the dog?

A Officer Hannon is the master trainer and then Officer Munden from Blaine and at every seminar there are a number of different officers from different agencies. I don’t have their names right offhand.

Q Are those seminars monthly too?

A The Pacific Northwest Seminars are done once a year and the WSPCA is twice a year.

Q Is it possible the dog may alert on chemical odors associated with methamphetamines that are related to legitimate products such as chemical solvents?

A My dog will do a change of behavior but—

Q But he will have a change of behavior around solvents, drain cleaners, phosphorous?

A Not necessarily. He’s had a change of behavior around some types of chemicals but he does not give a full alert unless it’s a finished product.

Q Okay, have you tested him in training relating to solvents, drain cleaners, other chemical solvents.

A He has been around it, yes.
1 Q Okay is that part of your training process?
2 A Yes.
3 Q And how many times have you done that with the dog?
4 A I don't have the numbers offhand.
5 Q You don't know?
6 A No.
7 Q Is the dog trained to detect a pharmaceutical narcotic?
8 A No.
9 Q Do you have a copy of your police report? Did you 
10 bring that with you relating to the incidents that you 
11 wrote for the police department?
12 A I did not bring it with me.
13 Q Didn't I ask you for that information?
14 A I don't think so.
15 Q Would it be possible for you to get a copy of the 
16 reports that were written on that?
17 A Unless they're on hold, then I probably could.
18 Q Is it possible—
19 MR. CHAMBERS: Could you let him 
20 see yours counsel?
21 MR. HINDMAN: Of course
22 Q (By Mr. Hindman) You were aware you would be asked 
23 questions about the incident?
24 A I assumed so, yes.
25 Q Is there some reason you didn't think it was
necessary to bring the report with you?

A I just didn't bring them. Do you have a question regarding them?

Q Yes. Do you recall the first contact you had with Doug Tran's vehicle?

A Yes.

Q Do you recall when that was?

A Not off hand.

Q Do you need the report to refresh your memory?

A On February 4th--

Q Do you need the report to refresh your memory?

A Yes.

Q Okay, go ahead.

A February 4th, 2004 at 1445 hours.

Q What contact did you have at that time?

A I was asked by SIU to meet them at Bellis Fair Mall.

Q And do you recall what happened?

A They asked me to run the dog on a subject's vehicle who had been arrested.

Q Okay and what did you do?

A I deployed my dog inside the vehicle.

Q Can you describe what happened?

A Yeah, once inside the vehicle Rookie stuck his nose inside the bag on the front passenger seat and gave a full response.
Q  So that was a positive finding?
A  Yes.
Q  What was his response?
A  He backed up and sat down and looked at me.
Q  And, of course, you did find marijuana in that bag, is that correct?
A  I never looked inside the bag.
Q  You never looked inside the bag?
A  I gave it to the detectives advising them that he alerted towards the bag.
Q  According to everything you said this evening that was considered a positive, is that correct?
A  Yes, he gave a positive response.
Q  For Marijuana?
A  For an odor of drugs.
Q  Okay, you said he never made a mistake so you anticipated there would be drugs in the bag?
A  Either drugs, paraphernalia or odor contamination.
Q  And what is odor contamination?
A  Basically the odor of a drug that is on something.
Q  But you explained to the officers that there was a positive response?
A  That he gave an alert on the bag.
Q  To an illegal drug presence.
A  The odor of.
Q  Why do you say odor of?
A  Because that is what he hit on. He hit on an odor.
Q  Would it be possible he could hit on an odor and there
    would be nothing in the bag?
A  Yes it is.
Q  Your only duty is to tell that the dog responded and
    not to do any further investigation?
A  My work is with the dog.
Q  And how long did you and the dog work on the vehicle?
A  Roughly ten, fifteen minutes.
Q  Okay, can you explain what the dog did to the vehicle?
A  Alerted on the bag.
Q  But that didn’t take ten or fifteen minutes?
A  The procedure starts outside the vehicle working from
    the front to the back, working the seams, underneath
    the wheel wells and once inside he sections it out. He
    starts in the front and works his way to the back under
    each seat, over each seat.
Q  And when he did the entire test around the vehicle did
    he have any positive response?
A  No.
Q  And other than the bag in the front passenger seat
    did you check all the rest of the inside of the
    vehicle?
A  Yes.
Q And was there any positive response anywhere else in
the vehicle?

A No.

Q Prior to you being requested to come to the scene
what were you doing just prior to that?

A Sitting at home.

Q Between the time you left home and the time you got
to the scene did you come in contact with any
narcotic-like training materials prior to service?

A No.

Q Or prior to the search?

A No.

Q Do you carry any training materials in your vehicle?

A Yes.

Q Where do you carry the training materials?

A In the trunk.

Q But there would be no training materials inside your
vehicle?

A No.

Q Okay and at the time those materials were in your
trunk?

A Yes.

Q Okay, did someone provide the bag containing the
money or just--

A It was inside the car.
Q  In your presence was anything taken out of the bag?
A  No.
MR. MacDONALD:
Q  Did the other officers on the scene give you a
description of—explain to you why they had called
you to the scene?
A  They had a guy in custody and wanted me to check
the vehicle. It was drug related or what they
thought was drug related.
Q  Do you recall any other details about what they
told you that they had found at the scene?
A  No.
Q  You don’t remember or they didn’t tell you anything?
A  They don’t tell me anything else, doesn’t look that
way.
Q  What did they tell you about what they wanted the dog
to look for?
A  Wanted the dog to search the vehicle.
Q  That’s it?
A  That’s all it is. I’m told there may or may not be
something in the vehicle and they would like me to
search it.
Q  Do you recall where Mr. Tran was at the time you
searched the vehicle?
A  I do not.
Q And not specifically where he was but was he at the
scene?
A I believe he was.
Q Do you remember one way or the other?
A No.
Q And there were two detectives there prior to you,
correct?
A Yes.
Q And those gentleman are known to you, right?
A Yes.
Q And they're regularly employed as part of the drug
task force?
A No, the drug special investigative unit of the
Bellingham Police Department.
Q But you know them to have experience in narcotics?
A Yes I do.
Q And do you remember where their vehicle was?
A No.
Q Do you remember what they were wearing that day?
A No.
Q And I’m guessing they were not in full police uniform?
A I don’t believe they were, no.
Q And they didn’t give you any details about what they
had been doing during the day prior to you running
into them at the mall or going out to the mall?
No.
Did they ask you to do any other searches or sniffs with the dog that day other than the Escalade at the mall parking lot?
I believe we searched a second vehicle there.
Do you remember what kind of vehicle that was?
No.
Do you recall if there was a suspect nearby that vehicle?
No.
Do you remember if you had a warrant for the search of the second vehicle?
I didn't have one.
Did either one of the other officers have one?
Not that I know of.
And was the scenario the same or different and you described a scenario where they asked you to turn the dog loose on the car. Was it the same scenario with the second vehicle or different?
Same.
Do you remember what the weather was like that day?
No.
Do you remember anything else about the wind speed or its direction or anything like that?
No.
Q  How long had the dog been at home with you prior to
the search—I should say prior to you leaving to do the
search?

A  I'd have to check what time I got off but I don't
recall right offhand what shift I was working that day.
Whenever I got off shift.

Q  Let me ask you this, more than an hour you think?

A  Yes.

Q  Less than ten hours?

A  Most likely.

Q  And how long does it take you to get from your house
to where the search was conducted at Bellis Fair Mall?

A  Actual drive-time once I'm in the car, anywhere from
fifteen to twenty minutes.

Q  And do you recall if the dog had been used for a sniff
or search the previous day, in other words during your
previous shift?

A  I don't recall right offhand.

Q  And I think you indicated that the bag was right on
the seat and my impression of seat is where a person
would sit on the seat?

A  Yes.

Q  Can you describe the alerting besides—was there
anything the dog did besides—I think you indicated
the dog basically backed up, sat down and looked at
you is that correct?

A Yes.

Q Okay, did the dog do anything else other than that or did the dog—let me rephrase. Did the dog do anything else other than that when the dog alerted on this particular search?

A He had a change of behavior prior to.

Q And what was that?

A Increased sniffing, increased tail wagging, actually more intense sniffing, dropping of the ears meaning he is interested in something.

Q And how long did the alert last?

A Until I gave him his ball.

Q Did the dog show any signs of interest in the package prior to coming in contact with the insides of it?

A Yes he showed interest in and around the seat and then once he got to the package and stuck his nose inside is when he gave me the alert.

Q Can you repeat what you just said, the dog did what?

A He had a change of behavior in and around the seat and he continued working until he got to the bag and then he placed his nose inside the bag and then gave an alert.

Q Before he placed his nose inside the bag I think you said he had some interest in the seat area?
Yes.

Does that indicate anything to you?

That he has an odor and he is trying to work the source, odor c.o.n.

And can you describe what an odor c.o.n. is?

The scent that comes over something in an outwardly direction.

Is this something that the dog always does whenever it makes a find or has a positive alert, expresses a high interest in the odor c.o.n. before it makes a positive alert on a drug or drug residue?

Yes, some change of behavior.

Now, you never saw what was inside the bag that is your statement, correct?

Right.

Did you use a control group to confirm the dog was alerting on money that was in the—let me ask the question in a different way.

You didn’t give the dog a sample of money to see if the dog would alert on did you?

No.

Did you use any wooden boxes to hide items during the search?

During what search?

During the search of the Escalade in the Bellis Fair
Parking Lot did you use any wooden boxes to hide any
items during the search?

A No.

Q What did you say was the dog's reward after he alerted?

A A ball.

Q Is that where the dog is allowed to play with the ball
or have it?

A Both. We play.

Q Now, does the dog receive the reward outside of the
search area or get the reward somewhere in the search
area?

A He gets it after each individual session.

Q In this case was the dog rewarded with the ball and
play inside the search area or away from it?

A Inside.

Q Was the dog shown the reward prior to the search?

A No.

Q Does the dog always receive an award after the alert?

A No.

Q What is the determining factor whether the dog gets
a reward after alerting or not?

A In some training we want him to get a full pin point
where he comes from—say there is something inside the
vehicle, he will give an alert because that is the
closest he can get but instead of giving him the
reward when we open the door so he can get to the
aid and then he will receive it.
Q I believe I asked this before. I think you said
the dog got his reward somewhere in the vicinity of
the search area?
A When he sat down.
Q Now, what happened with the dog after he got his
reward? What did you do next with the dog?
A Play with him.
Q Then what happened after that?
A Then I took the ball away and continued searching.
Q And what happened after that?
A I took him outside, had a training aid for him to
end on and played with him.
Q What is a training aid?
A I don’t recall right offhand.
Q Is that something he got from your trunk?
A Yes.
Q Something with a drug odor on it?
A Yes.
Q And then what happened after that?
A They asked us to search the other vehicle.
Q Then what happened after that?
A I was done, I left, that was it.
Q When you say you left, did you leave to go to the
station to prepare the report, take the dog home or
do you recall?
A I believe I went to the station and hung out with
the guys.
Q How long after the search did you actually type up or
sign your report?
A I have no idea. That day.
Q Can your dog differentiate between the different types
of drugs?
A No he alerts, just alerts on them.
Q Can the dog differentiate between other objects with
drug residue on them and the drugs themselves?
A No he gives the same type of response.
Q Is the dog trained to do anything else connected
with the police work?
A No.

MR. MacDONALD: Do you have anything
else Mr. Hindman?

MR. HINDMAN: Yes.

MR. HINDMAN:
Q Did you and Rookie have anything else to do on the
Douglas Tran case?
A I believe we assisted in searching the house.
Q Do you recall when that was?
A Not right offhand.
1 Q Did you write a report?
2 A Yes I did.
3 MR. CHAMBERS: He didn’t bring it.
4 MR. HINDMAN: Off the record.
5 (Off the record discussion)
6 MR. HINDMAN: Back on the record.
7 Q (By Mr. Hindman) Do you recall the day that your dog
8 Rookie was used to search the house?
9 A Yes.
10 Q And do you recall what day that was?
11 A No.
12 Q Did you record that in either your log book or in
13 the police report of it?
14 A No and no I haven’t done either one. I would have
15 to find my notes for it.
16 Q You have notes?
17 A Yes, from the search.
18 Q Where would those notes be?
19 A Most likely at home.
20 Q So you have notes from the search but they’re not
21 kept at the police department they’re kept in your
22 home?
23 A Right now, yes.
24 Q Do you ever give those notes to, for example, the
25 police department so they can be forwarded on?
A: No when I'm done with them they are thrown away.
Q: So then those notes that you would have kept on the
day of the search of the house would be thrown away?
A: Yes,

MR. MacDONALD:

Q: How come you didn't throw away the notes on the search
of the car?
A: I did throw away the notes on the search of the car.
Q: But didn't you indicate earlier every time there was
a positive find you put it in the logbook?
A: Yes I do.
Q: And also you make a report to the Bellingham Police
Department?
A: Yes.
Q: But there is no report regarding-
A: Not yet, no.
Q: There is no report yet regarding the search of the
house?
A: Not yet, no.

MR. HINDMAN:

Q: And you have thrown away your notes on that?
A: No.

MR. CHAMBERS: You have asked him
three questions on where his notes were and he has told
you they're at home.
Q  (By Mr. Hindman) So you have kept the notes?
A  Yes.

MR. MacDONALD:

Q  I thought I heard you say you had thrown the notes away?
A  You heard wrong. I throw away my notes when I’m done with them and obviously in this case I’m not done with them.

MR. HINDMAN:

Q  Were there any positive alerts in the search of the house?
A  Yes there were.
Q  What is your normal procedure about writing a report on a positive alert?
A  I write a report and I put it in the logbook. At this time it’s not done.
Q  Do you usually wait two or three months to write your reports?
A  Not usually, no.
Q  Is there some reason in this case you waited two or three months?
A  No reason whatsoever.
Q  Can you not throw away those notes so we can take a look at those notes relating to Doug Tran?
A  Sure, yeah.
Q When you find them?
A Yeah when I find them.
Q Do you know for sure that they’re there?
A I’m assuming they are.
Q You’re assuming they are?
A That’s right.
Q You don’t know—
A No Mr. Hindman I’m not for sure one hundred percent, no I’m not.

MR. MacDONALD:

Q Is there a place in your house where you normally keep them.
A No.

MR. HINDMAN:

Q Would it be possible for you to look for those notes and get a copy to the prosecutor of the notes within the next week?
A I will be looking for the notes and I’ll be writing my report and putting it in my logbook.
Q You don’t, at this point in time, you don’t even know the day that you searched the house with the dog?
A No.
Q And it’s not in any of the records that you have maintained on your dog?
A Not that I have here right now, no.
Q And it's evidently not the normal procedure to record
them right away if there are any notes on searches?
A There was a normal procedure for me to usually do it
right away. It's not normal to not do it.
Q And you don't know why you didn't do it?
A I don't have an answer for that, no.
Q And I'm assuming that in the next seven days if you
don't find it would it be possible for you to let my
office know that you searched—
A You will be informed.
Q As to that day it was probably—
MR. HINDMAN: And counsel you can
A correct it.
Q (By Mr. Hindman) But my guess is that search was
probably somewhere around either the 5th or the 6th,
just a day or two after the search at the mall. Would
that be correct?
A That sounds most likely right.
Q And when you went to the house do you remember what
time you went to the house?
A Early evening.
Q And when you got there do you remember where the
house was?
A I don't remember the actual address, no, not off hand.
Q Do you remember the area it was in?
1 A  Up off the Toad Lake Road area.
2 Q  And when you got there what were you asked to do?
3 A  Assist in the search of the house.
4 Q  And what did you and Rookie do?
5 A  We started with the bedroom and then finished the
6    upstairs bedrooms and then did a hand search down-
7    stairs in the kitchen and we searched—did a quick scan
8    of the downstairs.
9 Q  And did the dog at any time alert on anything?
10 A  Yes he hit on a drawer, a desk and an area next to
11    the bed.
12 Q  Did the dog hit on the little girl’s wallet?
13 A  Yes in the other bedroom.
14 Q  And, again, just drugs is what the odor was?
15 A  The odor of drugs, yes.
16 Q  And do you remember where the drawer was, what room
17    that was in?
18 A  The drawers were in the main bedroom.
19 Q  Okay and what other than the drawers specifically
20    did the dog hit on?
21 A  He basically hit on the money.
22 Q  When you say the money can you describe what
23    happened, please?
24 A  He was doing a change of behavior on the drugs and so
25    I opened up the drawers and he puts his nose inside
the drawer and basically touched the money with his
nose and gave a full response.

Q How did the money look?

A It was in a sack inside the door.

Q So the money was just a stack of money?

A Yes.

Q Okay and was it one stack, two stacks?

A Just one stack of money.

Q And how thick was it to the best of your recollection?

A I don’t know because I didn’t grab the money. Office
Crawford who was with me handled the money.

MR. MacDONALD:

Q Was it rubber banded or have a tape around it, tape
or seal, anything like that?

A I don’t recall.

MR. HINDMAN:

Q And to the best of your knowledge was there any drugs
on the money?

A My dog alerted on the money which, in turn, tells me
there was some kind of odor on the money.

Q But that doesn’t necessarily mean that there are
drugs on or in that money.

A According to what my dog does, yes.

Q And so you confirmed by looking at the money that
there was marijuana on the money?
A  No.
Q  Does the department have a policy to determine when
your dog alerts what the procedure is to confirm that
his alert is correct?
A  No.
Q  There is no procedure at the department to confirm
any odor to the best of your knowledge?
A  There is not a policy, no.

MR. MacDONALD:
Q  Was there something done in this case where the
money was subsequently tested?
A  I don’t know.

MR. HINDMAN:
Q  And you said the dog odor was on a desk?
A  The nightstand next to the bed, inside the drawer.
Q  And what was in there?
A  Same thing, a stack of money.
Q  Same size?
A  Like I said I didn’t look at the other one and I
didn’t look at that one I just advised officer
Crawford what we had done.
Q  So once the dog smells odors you do nothing to confirm
if it’s accurate or not accurate?
A  If I see it then I go with it or if I don’t then I
allow the other detective around to check.
Okay but there is no internal procedure to confirm an alert by some other means?

Are you talking about policy?

MR. CHAMBERS: He already answered that twice.

(By Mr. Hindman) But you don’t do anything else to confirm an alert? For example, if I had a stack of money sitting right here and the dog came in and sat down you would consider that an alert?

Yes I would.

Is there anything else you do to confirm that there are any actual odors on the money?

No I do not.

And on the desk—

The desk is on top of the nightstand.

Okay, well, you said drawer, desk and area next to the bed.

The drawer was in the dresser. The desk meant night stand and then the area of the bed and there was some under the bed.

Under the bed?

Yes.

Okay and did you see any of that?

I saw them pull it out. He didn’t give a full alert on that he just gave a change of behavior on which I
instructed them to check the bed.

Q Okay so he didn’t give a full alert on the money under

the bed?

A No.

Q Okay and he gave a full alert on the little girl’s

wallet?

A Yes, in the back bedroom.

Q And did you see the wallet?

A I saw the wallet as he hit on it, yes.

Q Okay, did you do anything else to look in the wallet

or confirm?

A No.

MR. MacDONALD:

Q How was the money situated under the bed? Was it

stacked too or was it loose?

A I didn’t see it I just advised them to check the bed

area and under the bed.

Q Okay so the dog went under there?

A The dog gave a change of behavior, showed some

interest under the bed and so I advised them to check

that.

Q How did you find out there was money under the bed?

A I was told.

Q So one of the other officers told you there was

money under the bed?
A Yes.
Q Do you recall which officer that was?
A No.
Q Now, did the dog alert on anything else like a penny jar or something? Do you recall anything about that?
A No.
Q So the dog alerted on nothing else in the house is that correct?
A Right.
Q Okay and because you haven’t written a report yet, the numbers that you gave us, are these one, two, three alerts recorded in the numbers you gave us or not recorded in the numbers you gave us?
A What do you mean?
Q Well, you had indicated that the dog had positive findings and alerted on so many cases—
MR. CHAMBERS: This was money this wasn’t drugs. It wasn’t marijuana it wasn’t cocaine he alerted on money.
Q (By Mr. Hindman) So in other words the statistics you gave us on the dog alerting on drugs you did not include the searches done in this house?
A No.
Q So you didn’t consider that the dog alerted on drugs?
A No, a substance of drug that we calculate for our
records he did not hit on. He hit on an odor whether it be a bag, whether it be inside the vehicle, side door where they keep their marijuana he hits on that but it’s not there. Technically it’s still a find but not a substance that he hit on.

Q Do you count these in determining the dog’s percentage of accuracy for drugs? Do you count these sniffs?

A It should be in my log book, yes.

Q Okay and are they accounted that the dog alerted for drugs—how are the accounted?

A Made a positive alert on money, that’s what it says.

Q But not a drug?

A Made a positive alert on money, which there means that he alerted on some sort of odor contamination.

MR. MacDONALD:

Q But you don’t confirm that subsequently through additional testing?

A I do not. Once it’s given to the detectives I’m assuming they do.

Q But you don’t know?

A I don’t do anything with the money, no I do not.

Q And you don’t know whether the detectives do not?

A I have no idea.

MR. HINDMAN:

Q In this particular case, the Tran Case, were you
involved in any other vehicles that were seized?

For example did you have your dog sniff the
recreational vehicles?

A The trailer.

Q Okay so the dog sniffed the trailer?

A Yes.

MR. MacDONALD:

Q Was that on the same day when the dog alerted on the
money inside the drawer and inside the wallet—

A No.

Q That was on a different day?

A To the best of my knowledge it was on a different
day.

MR. HINDMAN:

Q Did you make a report on that?

A I don’t know if I have my written report or not.

Q Do you know when that was?

A It was the 2nd of March.

Q And can you indicate what you have basically written
down in that book?

A He hit on a black bag, gave me an alert on a black
bag that came from inside the trailer.

Q And was there any marijuana in that bag?

A Substance of marijuana, no.

MR. MacDONALD:
Q Were there any other drugs inside the bag?
A No.

MR. HINDMAN:

Q Was there any residue found in the bag?
A There is odor contamination is what I’m assuming was in the bag.
Q Did you ever look at the bag?
A I looked at the bag.
Q Was there any residue in the bag?
A No, not that I saw.
Q Who else was present that day?
A Detective Crawford and Detective Elmendorf.
Q And did the dog sniff around the trailer first?
A Yes he did.
Q Did the dog detect anything sniffing around the trailer?
A No.
Q And was everything taken out of the trailer?
A Some of the things were taken out and some of the things were left in.
Q And what, other than the bag, did the dog sniff?
A He sniffed everything. There was a couple of mattresses, some bags and some other odds and ends inside the trailer.
Q And did the dog alert on anything else?
A No.
Q When you say the dog alerted on the black bag did he alert on the outside of the bag or the inside of the bag?
A The inside.
Q He alerted on the inside of the bag?
A Yes.
Q Would there by any chemicals or smell in the bag that the dog would have alerted on that might not have anything to do with any drugs at this point?
A My dog is trained to alert on the five substances and that’s what he alerts on.
Q Now were you and the dog requested to do, when you enter vehicles, boats, anything else, by Mr. Tran?
A No.
Q Okay, could you go back to the page you were looking at for just a second.
A Sure.
Q Now, have you written a police report on that?
A I don’t know. I’d have to check. I don’t know at this time.
Q Did you make notes at the scene?
A In my logbook.
Q So you have no other written notes?
A No.
Q: And those notes, they're still there?
A: Right.
Q: I would like to get a copy of that page on the specific day.

MR. MacDONALD: That’s from March 4\textsuperscript{th}?
MR. CHAMBERS: March 2\textsuperscript{nd}.
MR. HINDMAN: Off the record.

(Off the record discussion)

MR. HINDMAN: Back on the record.

Q: (By Mr. Hindman) So you did not look at any other property that was seized of Mr. Tran or Mrs. Tran?
A: No.
Q: And didn’t do anything with the boat?
A: No.
Q: Okay and you will get a copy of the certificates for me?
A: Yes.
Q: And then the only other thing, you will take a look for the notes that you supposedly had on the house search?
A: Yes.
Q: And get a copy and give us a copy of the report that’s written.
A: Yes.

MR. HINDMAN: Okay, that’s all I
MR. MacDONALD: Just a couple of questions.

MR. MacDONALD:

Q You said you made notes on the logbook for the search on March 10th of '04 where the dog didn't alert on the black bag?

MR. HINDMAN: No, we have--

Q What I said, you said that you made notes of the logbook for a hit that the dog had on March 2nd of '04, right?

A Yes.

Q That's what Mr. Hindman was looking at.

A Yes.

Q And you haven't filed a report on that positive hit yet, correct?

A That I can find, no. So yes, that is correct.

Q And do you have any notes at home on the positive hit on March 2nd of '04?

A No.

Q But you do believe you have notes at home for the positive hit that happened when they searched the house?

A Yes.

Q Is there a reason why you have got notes on one but
not the other?

You have the notes on the other.

Right. Is there a reason why there are notes at
your home for one search but not the other?

Because one took longer than the other and I didn’t
need to write notes on one that was so small of a
search.

And the small search is which one?

The trailer, the one that you have.

So the search of the trailer was too small to keep
notes on that you keep at home, right?

I didn’t take notes on the trailer.

But the search of the house wasn’t big enough for
you to make an entry in your logbook is that right?

That’s not right.

But there is no entry in your logbook?

Not yet, no.

Now assuming that you went to the police academy,
you have to do that before you are a sworn officer,
right?

Correct.

And when did you graduate from the academy?

July of ’98.

And other than your training with the dogs have you
had any other specialized police training?
Yes.

Can you briefly run us through what your additional training is? I wouldn't expect you to have everything but, you know, like major areas. Like if you went to the DEA drug school or something like that, that type of stuff.


Other than the K-9 training have you had any other training in the drug area?

Criminal interdiction.

And that is a course given at the Washington State Criminal Justice Training?

The Washington State Patrol.

And that was after you graduated from the academy?

Yes.

Do you recall when you took that training?

I believe in March of this year.

2004?

I believe so.

And do you know where that training was held?

Tacoma.
Q: And is there a WSP location down there or is it somewhere else?
Q: Is that in conjunction with just the state patrol or other agencies?
A: The Washington State Patrol puts it on.
Q: And it's called drug interdiction or criminal interdiction.
A: Criminal interdiction.
Q: So drug training and an additional two other trainings?
A: Yes.
Q: How many hours total was the training?
A: Sixteen hours.
Q: And how much of that was drug training?
A: All of it.
Q: Okay so it was called criminal interdiction but all of the criminals was in the drug areas?
A: Yes, drugs.
Q: And what in general was that training about?
A: Detection, searching vehicles.
Q: Was that it?
A: Yes.
Q: Other than that additional police training have you had any other education or training since graduating from the law enforcement academy other than the
police training that you talked about?

A Yes.

Q What kind of training is that?

A We have training every year for the last six years. There is a lot of the training there but I don't recollect every single one of them. Defense tactics, writing procedures, domestic violence and I can go on.

Q Let me put it this way, anything outside of the law enforcement field?

A For the department, no.

Q Do you have any training in sciences?

A No.

Q Did you have any training in any sciences before you joined the department?

A I went to school.

Q And where did you go to school?

A Where do you want to start, high school, college?

Q Where did you go to high school?

A Cascade High School.

Q And that is in--


Q Did you graduate from Central Washington?

A Yes I did.

Q What year was that?
A '96.

Q What kind of course work and sciences did you have at Central?

A At Central it was law and justice.

Q Did you have any chemistry, biology, physics?

A Not at Central.

Q Did you have any at Shoreline Community College?

A I did.

Q What sciences did you take?

A I would have to take a look. I don't know right off hand.

Q Do you remember how many courses you had in science?

A No I do not.

Q Was it more than ten?

A Right now I have no idea.

Q Okay, you don't recollect.

A I don't recollect.

Q That wasn't your major or your minor?

A No it wasn't.

Q And that wasn't your major or minor at Central?

A No it wasn't.

MR. MacDONAL: Thank you for your time.

Mr. HINDMAN: I just have a few questions.

MR. HINDMAN:
Q You indicated that you have not given any reports to
the Bellingham Police Department?

MR. CHAMBERS: No, that is not what he
said. He has answered all the questions about all his
reports six times.

Q (By Mr. Hindmand) Do you give the Bellingham Police
Department reports on the dog?

A The reports that I write, yes I do.

Q And what reports do you give them?

A Case reports.

Q But only case reports, you don't do the monthly or the
annual summary of the dog's activities

A In my logbook is where that goes.

Q But it doesn't go to the Bellingham Police Department?

A If the Bellingham Police Department wants it they can
ask for it but they have not asked for it.

Q Do you and the dog have any federal funding?

A Federal funding?

Q Federal funding?

A I have no idea.

Q Do you work with the federal authorities with your
dog?

A I have.

Q How often do you work with them?

A A few times.
MR. HINDMAN: That's all I have.

MR. MacDONALD: Nothing else.

MR. CHAMBERS: No questions
STATE OF WASHINGTON

) COUNTY OF SKAGIT )

CERTIFICATE

I, ALLEN R. EMERSON, a Notary Public in for the State of Washington, do hereby certify:

That the annexed and foregoing unsworn statement of the witness named herein was taken stenographically before me and reduced to typewritten form under my direction;

I further certify that the signature of the witness was determined not to be necessary pursuant to agreement of all counsel beforehand that the witness would not be sworn prior to being questioned.

I further certify that I am not a relative or attorney or counsel of any of the parties to said action or a relative or employee of such attorney or counsel and that I am not financially interested in the said action or the outcome thereof;

I further certify that the unsworn statement, as transcribed, is a full, true and correct transcript of the proceedings including questions and answers and any objections to the proceeding that may have been made by the witness at the time of the foregoing examination;
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON, )
                     )
    Plaintiff, )
                     )
vs.                 ) NO. 04-1-00125-3
DOUGLAS TRAN, VIEN LUU and ) 04-1-00126-1
PHUONG TRAN, ) 04-1-00507-1
                     )
    Defendants. )

TESTIMONY OF WARREN JAMES WOODFORD, Ph.D.

August 23rd, 2004

KENNETH E. QUINN
Official Court Reporter
Courthouse
Bellingham, Washington 98225
(360) 676-6748
DIRECT EXAMINATION

BY MR. MACDONALD:

Q  Dr. Woodford, could you state your name and spell your last name for the record?
A  My name is Warren James Woodford, W-o-o-d-f-o-r-d.
Q  Where do you live, Dr. Woodford?
A  I live on Lookout Mountain at Chattanooga, Tennessee.
Q  What's your address there?
A  451 Lower Cravens, Chattanooga 37409.
Q  Dr. Woodford, what do you do for a living?
A  I am a chemist.
Q  Could you give us a summary of your background, what type of chemistry work you do and who do you work for?
A  I do forensic work and I am self-employed and have always been self-employed since I received, finished my post-doctoral work. I have a Bachelor's Degree in chemistry I received in 1968. Went to graduate school and had a Ph.D. in chemistry from Emory University in Atlanta in 1973. Then I went to Kansas University, Lawrence, Kansas and did a post-doctoral study. And right out of there I went to New Scotland Yard in London to do research on drug and alcohol testing, not working for the police but working on a grant as an
independent.

While I was there the first time I learned about a program at Scotland Yard since it began in Scotland Yard called the independent examiners. These are certain people that are allowed to use the laboratories that are not law enforcement but are researchers. So I went back to Atlanta where a new state of the art crime lab had been built and asked for permission to be an independent contractor doing independent examinations of evidence.

Q Who ran that crime lab in Atlanta?
A Dr. Howard at the time.
Q Was there any organization that funded it?
A It was the state crime lab.
Q So for the state of Georgia?
A For the Georgia Bureau of Investigation. I worked on the case of Patterson v. State that went to the Supreme Court of Georgia giving the right for independent examinations to be done at the crime laboratory. So on a regular basis for the last 30 years I have been doing independent examinations of evidence, many years at GBI laboratories, still do it on a, we have a procedure for doing this, the court authorized testing of evidence and that's what I've been doing and basically created this position for myself.
Over the last 30 years has the majority of your work been done in a lab that is either controlled or managed by law enforcement authorities?

Yes. It's now expanded to now with the same principle of using government facilities. I have been able to use the U.S. Army Forensic labs, U.S. Customs labs, many crime labs throughout the country.

Have you provided law enforcement agencies with any licenses or patents you hold in order for them to be able to proceed with their work in the area of drug detection?

Yes.

Could you describe that for the court?

Well, I have one patent that has to do with drug testing, the use of, it's the GCMS device testing of drugs based on research I did at test laboratories in Weisbaden, Germany. Then I have another patent, and I have allowed law enforcement to use these patents without compensation for twenty years, the other one is I invented pseudo-narcotics. These are the odors of controlled substances used to train drug dogs. And my formulations and patents have been used by U.S. Customs, became a standard in the industry of drug training and for proficiency testing for drugs for the last, well, since the early '80s. So my last twenty
Q: You manufactured a chemical compound which gives off the same odor of cocaine; is that right?
A: That's one of them, yes.
Q: They use that to train drug dogs because sometimes it's difficult to bring in real cocaine to train the dogs with; is that a fair statement?
A: That's one of the problems that you have stated. The other one is this is not a toxic material, these don't hurt the dogs so they can be handled and possessed by anyone, you don't have to have a special license or be law enforcement to use them. So from my work, training centers sprang up and the whole industry of training drug dogs. Then I moved into explosives and tracking. I make the training aids and invented the training aids that are currently used.
Q: What other training aids did you invent other than this odor of cocaine?
A: I have invented the various odors of heroin, methamphetamine, PCP, and marijuana odor. I don't sell these. I have provided them gratis to law enforcement.
Q: Do you hold patents on all these odors?
A: No. The only one that's patentable is the cocaine one. The others, marijuana is not patentable.
Q: Because it's a natural substance?
Yes. And cocaine is a natural substance. But an odor forms after cocaine is taken out of the leaf so it's not a natural substance anymore. So it's a patentable material. And the others I just make and haven't patented because I just didn't, hadn't gone through the process.

What federal law enforcement agencies use your patents or your inventions for training of drug detection dogs?

Well, mainly U.S. Customs. And then I worked as a consultant with the FBI and CIA and HRT dog handlers.

HRT is like a response team?

Hostage rescue retrieval. Hostage Retrieval Team. And I worked with those people in Washington that consults for the White House K-9 corps, the people who do heavy duty dog training in this country.

Did you review any materials to prepare yourself for your testimony here today?

Yes.

Did you review an unsworn statement of a Rich Holdridge which was stated June 10, 2004?

Yes.

Did you review the police report of Rich Holdridge dated February 4th of 2004?

Yes, I did.

Did you also review two police reports both dated June
10 of 2004 that referred to dog alerts on February 5th
of 2004 and March 2nd of 2004?
A Yes.
Q Did you review certificates for a K-9 known as Rookie?
A Yes, I did.
Q Did you review the Washington Administrative Code in
terms of requirements for training of dog handlers and
certification of K-9 teams?
A Yes.
Q Did you review any materials to prepare for your
testimony that have to do with the contamination of
currency in the United States with drug residue?
A Well, I reviewed those but I am the author of those, or
the subject of those.
Q Let me ask you this question a little more specific.
Did you review any internal documents from the Drug
Enforcement Administration concerning this?
A Yes.
Q In terms of your studies, how many studies have you
done?
A Well, many studies having to do with the use of my
odors, I call them my odors but they're everybody's
odors, my drug odors, and the one of the areas of my
studies that relates here is I am the person who
discovered that the monies in the United States is
contaminated through Federal Courts asking me to test money or asked me, authorized me to test money from the Federal Reserve Banks and I discovered drug traces on circulated money back in the mid-'80s. I was already doing odor work. So I discovered that. And then I have been involved in numerous studies since then, some formally, some not so formally, and other people doing studies that have confirmed my studies and still confirm them to this day, that circulated money is contaminated with various drugs, particularly cocaine, methamphetamine, heroin, and marijuana product, marijuana from hash hish or green leafy material, and that the money in general circulation is contaminated with these substances.

The Drug Enforcement Administration has done further study how this money gets contaminated with banking equipment machinery, bill counters, ATMs, vacuum systems. Once one bill gets used to snort or sniff powder rolled up like a straw and used to sniff powder, then it goes to the bank, then goes to the bill counters and get contaminated. This is a study done by the Drug Enforcement Administration but I just did the early studies of detecting drugs on about 90 percent of circulated money.

Q Your studies showed that?
A

My studies showed that. There are other studies that range from a hundred percent contamination rates in places like Hawaii. The 90 percent is in various cities. A colleague of mine did a study of 135 bills from 12 cities and all but four of them had cocaine residue on them. And then there are many, many studies throughout the country over the years and recently one in Berlin, a study on Euros found that 90 percent of the Euros are now contaminated with cocaine and that's not because 90 percent of the bills are used in some kind of illegal activity or anything. A few bills got heavily contaminated and the banking machinery helps spread the contamination throughout really quickly contaminating basically all the bills.

Q Aren't there some studies out there that show only about a third of the bills in circulation are actually contaminated?

A Yes, there's studies showing fewer bills. It varies. But those studies are mostly cocaine specific studies. If you expand the studies to look for the five groups of drug substances that dogs are trained on you will find that virtually all money is contaminated with either cocaine, and there's a lot of money contaminated with marijuana odor, plus people carry it in their purses close to the money and it's not used to smoke or
use marijuana.

Q You don't use a dollar bill to smoke marijuana most of the time?

A Right. But people carry it in their pockets and get it on their fingers and all sorts of -- I have studied deeply the chemistry of money.

Q We'll get to that.

A And money is contaminated with the very things that dogs are trained to detect.

Q I was going to get to that. When you say contaminated when you're using these figures that as low as maybe a third when you're just looking for cocaine to somewhere between 90 and 100 percent when you expand it to four or five drugs?

A Yes.

Q That's what the accurate figures are as far as you are concerned?

A Yes.

Q Now, when we talk about could be contaminated are we talking about contamination in those proportions at levels that are high enough for a dog to detect?

A Yes, much higher than needed for a dog to detect.

Q So presumably the study where you indicated 90 percent of the Euros were contaminated, presumably a dog would hit on at least 90 percent of that money? Or around
there?

Q  So, in essence, let's say that you wanted to increase the likelihood of a hit, wanted to increase the likelihood that a dog would hit on some money, what would be the best way to create an environment where you would have a more pungent odor that the dog would hit on?

A  It would be like in this case where you put money in a confined air space.

Q  Like a paper bag?

A  Yes.

Q  Why is that, that in a confined air space that will increase the likelihood of a dog alert on money?

A  Well, dogs alert to drugs per cc., or drugs per volume of air. That is the quantity or is called concentration of drugs. So any time you put drugs into a closed air space there's a chemical process of equilibrium where the odor molecules fill up and contaminate the air space. Just like in a room, you go into a room and let go of some perfume, it will just completely diffuse in the air.

Q  What about money that's stored in a desk drawer, is that a confined air space?
A: Yes.
Q: Does that increase the likelihood of a dog alert?
A: Yes.
Q: What about a large sum of money as opposed to a small sum of money?
A: Well, you could have one dollar bill, just one single bill that's highly contaminated or you can have that bill contaminate some other clean bills. It would lower the concentration quantity per bill but you would still get the same air space.
Q: Let me ask you this question. If you had $125,000 does that increase the likelihood of a dog alert as opposed to if you have $10?
A: Oh, yes. Quantity increases it.
Q: Why is that?
A: Because of just the numbers, statistics.
Q: Because you've got more bills?
A: Yes.
Q: Now, dogs are capable of detecting drugs on money, right?
A: Yes.
Q: Besides the bill counters how is drug residue transferred to currency if the drug residue comes off of a human hand?
A: Well, the human hand contains oil, skin oil called
sebum oil. So if you take a dollar bill out of your pocket that's been in circulation, you put it in a test tube, you pour in some chloroform or alcohol and just wash the bill, take the bill out, throw it away and then you concentrate, take a little air, evaporate off the liquid solvent or the chloroform and you're left with this bright golden oil of money that looks like honey, it smells like money, it's the odor of money which I have also bottled and I supply that to dog trainers, too. It's called the Oil of Money. And it's a thick honey-like oil. It's amazing. You can get about 50 milligrams of oil out of a well-circulated bill, more than enough to see, a drop or two of this thick, oily stuff. And that stuff, the sebum is in the bill, in the paper, in the fiber, saturates the well-circulated bill and it acts like a solvent for drugs. It dissolves all these drugs. It will dissolve all the drugs that dogs are trained to target. And it holds the drugs like dissolving them in alcohol or water. It makes not a tincture but it serves as a solvent to hold the drugs and it causes the drugs to be held for a long time and the odors from these drugs are released from the sebum in unpredictable times.

Let me get you to break that up a little bit. The sebum is an oil which comes from your fingers; is that
what you are saying?

A Human oils.

Q Your pores?

A Yes.

Q But if we are assuming that we are handling, some person like me perhaps I'm handling cocaine or I'm handling marijuana with my hands, and it gets on my bare hands and then I handle some money, what you're saying is what happens is that the sebum, the oil off of my fingers, adheres to the bill and the drug residue is in the sebum?

A Dissolves in the sebum. So when you look under the microscope you will see cocaine particles in the bills and fiber. But if you don't see any cocaine particles or meth particles you might not see the particle because it will be dissolved in the sebum which is the oil material. So it liquifies.

Q Let's say I contaminated a bunch of money with drugs and I want to get rid of the sebum that is adhering to the currency, how do I do that?

A You wash it. You literally launder the money with solvent to wash it out. It washes off with detergent.

Q Like Tide?

A You can wash it in a washing machine or in the laboratory. This is the standard procedure for use by
law enforcement to test money for drugs which had been
worked out by the FBI. There's two main methods. One
is the FBI method and one the Drug Enforcement
Administration method is to use a solvent like alcohol
or chloroform, put the bill in a glass container, put
it in, shake it up, take the bill out, throw it away
and then evaporate off the solvent to leave the sebum
and drugs.

Q Dr. Woodford, you're not telling me that if I had a
bill that was contaminated and I hung it on a clothes
line and I let it dry that the sebum would never come
off the bill? There must be some sort of natural
process where the sebum and the drug residue leaves the
bill.

A Yes. The sebum clings like crazy to the bill except
it's like a time release system. If the temperature
changes or humidity changes, these drugs like cocaine,
methamphetamine, they dissolve in not only the alcohol
but they love water, too. So if you've got humidity,
warm atmosphere, all of a sudden the drugs come out
like a time release from the sebum and it goes into the
air space.

Q So in a hot, humid atmosphere the drug residue is going
to evaporate off the money?

A Right. If you put the money in the trunk of a car or
take it from air conditioning to non-air conditioning.

Q But it's all dependent on environmental circumstances?

A Environmental circumstances and changes.

Q Now, if I understand your testimony correctly it
   evaporates at different rates and just depends how
   contaminated the sebum is and what the environment
   conditions are?

A Yes. When you say "it" you're talking about the drug
   and its odors?

Q Yes, drug residue.

A Yes.

Q What would be the range between how quickly under ideal
   circumstances the drug residue would evaporate off the
   bills as opposed to non-ideal circumstances?

A I don't know. I don't have a general answer to that.

Q Let me ask you this question. Would some time between
   eight minutes and eight years be within the range?

A Yes. It would take a matter of seconds to forever.

Q I'm not asking to pinpoint but would you say that under
   the least ideal conditions it would take about eight
   years for the sebum to evaporate, the drug residue to
evaporate, under the most ideal conditions it would take about eight minutes?

A I could go along with that but generally bills aren't in circulation for eight years. But stored money maybe. I don't know. I can't answer really specifically.

Q So does all this explain why 90 to 100 percent of the bills in circulation are drug contaminated? I'm assuming what you are telling us is that the sebum, the drug residue has not evaporated off the bill, that's why the numbers are so high?

A Right. It holds it in there indefinitely depending upon the temperature and the humidity in the sebum. So you look through the microscope or the FBI TSOP analyzing money for the FBI, put it into plastic and then use certain little brushes and you brush the money and the static electricity pulls it off the money on to the plastic. Then you wash it off the plastic and put it into the device, GMC, the device to analyze it. But scraping the money won't take all the drugs off because a portion of the drug substances are in the sebum. You can't scrape that off. You can't brush that off. That's like having oil on your clothing. It's an oily spot.

Q You can't get the oil out?
A You just can't get it off by brushing. And the Drug Enforcement Administration actually uses solvent.
That's the way I did it, too.
Q The only clean money is in DEA hands?
A No. There's clean money. It depends on the circulation time. I could go get new twenties out of the bank and it may not have any drugs on it at all.
Q Provided it hasn't gone through a contaminated machine?
A Right.
Q Or a contaminated bill counter?
A Right.
Q And the odds are better if it's new money from the Federal Reserve?
A Right.
Q Do you know how long most bills stay in circulation?
A Yes. It's just a matter of --
MR. CHAMBERS: I will object to the foundation of the testimony.
Q (By Mr. MacDonald) Do you have a basis for any testimony in this area that I have just asked you about?
A Yes.
Q What is the basis for your testimony in this area?
A Well, the Federal Reserve has these criteria for taking money out of circulation, I mean for destroying the
money, for cleaning up the money.

Q Are you familiar with the criteria?
A Yes.

Q What is that criteria?
A They have people assigned to examining bills, taking
out the ones that look contaminated, you can tell by
looking, and it's an ongoing process. And a bill in
circulation may be only circulating for like one to
maybe three years. To find one three-year-old, you
know, it's not a hardcore rule for every bill but
they're looking for certain things and certain things
they're looking for is like lipstick stains.

Q Let me ask you a question.
A If you see that, then, that money gets taken out.

Q Since the age of the bill is irrelevant because what's
relevant here is when is the bill contaminated, right?
A Right. You can't tell when the bill is contaminated.
You don't know whether it was done by drug users or
done by machinery of the bank counters. It's an
uncontrollable, unknowable source of drug transfer.

Q I'm not going to go any further then to ask this
initial question but I think I need it to lay
foundation for my next question on this topic. Are you
familiar in general with how drug detection dogs are
trained?
A  Yes.
Q  Are you familiar in general terms as a chemist with how
    it is dogs pick up the odors of drugs and how does that
    happen?
A  Yes. Do you want me to tell you?
Q  Yes, please.
A  The odors of drugs are picked up by the dog by the
    olfactory cells that comes through the bone called the
    superior turbinate in the back of the head. There are
    little neurons that come straight out of the brain.
    Then there's a layers of mucous over that and the dog
    is literally sniffing in the air by force using his
    muscles bringing in the air and the odors of, drug
    odors and explosives odors are very similar. I'm not
    saying that explosives smell like a drug but I'm saying
    they're both chemical odors that have certain size and
    shape. And the theory of it worked out by Dr. Amoore,
    he has developed the theory of olfaction of a person,
    that I know and worked with for years who recently
    passed away.
Q  Is this theory generally accepted in the scientific
    community?
A  It is the accepted theory.

    MR. CHAMBERS: I'll object. What is the
    scientific community in which counsel is referring to?
MR. MACDONALD: Your Honor, do you want me to go further?

THE COURT: Go ahead and proceed. The Rules of Evidence don't apply in these hearings.

Q (By Mr. MacDonald) Among your fellow chemists -- how many chemical associations are you a member of?

A Well, I'm a long-term member of the American Chemical Society which is the main thing, and I'm also a member of the American Association for Advancement of Science. Those are my main two organizations.

Q Do these two organizations do peer review of chemists' studies and articles?

A Yes. And they've done peer review publications of this, of not only drug contamination of money but also the theory of olfaction.

Q And the studies you are referring to have been peer reviewed by these two organizations?

A Yes.

Q What are the qualifications to become a member of these two organizations?

A Both of them require advanced degrees and you have to be nominated by a senior member and it goes through a process of -- you just don't pay to get into these things, you have to be voted in.

Q You don't get voted in if all you have done is passed
high school chemistry, right? You have to have an advanced degree in the subject?

A Yes. They let you in as a student affiliate.

Q But the student affiliates go the peer review?

A That's right.

Q What I was just referring to in terms of olfaction, and that was Doctor?

A Amoore.

Q That was peer reviewed by these two associations that you belonged to or one of them?

A Yes. His work has been reviewed by those plus animal human physiology books. He's a standard textbook guy.

Q Is there anybody who is disputing his olfaction theory?

A No.

Q That you know of?

A No.

Q Would that be the generally accepted theory and standard in the scientific community, specifically I'm referring to the chemists?

A Yes.

Q If I could break this down simply. The dog is smelling some evaporating molecules; is that what's going on?

A Yes.

Q And the size of the molecules and the shape of molecules is different depending upon what substance
there is some evaporating odor coming from?

A That's right. It's like a lock and key type mechanism going on.

Q Basically not to oversimplify it but dogs are trained to alert on a particular size and shape of molecule that they smell which presumably comes from whatever it is that law enforcement is looking for?

A That's right.

Q That's how they're trained?

A Yes.

Q Once the dog alerts to the smell, let's assume that the dog has been trained in accordance with scientific standards.

A Okay.

Q And that the dog would be considered reliable by the scientific community in terms of his ability to detect the odor of a drug or an explosive.

MR. CHAMBERS: I'm going to object, assumes facts not in evidence that there is some sort of chemical or chemist community which trains dogs that has standards for training dogs and therefore is an improper question.

THE COURT: Well, I haven't heard the whole question. There was an assumption here, assuming that a dog is trained in accordance with acceptable
standards. Would you complete your question, please, maybe rephrase the question and make it a little bit simpler?

Q  (By Mr. MacDonald) Did you review some police reports involving a dog named Rookie?
A  Yes, I did.

Q  Rookie, as you understand it, had a positive alert on money on two occasions, and on a black nylon bag on a separate occasion. Is that consistent with your recollection of the reports you have reviewed?
A  Yes. One observation, the bag, and then two at another time.

Q  One alert on a bag in a car?
A  Right.

Q  One alert on some money found in a house or maybe a couple different alerts?
A  Yes, couple.

Q  And then on a different occasion he alerted on a nylon bag found in a trailer; do you recall that?
A  Yes.

Q  Let's assume that Rookie is the most reliable highly trained drug detection dog in the whole world, the best we've got.
A  Okay.

Q  And that Rookie has alerted on currency, $125,000 of
currency that's in a plastic bag on the front passenger seat of a car. What does that tell you?

MR. CHAMBERS: I'm going to object, Your Honor. Is this within the scope of the expert's expertise?

THE COURT: Overruled.

Q  (By Mr. MacDonald) What does that tell you?

A  Well, it tells you -- if it's the best dog in the world it tells you there are some drug odors but it doesn't tell you anything about where it came from, when it happened, or doesn't tell you anything to interpret whether there's any kind of criminal activity involved, whether there's a crime committed, how it got there.

Q  As a chemist and based on your training and experience --

MR. CHAMBERS: I will object to the witness' answer to the last question as nonresponsive and outside the course of his expertise.

THE COURT: The Rules of Evidence don't apply at these preliminary matters so I will overrule the objection.

Q  (By Mr. MacDonald) Based on your training and experience as a chemist and your review of, your personal review of the peer reviewed literature in this area, does a dog alert tell you anything in this case other than the fact that this $125,000 in the bag on
the front seat resembles all the other money that's currently in circulation in the United States?
A No. It tells you nothing, nothing more.
Q It's no different in any sense from what we generally know is circulated in the United States?
A Yes, that's correct.
Q And what virtually everybody is walking around with?
A Yes.
MR. MACDONALD: Thank you. Nothing further.
THE COURT: Mr. Chambers, do you have any questions to ask?
MR. CHAMBERS: I would, Your Honor, but can we do that after the noon hour?
THE COURT: We'll take our noon recess, then, and reconvene at 1:30.
(Recess taken.)
CROSS-EXAMINATION
BY MR. CHAMBERS:
Q Good afternoon, Dr. Woodford.
A Hi.
Q We talked just last Friday, did we not?
A Yes.
Q I'm trying to take as good as notes as I could from your testimony, I might need a little assistance here, though. I believe you stated you reviewed the
Washington Administrative Code provisions in part utilized to certify narcotics dogs; is that correct?

A Yes.

Q Did you express any opinion about whether that standard is in conformance with any other standards that you are familiar with?

MR. MACDONALD: Objection, Your Honor. I thought this was the area of testimony we weren't going into today based on the unavailability of the dog reference.

MR. CHAMBERS: It's not regarding the training.

THE COURT: I'm allowing both sides to get whatever testimony they want and continue the matter and supplement the record on anything.

Q (By Mr. Chambers) Did you express an opinion as to whether that is in conformance or did you not discuss that?

A In my testimony or in talking with you?

Q No, in your testimony.

A I didn't discuss it.

Q You say you have invented training aids used and have a patent on some of the aids?

A Right.

Q Used to train narcotics dogs?

A Yes.

Q Also that you are used as a consultant with federal
agencies?
A Yes.
Q In regard to the use of these training aids; is that correct?
A Yes.
Q You testified concerning contamination of currency?
A Yes.
Q With drug residue. Is that a proper term to use, drug residue, to characterize your testimony? Drug residue?
A That works okay. Residue or drug traces.
Q And you stated in some areas the percentage of currency of the United States, some areas have percentage of the currency greater than other areas?
A Yes.
Q Do you know the contamination percentage in Bellingham, Washington?
A No, I don't.
Q You have never trained a narcotics dog yourself?
A No.
Q Never used a narcotics dog in the field to search for narcotics?
A No, I have not.
Q Never certified a narcotics dog?
A No.
Q Don't know the certification procedure outside of the
Washington Administrative Code provisions you reviewed, you don't know the certification procedure in the state of Washington?

A No.

Q When did you review that Washington Administrative Code provision?

A Yesterday.

Q Because I talked with you Friday and you said you had not reviewed that.

A That's right. I just got it yesterday.

Q I asked you if you knew how many states have a state certification procedure for narcotics dogs when we talked last week on the telephone?

A Yes.

Q You weren't aware of how many states?

A No.

Q Also you don't know how Washington's standards for certification compare in strictness or difficulty to the standards of other states?

A No, I do not.

Q Do you know the difference between aggressive and passive training of narcotic dogs?

A I know those terms. They're not terms of art particularly in the training of all dogs. I know those terms are used but you know, I don't know, I'm not a
trainer and the terms are used differently in different contexts of training.
Q Do you know that those are the two basic schools of thought as far as the training of narcotics dogs, aggressive versus passive?
A In terms of the behavior change in the alert, what the alert looks like?
Q Yes.
A Yes, that's used like that. Sure. That's one of the uses of them. The other words, most used words, compulsive rather than aggressive. Compulsive versus -- well, go ahead. I'm sorry.
Q Versus what?
A Reward. Compulsive versus rewarding. Compulsive meaning you are jerking the chain of the dog and dragging him over to where you want him to go rather than a rewarding initiative by the dog. Dogs can be led to things or dogs can lead themselves to do things and you guide them and the handlers will guide them.
Q Is that how you are characterizing the difference between aggressive and passive training methods of narcotics dogs?
A No. Those terms are soft terms. I have heard different terms. I'm not a dog trainer. That's the way I think of it, more compulsive versus.
Q    You are not a dog certifier either?
A    No.
Q    You've never been asked to certify a narcotics dog for
    performance in the field?
A    No, I have not.
Q    Were you aware that this police dog Rookie has had 17
    actual verifiable finds of narcotics in his training
    and deployment?
A    I thought it was more than that. From what I read from
    that sworn statement I thought it was --
Q    Over 17?
A    I thought it was more than 17 that the handler was
    claiming, but I don't know what the actual number is.
Q    Are you aware that in this particular case that the dog
    didn't alert or respond to some of the currency that
    was involved in the investigation?
    MR. MACDONALD: Could you repeat the question?
    I'm not sure I heard it.
    THE COURT: You can repeat the question or have
    the court reporter read it back.
    (Record read.)
    THE WITNESS: I was not aware of that from my
    reading of the statements. I didn't know that, no.
Q    (By Mr. Chambers) Did you read Officer Holdridge's
    report?
Yes, I did. I must have missed that. I think I did.

Would you like to review that?

Yes. Could I review it?

I think it's next to the last paragraph?

Yes. I must have seen it but it didn't stick in my mind. But I thought he said he did take the dog -- was he talking about the same, at the top of the desk there? Isn't that what he talked about, the top of the desk where the drawer was that the dog showed interest in? But in his sworn statement he talks about that amoire. Is that the same desk?

I'm not sure.

It's not clear in my mind. I see there's more money.

THE COURT: Hold it.

THE WITNESS: I see there's more money there, particularly under the mattress. But I do think he talks about the dog showing some interest on the top of the desk.

(By Mr. Chambers) I just asked you if you were aware that he didn't alert on all of the money that was involved in this case. Yes or no?

Yes. It was no then but now I have some doubts.

Are you aware that this dog has been trained on several occasions with non-contaminated money and has not alerted to the money?
I did not know that, nor the conditions of how that happened.

MR. CHAMBERS: I think that's all the questions I have.

THE COURT: Mr. MacDonald, do you have any other questions you want to ask?

MR. MACDONALD: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. MACDONALD:

Q Do you remember getting a set of documents from me to help you prepare for testimony, like a tabbed set?

A Yes, I did.

Q Did you bring those with you?

A Yes.

Q There's an unsworn statement from Officer Holdridge which is your first item there, correct?

A Yes.

Q That was taken on June 10, at least that's what the document indicates?

A Yes.

Q Then in Tab 1, what's in Tab 1?

A Tab 1 are the various certificates, there are several certificates here of the handler slash K-9 team.

Q Tab 2, what's in Tab 2?

A Tab 2 is the Washington State K-9 Association
Performance Standards.

Q  And Tab 3?
A  Tab 3 is the Certification Rules and Regulation.
Q  What's Tab 4?
A  Requirements for Training Law Enforcement Dog Handlers,
   Certification of K-9 Teams.
Q  That's the Washington Administrative Code?
A  Yes, it is.
Q  And Tab 5?
A  That's a declaration of Ben Bogardus.
Q  And Mr. Bogardus is a dog expert known by you which you
   know is being called by the defendant Douglas Tran?
A  I don't know if he is being called but I've known him
   for many years.
Q  You know him as a dog training expert?
A  Yes.
Q  Was the next tab, Tab 6?
A  This looks like a Qualification Statement of Steven
   Weigley.
Q  Who you understand to be the State's expert on dog
   training, dog handling?
A  Yes.
Q  Next tab?
A  This is a case U.S. v. --
Q  We don't need the case law. What's the next tab after
that?

A  The next tab is U.S. Department of Justice. These are the studies that --

Q  DEA Internal Study?

A  DEA Internal Study.

Q  The next tab after that?

A  These are some other published things about the DEA studies.

Q  Go to Tab 11, that's Officer Holdridge's, one of his reports, right?

A  Yes.

Q  What date is that indicated that the dog alerted on that first report there in Tab 11?


Q  And then there's two other reports there in Tab 11, right?

A  Yes.

Q  And those are reporting on dog alerts on February 5th and I believe sometime in March?

A  March 2nd, yes.

Q  February 5th and March 2nd?

A  Yes.

Q  In any of that information that you have reviewed, did it indicate in there that Rookie has had 17 verifiable finds?
A  The question being 1700 verifiable finds.
Q  Oh, 1700 verifiable finds, as in f-i-n-d-s?
A  Right. I remember in the sworn statement involving
various large numbers of finds, and if you add them up
it might come up to 1700. More than 17, I remember.
Q  What would make a find verifiable?
A  Verifiable is when you find something and then you test
it in the lab and show that it's -- well, two ways to
do it. You either test in the lab but I note from my
other testimony here in Washington State that there's
another procedure used in this state, too.

MR. STEINBORN: I couldn't hear the answer.

THE WITNESS: There's another procedure often used
in the state of Washington that uses ion scan and I
have had several cases here in this state with dog
alerts on money that then the money was later tested
using a device called the ion scan.
Q  (By Mr. MacDonald) In the records you reviewed did any
of those records show that these dog alerts had ever
been verified by anything?
A  No, they did not show that and that question was asked
specifically, I believe, to Officer Holdridge in the
statement and there's a clear term there that testing
was not done.
Q  In Officer Holdridge's statement he says he has no idea
whether there's been any testing done which verifies
that the dog's alerts were in fact accurate, right?
A  Right.
Q  You were asked a question by Mr. Chambers as to whether
you knew if the dog was previously trained on drug
contaminated money before the dog was put into service?
A  Did I answer a question to that?
Q  Yes. Did Mr. Chambers ask you a question to that
effect?
A  Okay. Yes, he asked me the question about did I know
that the dog did not alert to known non-contaminated
money. Is that the question?
Q  Okay. Yes.
A  Okay.
Q  Was that anywhere in the records that were provided to
you?
A  No, there's no mention of money training.
Q  You are not certified to be a dog handler or trainer;
is that correct?
A  That's correct.
Q  But you have observed the training that different law
enforcement agencies do with the dogs in the past,
correct?
A  Yes.
Q  And which agencies have you observed their training of
the drug detection dogs?

Well, state dog trainers, I get to know the trainers personally. I don't really do any agency work.

There's a guy who's worked with the HRT and he is from Baltimore, what's his name?

Tom Knott, who has written several books on dog training. He handled the Baltimore, was the handler of the Baltimore K-9 Department, Baltimore Police, and he is a police officer and his wife Mary Jean, they're considered the top dog trainers in the world. I mean, they supply dogs to the CIA and FBI and White House and stuff and these are very high level police organizations.

Other than Mr. Knott and his wife, have you observed other dog trainers?

Yes. John Benard, trainers from the AKC, I do consulting work for the America Kennel Club on scenting dogs, FBI people, a lot of state law enforcement trainers.

Is there something called imprinting which is done as part of the dogs training?

MR. CHAMBERS: I'm going to object. This is outside the scope of the cross-examination.

THE COURT: I let you go way outside the direct. The Rules of Evidence don't apply so I'll let counsel
have leeway also. Proceed.

Q (By Mr. MacDonald) What's imprinting?

A Imprinting is the first step of dog training. It's a
two-step process. It's imprinting where you teach the
dog using the scientific method started back in
Pavlov's time and then in Germany that imprints the dog
in its brain that target odors that you want the dog to
detect.

Q Teaches the dog what odors to hit on?

A Right. Exactly.

Q And is there a method of imprinting the dog which is
accepted in the scientific community?

A Yes.

Q How is that done?

MR. CHAMBERS: I'm going to object, until counsel
states what the relevant scientific community would be
that he is referring to.

Q (By Mr. MacDonald) You have previously testified that
you are a chemist?

A Yes.

Q And you are member of several associations that peer
review articles by other chemists?

A Yes.

Q Including one by a Dr. Amoore concerning olfaction?

A Yes.
Q And that there is some peer reviewed -- let me 
rephrase. There are some peer reviewed articles in 
this field?
A Yes.
Q Would that be fair to state?
A Yes.
Q In the peer reviewed articles that you are familiar 
with, is there some reference to imprinting the dogs?
A Yes.

MR. CHAMBERS: Again, I'm going to object. Is 
this relevant scientific community for dog trainers he 
is talking about chemists and whether they're dog 
trainers, what the relevant scientific community he is 
referring to is.

THE COURT: Sustained. Rules of Evidence don't 
apply but I will require counsel to --

Q (By Mr. MacDonald) Let me go back a little bit. What 
field of chemistry would you describe as your 
specialty?
A My specialty is in forensic work.
Q Does forensic work encapsulate olfaction?
A Yes.
Q Now, what background or training do you have which 
would render you capable of giving an opinion about 
Dr. Amoore's olfaction theory?
Well, when I went to get my Ph.D. I worked on a scholarship and was being trained as a fragrance, flavors and fragrance chemist specializing in odors and frangrances and flavors from naturally occurring sources such as plant material. Coca-Cola makes Coca-Cola out of cocoa leaves. The cocoa leaf odors, the cocoa leaf flavors, that's where I learned to become, that's where I became familiar with odors and one of my projects for my Ph.D. was I independently made the odors of that scent which is absinthe which is the green berry now an outlawed alcoholic drink that had a certain flavor and fragrance, the absinthe drink of the '20s.

Q How many years of your career have you spent working primarily on issues of olfaction?

A Well, my training since 1968 I have been involved in this.

Q How many peer reviewed articles have you published on olfaction?

A Just two or three beside my patent. I mostly give lectures but I don't really publish in this area much. I do a lot of consulting work, it's a lot of behind the scenes non-published.

Q How many peer reviewed articles have you examined that people have written concerning olfaction?
A Hundreds.

Q Is there anyone that you are aware of in the chemist community, and by community I'm limiting that to members of the associations that you testified you are a member of, is there anybody in either one of those communities that seriously disputes Dr. Amoore's olfaction theory?

A No, there's nobody that seriously disputes. There's one guy that adds to it. And then outside the scientific community there's not a community, the perfumery, perfume like we wear, perfume industry, and their odors have an electric charge. They have a formal electric charge on them unlike drug odors, unlike explosives and there's another theory based on that electric charge. So, they're supporting theories but Amoore's basic theory is sound.

Q Anybody in either one of those two associations that you belong to who seriously disputes the methods by which -- let me back up and ask another question. You were talking about Mr. Knott and other dog trainers and they used a certain method to do the imprinting, right?

A Yes.

Q Anybody in either one of these chemical associations who works in the olfaction area who disputes the
imprinting method as the most reliable method of
training drug detection dogs?

A  No.

Q  Is that the generally accepted method in the scientific
community for training a drug detection dog?

A  Yes.

MR. CHAMBERS:  Same objection, Your Honor. The
chemists are not dog trainers and their opinion as to
dog training is not the relevant scientific community.
It would be the dog trainers and handlers.

THE COURT:  Since the Rules of Evidence do not
apply, I am going to permit all these objections to be
made at the time of final argument on all these issues.
And I will consider that evidence which the court may
consider and I will disregard that which I shouldn't
consider at that time.  Okay?

MR. CHAMBERS:  Sure.

THE WITNESS:  Could you repeat the question?

Q  (By Mr. MacDonald)  What is imprinting?  How do you
imprint the dog?

A  Well, the dogs can be imprinted using actual
substances, actual odors.

Q  Describe to us if we were imprinting the dog right now,
if I was the dog's trainer, what would I be doing with
the dog?
A You would be presenting the dog with what you want the
dog to learn and you would then be -- you would then be
looking at the behavior and you would give positive
feedback for the behavior you like and you would give
negative feedback for the behavior you don't like.
Q I'm going to jump start you. Let's go to the paint
cans. Do you know what I'm talking about?
A Oh, yes.
Q How do paint cans work?
A Four chemical odors. They're standard equipment that
has been developed that involves these clean paint cans
on wheels and you have sniffer boxes, little tiny boxes
with holes in them, you put either drugs or explosives
in those little sniffer boxes with the hole so the dogs
won't eat them and kill themselves. So you put the
sniffer boxes in empty paint cans on wheels and they
have their own numbers and you have four big wheels
with paint cans on there and they're all numbered and
it's a double blind situation so that the person
handling the dog doesn't know the odors or where they
are and spin those things.
Q Let me cut in. Some of the paint cans have drugs in
them or explosives and some don't?
A That's right.
Q The way you determine the dog is accurate is if he hits
on the one that's got drugs or explosives in them and
he doesn't hit on the ones that don't have drugs or
explosives in them, then presumably the dog is 100
percent accurate, he is alerting on the right stuff?
A Right. And you keep score cards and then you have to
pass, he has to have everyone of them correct. He has
to have 100 percent.
Q It's a double blind test because the dog doesn't know
just from looking at the paint can what substance he is
suppose to alert on and what substance he is not to
alert on?
A The dog doesn't need to or the handlers or the people
doing the test.
Q So the test is scored by somebody who is not associated
with the dog?
A Right.
Q So you've got an objective scoring system?
A Yes.
Q And you've got an objective system for determining
whether the dog is correctly alerting because it's a
blind test, right?
A Yes.
Q Sort of like when we used to do the Coke versus Pepsi
and the guy was blindfolded?
A Right. It's a scientific method.
Q  Does the dog's eventual trainer or handler take part in
the imprinting?
A  No. I mean shouldn't.
Q  Why not?
A  Well, you want to imprint the dog in an objective way
and if you get a dog that has passed these tests then
the handler, trainer team is another kind of training.
The first part of the training imprinting is best done
with the food reward. Handlers don't use the food
reward, they use play reward. So what you do is
imprint using the Pavlovian method, double blind test,
food reward, and you can really imprint dogs really
super. Then you've got a certificate. Once the dog
passes the wheels they get a certificate as a certified
drug dog or a certified explosives dog, depending on
what odors you put in. And the explosive dog training
is the same because the odors are chemical odors of a
certain size.
Q  What happens if a dog gets a false positive during this
testing procedure?
A  Well, they don't get a certificate and can't be --
Q  He fails?
A  He fails. Right.
Q  He flunks out?
A  Maybe not flunk. There's some remedial things you do.
It's a lot of money.

But to pass you have to have 100 percent?

Yes.

All the testing is done without the dog's handlers in order to make the test objective?

Right. It's just an imprinting, it's a Pavlovian imprinting thing like you're calibrating a machine.

Is this objective imprinting procedure considered necessary in the scientific community for the dog's future results to be reliable?

Yes.

If you match the handler with the dog from the get-go, what's the danger there?

Well, if you do that you get what is called play dogs and it's really dangerous if you start with what's called a green dog, something you get like from a pound or something like in this case, you get a green dog and you start with the handler and they form this bond. And it's like your best friend and the handler doesn't make disparaging remarks about his dog like you wouldn't make disparaging remarks about your best friend. There is a very emotional bond between the handler and the dog and they're a team and they will fight to the death to uphold each other's credibility.

So it's not double blind. It's not scientific and is
open to abuse.

Q When you are training the dog handler during the second phase after the imprinting is done, first the dog has to be imprinted, he has to basically get his certificate that he is imprinted?

A Right.

Q Then he's turned over to the handler?

A Yes.

Q Not before?

A Then you go through another training thing that has to get another certificate. That's the time it's the handler's last K-9 certificate.

Q Does Rookie have any certificates indicating he was imprinted before he began training with Officer Holdridge?

A No, not that I have seen.

Q In your opinion is the method that was used to train Rookie generally accepted in the scientific community for assessing whether the dog is reliable?

A No.

MR. CHAMBERS: I'm going to object to that question. It's outside his area of expertise.

THE COURT: As I said earlier and I will say it one more time, the Rules of Evidence do not apply. Counsel may reserve all objections to their argument
and if the proper foundation has not been laid by
either side to the proffered testimony I will reject
its consideration at the time of my ruling. So you can
reserve all these objections for a later time,
Mr. Chambers. You don't have to keep making these.
Both sides can reserve objections.

Q  (By Mr. MacDonald) Now, after they finished the
imprinting and they began training with the handler are
you in general trying to train the dog at that point or
are you training the handler?

A  No, it's a little of each but you are training a team
at that point.

Q  But there is a reason why they're focusing to some
extent on the handler during the second part of
training?

A  Right. It's called the reinforcement step. First part
is imprinting, second part is reinforcement. The
handlers learns to reinforce not with food but play
reward.

Q  They're also trying to make sure during the second part
that the handler is not using inappropriate methods to
coax the dog, right?

A  Yes. And how to protect the dog.

Q  So you've got to train the handler not to coax the dog
incorrectly?
A Right.
Q You've got to train the handler to make sure he doesn't do anything that would put the dog in danger?
A Exactly.
Q You've had an opportunity to read Officer Holdridge's statement and also his reports, correct?
A Yes.
Q In terms of Rookie's hit on the bag that was in the passenger seat in Mr. Douglas Tran's vehicle, was there any danger presented to the dog by virtue of his being asked to probe the bag?
A Yes.
Q What was the danger to the dog?
A You never have a dog put their head into a closed container, especially a narcotics dog while they're sniffing or excited because they could kill themselves if there are drugs in there. They will overdose on heroin or cocaine or meth or something that might be in the bag.
Q So assume a paper bag with a suspicious substance was in Mr. Tran's vehicle.
A Yes.
Q And that the dog handler, Officer Holdridge, had no idea what was in the bag.
A You want me to assume that?
Q  Assume that.
A  Okay.
Q  Would it basically violate every protocol in the
    training book to allow him to have his dog approach and
    stick his nose in the bag?
A  Yes, that would be a cardinal sin of dog handling.
Q  Because if it was methamphetamine and heroin or cocaine
    the dog would be dead?
A  It could very well be. That happens a lot. I mean, it
    happens way too much. So you don't want to ever do
    that. You're trained not to apply a dog like that.
Q  In addition to imprinting the dog, prior to imprinting
    the dog don't they actually do some medical studies on
    the dog for make sure they're appropriate?
A  Yes.
Q  What type of study do they do?
A  Well, there's usually a veterinary checkup. There's a
    psychological examination and then there's the physical
    examination, medical examination.
Q  Don't they test their brain somehow, too, to see
    whether they would be adept at this type of work?
A  My type of work is using scanners on dog brains.
    That's my personal thing.
Q  Is it scientifically acceptable to consider the dog
    reliable even in the absence of the veterinary check
and the psychological testing of the dog?

A  No. You have to have those. Well, I mean -- that's the standard the procedure, that's what you do. And it wouldn't be good not to do that.

Q  That's the procedure generally accepted in the scientific communities, you do some psychological testing of the dog, you check them out physically?

A  Right.

Q  And you imprint the dog before matching them up with the handler?

A  Right.

Q  Was any of this done in Rookie's case to your knowledge?

A  No.

Q  Is there anything that has anything to do with the age of the dog in terms of when you start training; is that of any concern?

A  Not too much. I think this dog is about two-years-old which is okay.

Q  Would it make any difference in terms of a scientific expert's opinion concerning Rookie if he had a false alert 10 months before February of 2004?

A  Well, if there's a documented false alert then he goes back through, maybe back through imprinting.

Q  He has to go back to remedial training?
A Right.
Q In order to be accepted as reliable in the scientific community?
A Right. You have to take some action, remedial action.
Q And, again, you have been provided with no records concerning any logbooks that Officer Holdridge kept, right?
A That's right.
Q When did you first talk to Mr. Chambers about testifying in this matter?
A About a month or so ago.
Q How did that occur?
A He called me.
Q What did he ask you?
A He asked me if I was going to testify and I said yeah, and he said would I talk with him and I said yeah. I mean, he wanted to talk right then and I said yes, I would.
Q Did he ask you anything else?
A I asked him what he wanted to know and then he asked me didn't I want my lawyer present, and I said I didn't have a lawyer. And he said no, he meant you, and I said I told him it didn't matter, I didn't need a lawyer present.
Q So you volunteered to talk with him with or without an
attorney being present?

A Right. So then we decided or he decided maybe we would talk at another time and he would talk with you that he was going to be talking to me.

Q He wasn't interested talking to you a month ago when he contacted you on the phone?

A I think he was interested but he was cautious or something.

Q Okay. After a dog alerts what is generally the next thing that the trainer does if the dog has a positive alert?

A Well, if it's a positive alert whatever the dog targeted is taken into custody or somehow seized, isolated.

Q Does it make any difference whether the dog -- I assume the dog gets a reward when he has a positive alert?

A Yes. Once it gets to the handler's stage it's a play reward.

Q What happens to the dog in terms of his reliability if he is rewarded for positive alerts where the material that he's alerted on is never verified or checked?

A This is very problematic. The reward has to come immediately. I mean, as quickly as possible after the alert and any delay scrambles the dog. The dog is only here and now this second. And when he alerts you've
got to immediately reward him. If you just wait a little while, a few seconds or something, the dog forgets why he is being rewarded. That's one thing. And the other thing is that you've got to make sure that the stuff, that is, you've got to be careful, you could reward the dog for actually making a false alert.

Q That's where I'm going with this. If you reward a dog and then verify the results do you have any idea whether the dog's reliable or not?

A No.

Q Because the dog may just be alerting because he wants to play with the ball?

A Right.

Q Or whatever his toy is?

A All dogs want to please themselves first and then the handlers second.

Q Does it make any difference whether you reward the dog within or outside of the search area?

A Yes, it does. It's a timing thing. You need to have the reward coming within the same instant as the alert, if possible. If this is a training situation, you know there's methamphetamine there, the dog alerts, you need to reward them right away so when you get to actual field use and you don't know what the material is until you open the bags so there's a delay and then that will
screw up a dog's mind, his imprinting. Not his imprinting but his reinforcement ability.

MR. MACDONALD: Thank you. I don't have anything further.

THE COURT: Mr. Chambers, do you wish to continue with anymore cross-examination?

MR. CHAMBERS: Thank you, Your Honor.

RE CROSS - EXAMINATION

BY MR. CHAMBERS:

Q   You don't know if Rookie had a psychological checkup before training and deployment, do you?

A   I do not.

Q   He could have, you just don't know?

A   I don't know.

Q   You did know that the officers had looked inside the bag and knew there were no drugs in there before Rookie was exposed to the bag; were you aware of that?

A   No.

MR. MACDONALD: Objection, the question is ambiguous.

THE COURT: I don't know how many times I have to say it, Rules of Evidence don't apply. I have given you both all kinds of leeway. Ask whatever questions you want, you can reserve objections at the time of argument, and I will decide whether I consider the
testimony or not.

MR. MACDONALD: The "officers" is general. If he could ask which officers.

THE COURT: You can ask if you want on redirect, if he doesn't make it clear when he says officers. If that has something to do with the ultimate decision you can make that argument. I just don't want to hear anymore objections. You can both reserve them.

THE WITNESS: What was the question again? I'm sorry.

Q (By Mr. Chambers) Were you aware, Dr. Woodford, that Detectives Crawford and Elmendorf had examined the contents of the bag containing the money and knew it contained no drugs prior to the dog being deployed on the bag?

A No, I didn't know that.

Q So it wasn't any real danger to the dog or violation of protocol?

A Well, yes there were. In the sworn statement by the officer he was asked specifically did you know what was in the bag and the handler said I had no idea. Well, a handler who has no idea would never let his dog's nose go into a I don't have any idea what's in the bag. So I think he knew, the handler must have known what was in the bag and he was not being truthful when he said
he didn't know what was in the bag. I think he knew, too. That's my personal opinion.

Q The detectives knew?

A I think the handler is not being truthful when he said he didn't know what was in the bag. I think he knew what was in the bag, too, because if he didn't the dog should be taken away from the guy and he needs to go back to training and start all over. Because that's a cardinal sin. You don't risk the life of your dog -- you don't take somebody's word for it that they know what's in the bag.

Q You never trained a dog, have you?

A I'm not a dog trainer but I've been around a whole bunch of them.

Q Have you ever trained a dog, sir?

A No, I am not a dog trainer.

Q And the imprinting of the odor portion of the certification, you don't know what methods are used by the state of Washington to certify a narcotics dog, do you?

A Not in detail.

Q So you don't know if the imprinting portion of the process that you discussed is just incorporated in Washington as part of the one-step certification process?
A It could be. I'd have to see the more detailed.
Q You don't know if Rookie was imprinted properly or not?
A No. For purposes of my testimony here I think we are
assuming it is the best trained dog. The thing about
the put the nose in the bag really bothers me but I
will assume anyway it's the best handler, too.
Q You said that the find can't be verified until it's
sent to the crime lab and chemically analyzed?
A No. No. You have the NIK tests, these are little
pouches that officers carry and you can test right
there in the field what's going on. Or you can use an
ion device which is portable. There's a whole lot of
technology you can do right there in the field. You
don't have to send it to the crime lab.
Q A law enforcement officer can look down there and see
that it is a small baggie of a white powdery substance
rather than a loaf of bread and reward on that basis as
well, can't they?
A Yeah. But that's open to real problems because, you
know, I have in my case here a little bottle of white
powder and --
Q Shall we run the dog on it?
A If you want to. No, it's not drugs, I can tell you.

MR. CHAMBERS: That's all the questions I have.
MR. MACDONALD: I have two questions.
THE COURT: Okay.

FURTHER REDIRECT EXAMINATION

BY MR. MACDONALD:

Q Now, Mr. Chambers asked you about the methods used by
the state of Washington and whether you were familiar
with them; is that right?
A Yes.

Q You had a chance to review the Washington
Administrative Codes that I provided you yesterday?
A Yes.

Q Would it be fair to state that the Washington
Administrative Codes delegate all of the training
requirements to the Washington State Criminal Justice
Training Commission?
A Yes.

Q Basically there's nothing in the Washington
Administrative Codes about what the proper training
methods are.
A Right.

Q In order to assess the methods utilized by the state of
Washington and whether they are up to standard you
would have to review the Washington State Criminal
Justice Training Commission guidelines and possibly the
Washington State Police K-9 Association, correct?
A That plus the data from the double blind imprinting
procedure if there is one.

Q Do you feel you have looked at either the Washington State Criminal Justice Training Commission or the Washington State Police K-9 Association guidelines in enough detail to issue an opinion as to whether they require the imprinting of the dog?

A I think so.

Q Do they require imprinting of the dog?

A No, they don't. I don't believe so from what I can read from it.

Q In the absence of an imprinting requirement, your assessment would be that the State Criminal Justice Training Commission guidelines and the State Police K-9 Association guidelines are insufficient in terms of the scientific community assessing the reliability of the dog?

A That's correct.

MR. MACDONALD: Thank you.

FURTHER RE CROSS-EXAMINATION

BY MR. CHAMBERS:

Q You don't know anything about what standards are required by the Washington State Patrol K-9 Association as far as certification or imprinting, do you?

A I do not know firsthand but I have spoken with someone who does and I know from talking to him that imprinting
is not done that way.

Q When did you have that conversation?

A I had it this morning, Ben Bogardus who is very familiar.

Q So you are not being untruthful with me when I talked with you on Friday when you said you didn't know?

A No. I just talked with Ben Borgardus and asked him if he knows and he said yes, and I asked him do they do that and he said no. That's as far as I know.

Q Okay.

A It's just I can rely, I know him to be an expert and I rely on what he would say. I'm testifying from my information I received from another expert.

MR. CHAMBERS: No further questions.

MR. MACDONALD: No further questions.

THE COURT: Thank you, sir. You are excused.
IV. DISCOVERY OF DOG RECORDS

Motion to Compel - Excerpt from brief filed in 5th circuit.

1. Discovery of dog's training records: The alert of a drug dog may establish probable cause where the government establishes that the dog is properly trained. See, e.g., United States v. Outlaw, 134 F.Supp. 2d 807, 810, (W.D. Tex 2001). We respectfully await that proof. Additionally, we have requested by this motion that relevant training records be produced so that the defendant may have his own expert examine them to see if the totality of the circumstances would support the conclusion that the dog is reliable. The defendant has the burden here. Although the Outlaw court held
that the defendant was not entitled to see all of the dog’s training records in that case, the case did not foreclose this form of discovery. Where the defendant has a burden to undermine what is essentially a prima facie showing of reliability based upon certification, it would be unfair to deny the defendant the opportunity to examine whether the training really was sufficient. This defendant is unable to litigate facts incorporated in the “totality of the circumstances” if those facts reside behind a veil of secrecy. We request that this court exercise its discretion to order this discovery.

Further, controlling new authority, *Illinois v. Caballes*, 543 U.S. __ (2005) places a heightened importance on the reliability of the dog. As the *Caballes* dissent documents, false alerts are a persistent problem with drug dogs. Souter, J, dissenting at 2, ff. The dog must be “well trained.” The absence of a complete record prevented the *Caballes* court from reaching this issue. (Slip op. at 4). The defendant cannot make a record absent access to the materials requested here.
2. **Dog's Training Records – Great Case:**

UNITED STATES OF AMERICA, Plaintiff-Appellee, v.  
JUAN PABLO CEDANO-ARELLANO, Defendant-Appellant.  

No. 02-50450  

UNITED STATES COURT OF APPEALS FOR THE  
NINTH CIRCUIT  


May 6, 2003, Argued and Submitted, Pasadena, California  
May 27, 2003,Filed
Defendant-Appellant Juan Pablo Cedano-Arellano was indicted on charges of smuggling cocaine into the United States after a search at the Mexican border revealed packages of cocaine in the gas tank of his truck. Cedano-Arellano entered a conditional guilty plea, preserving his right to appeal the following issues: whether the district court erroneously denied him discovery on the narcotics detector dog that "alerted" on his gas tank, whether there was probable cause to support his initial and subsequent arrests, whether there was reasonable suspicion to support the Customs agents' search of his gas tank, whether the federal drug statutes are constitutional under Apprendi v. New Jersey, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000), and whether the grand jury that indicted him was instructed properly. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

I. Discovery Issues

In a pretrial motion, defense counsel asked the district court to require discovery from the government about the narcotics dog that had alerted on Cedano-Arellano's gas tank. Counsel explained that he had retained an expert to review the dog's performance and training records, and sought discovery under Fed. R. Crim. P. 16 and the Jencks Act of a broad range of materials pertaining to the dog, including his handler's log, all training records and score sheets, certification records, and training standards and manuals. The district court declined to compel general discovery on the dog, ruling that the government's obligations were as follows: (1) to establish the dog's reliability, if it intended to rely on the dog to establish reasonable suspicion for the subsequent search of the gas tank; (2) if the government did intend to put on evidence about the dog,
to disclose all Brady material suggesting that the dog was not reliable; and (3) under Rule 26.2, to disclose to the defense any prior statements that the officer testifying about the dog's reliability had made. Otherwise, the district court concluded, if the requested material was not Brady material, the government had no obligation to disclose it.

The dog's handler testified at a pretrial evidentiary hearing on March 18, 2002. The judge reviewed in camera the training logs maintained by the dog's handler, and concluded that none of the information was Brady material or contradictory to the witness's testimony. He held that the training logs were precluded from discovery by Fed. R. Crim. P. 16(a)(2) and did not constitute a "statement" by the witness under the rule set forth in United States v. Carrasco, 537 F.2d 372 (9th Cir. 1976). Accordingly, the judge denied defense counsel's Jencks Act motion to disclose the training logs. The only evidence about the dog introduced at the hearing was the canine officer's testimony, without any supporting documentation. At the close of testimony, the judge made several findings of fact and conclusions of law, including, inter alia, that the dog was a "reliable trained narcotics detector dog."

On appeal, Cedano-Arellano challenges two discovery rulings by the district court: (1) its refusal to compel production of general discovery regarding the narcotics detector dog under Fed. R. Crim. P. 16, and (2) its refusal to compel production of the canine officer's "statements" (i.e., the dog's training log) under the Jencks Act and Fed. R. Crim. P. 26.2. We review the district court's denial of discovery for an abuse of discretion, United States v. Guagliardo, 278 F.3d 868, 871 (9th Cir. 2002) (per curiam), but we review de novo the district court's interpretation of a discovery [*571] rule, United States v. Finley, 301 F.3d 1000, 1007 (9th Cir. 2002).

A. Discovery of the dog's qualifications

Rule 16 requires, inter alia, that the government disclose to the defendant any documents or objects that are material to preparing the defense, or that the government intends to use in its case-in-chief at trial. Fed. R. Crim. P. 16(a)(1)(E). The government is also required to disclose the [*55] results of any scientific test or experiment if the results are within its possession, custody, or control, and if the attorney for the government knows or could know through due diligence that they exist, and the results are either material to preparing the defense or the government intends to use them in its case-in-chief at trial. Fed. R. Crim. P. 16(a)(1)(F). However, Rule 16 specifically excludes the following from disclosure: "reports, memoranda, or other internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting the case. Nor does this rule authorize the discovery or inspection of statements made by prospective government witnesses except as provided in 18 U.S.C. § 3500." Fed. R. Crim. P. 16(a)(2).

Cedano-Arellano argues that the materials at issue were crucial to his 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. We agree. For example, the handler testified that the dog had been certified several times and had achieved a much-better-than-passing score on the certification [*56] tests. We can see no reason why the certification documents, the production of which had been requested and about which the handler testified, should not have been disclosed. Moreover, the dog's training materials and
records plainly do not fall within the scope of Rule 16(a)(2): they were not made in connection with investigating or prosecuting this or any other case, and most of them (with the possible exception of the training log) are not statements by prospective government witnesses. Cf. United States v. Armstrong, 517 U.S. 456, 462-63, 134 L. Ed. 2d 687, 116 S. Ct. 1480 (1996) (characterizing Rule 16(a)(2) as precluding discovery of "government work product in connection with [the defendant's] case").

Accordingly, we find that the district court judge erred in denying defense counsel's motion for discovery of the dog's training and certification records under Fed. R. Crim. P. 16.

B. Jencks Act disclosure

Although the records are discoverable under Rule 16, we conclude that they are not Jencks Act material. This Court has explained:

Under the Jencks Act, the government must turn over pretrial statements made by prosecution witnesses related to the subject matter of their trial testimony. 18 U.S.C. § 3500. This court has held that reports of government agents made in the course of criminal investigation are subject to production under the Jencks Act if the government agent testifies. See, e.g., United States v. Harris, 543 F.2d 1247, 1250 (9th Cir. 1976). However, the court has held that an agent's rough notes jotted during surveillance are not producible under the Jencks Act due to the incomplete nature of the notes. United States v. Bernard, 623 F.2d 551, 557-58 (9th Cir. 1979).

United States v. Alvarez, 86 F.3d 901, 906 (9th Cir. 1996).

Cedano-Arellano argues that, under Carrasco, supra, the dog's training logs were subject to disclosure under the Jencks Act and Fed. R. Crim. P. 26.2. The district court disagreed, ruling that the notes taken in the training logs did not constitute "statements" under the Jencks Act. We agree with the district court. In deciding whether something constitutes a "statement" under the Jencks Act, this Court has focused on the distinction between investigative interviews and surveillance observations, rather than on whether the material was communicated to another person. United States v. Bobadilla-Lopez, 954 F.2d 519, 522-23 (9th Cir. 1992). The training logs are more like surveillance observations than witness statements. The logs were not "intended to form the basis for evidence at trial." Id. Therefore, the district court did not err in ruling that the logs were not statements for purposes of the Jencks Act.

Thus, the district court did not err in refusing to compel discovery of the training log under the Jencks Act, in the absence of any Brady material contained therein.

II. Other Issues

A. Reasonable suspicion for gas tank search
The border agents plainly had reasonable suspicion to support their search of Cedano-Arellano's gas tank. As this Court has explained, gas tank searches at the border are not "routine," and are therefore subject to the reasonable-suspicion standard, rather than the any-suspicion standard for routine searches. *United States v. Molina-Tarazon*, 279 F.3d 709, 713, 717 (9th Cir. 2002); see also *id.* at 712 (requiring that, when a border search "goes beyond the routine, an inspector [*9*] must have a reasonable suspicion that the person to be searched may be carrying contraband.") (citing *United States v. Ramos-Saenz*, 36 F.3d 59, 61 (9th Cir. 1994)).

The agents made the decision to search Cedano-Arellano's gas tank based on the following factors: Cedano-Arellano's nervousness and evasiveness in response to routine questioning, the fact that he stated that someone else had borrowed his truck the day before, and the certified narcotics detector dog's alert on the gas tank. The agent then tapped on Cedano-Arellano's gas tank, and heard a solid sound consistent with the presence of something other than liquid in the tank. n1 Only then did the Customs agents remove and search the gas tank. Accordingly, we affirm the district court's finding that the agents had reasonable suspicion sufficient to support the gas tank search.

n1 Cedano-Arellano argues that the agent was incompetent to testify about the significance of sounds produced by tapping on the gas tank. The government did not establish that the agent was an expert under Fed. R. Evid. 702. This argument is without legal support. See, e.g., *United States v. Hernandez*, 313 F.3d 1206, 1210-11 (9th Cir. 2002) ("[W]hile the determination of reasonable suspicion is exceedingly fact-specific, the circumstances taken together must be evaluated as they would be understood by those versed in the field of law enforcement . . . . Such an approach allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.") (internal citations and quotation marks omitted); *United States v. Bravo*, 295 F.3d 1002, 1008 (9th Cir. 2002) (Customs inspector had reasonable suspicion to search toolbox for drugs based on, inter alia, tapping on toolbox, which made a solid rather than a hollow sound); *United States v. Buckner*, 179 F.3d 834, 837 (9th Cir. 1999) ("In drug investigations, the court may consider the experience and expertise of the officers involved . . . . This experience and expertise may lead a trained narcotics officer to perceive meaning from conduct which would otherwise seem innocent to the untrained observer.") (internal citations omitted).

[**10]

[*573] B. Probable cause for arrest

As the government concedes, Cedano-Arellano was under arrest by the time he was shackled to the bench in the waiting room while the agents tapped on his gas tank and then searched his car. See *United States v. Hernandez*, 314 F.3d 430 at 433-34 ("The standard for determining whether a person is under arrest is not simply whether a person believes that he is free to leave, . . . but rather whether a reasonable person would believe that he or she is being subjected to more temporary detention occasioned by border-
crossing formalities.'") (quoting United States v. Butler, 249 F.3d 1094, 1100 (9th Cir. 2001)) (internal citations omitted). Cedano-Arellano maintains that, at this point in time, the agents did not have probable cause to arrest him.

We disagree. To begin with, the "alert" by the certified, reliable narcotics detector dog was sufficient, even by itself, to support a finding of probable cause. See United States v. Lingenfelter, 997 F.2d 632, 639 (9th Cir. 1993) (holding that "[a] canine sniff alone can supply the probable cause necessary for issuing a search warrant if the application for the warrant [**11] establishes the dog's reliability"). Moreover, in this case, there was more: Cedano-Arellano's nervousness and evasiveness, and the fact that Cedano-Arellano himself told the agent that someone else had borrowed his truck the day before. Accordingly, we agree with the district court that there was probable cause for Cedano-Arellano's initial arrest. n2

n2 We therefore do not reach the issue of "intervening" probable cause.


In United States v. Buckland, 289 F.3d 558 (9th Cir. 2002) (en banc), we rejected the argument that 21 U.S.C. § 841(b) is facially unconstitutional under Apprendi. We reached the same conclusion as to 21 U.S.C. § 960 in United States v. Mendoza-Paz, 286 F.3d 1104 (9th Cir. 2002). Cedano-Arellano, however, argues that the Supreme Court's subsequent opinion in United States v. Harris, 536 U.S. 545, 153 L. Ed. 2d 524, 122 S. Ct. 2406 (2002), [**12] overrules these opinions.

This argument was already rejected in a published opinion of this Court in United States v. Hernandez, 314 F.3d 430, 437-38 (9th Cir. 2002). Accordingly, under basic principles of stare decisis, we reject it as well.

D. Propriety of grand jury instruction

Cedano-Arellano argues that the grand jury instruction in this case violated the Supreme Court's holding in Vasquez v. Hillery, 474 U.S. 254, 88 L. Ed. 2d 598, 106 S. Ct. 617 (1986), because the judge instructed the grand jurors that they had a duty to indict him if they found probable cause to believe he was guilty. This Court has rejected Cedano-Arellano's argument in United States v. Marcucci, 299 F.3d 1156, 1161 (9th Cir. 2002) (per curiam).

III. Harmless Error

We publish this opinion to make clear that discovery of the qualifications of a dog used for drug detection is mandatory. However, we nonetheless conclude that the error in this case was harmless within the meaning of Fed. R. Crim. P. 52(a) because it did not affect any substantial right of Cedano-Arellano's. As noted above, the judge reviewed the training logs in camera and [**13] concluded both that (a) the dog was reliable and (b) there was no Brady material contained therein. Accordingly, the dog's "alert" may be considered in both the reasonable-suspicion and the probable-cause analyses. Viewed in [*574] conjunction with the other evidence, we conclude that, while defense counsel
should have been given access to the requested documents, there was nothing in those
documents that would have changed the ultimate determination that the agents had
reasonable suspicion to support their search of the gas tank and probable cause to arrest
Cedano-Arellano.

IV. Conclusion

The documents pertaining to the dog's qualifications sought in this case were material
to preparing the defense. They should have been disclosed to the defendant. Under the
circumstances of this case, we find that the failure to do so was harmless error, but we by
no means suggest that this will be true in all cases.

AFFIRMED
3. Subpoena for handler’s notes

WHATCOM COUNTY SUPERIOR COURT
STATE OF WASHINGTON

STATE OF WASHINGTON, )
     ) No. 04-1-00507-1
     ) SUBPOENA
V. )
DOUGLAS T )
     )
     )
     )
     )

STATE OF WASHINGTON SENDS GREETINGS TO:

OFFICER RICHARD HOLDRIDGE
Bellingham Police Department

YOU ARE HEREBY COMMANDED to appear at the courtroom of the criminal presiding judge, Whatcom County Superior Court, Bellingham, Washington on August 19, 2004 at 8:30 A.M. and testify then and their on behalf of the Defendant and give testimony upon oral examination in the above-entitled cause now pending in the above-entitled Court, and there remain until discharged. If you fail to attend you will be deemed guilty of contempt of Court and liable to fine and imprisonment until the fine is paid, and also liable to pay all loss and damage occasioned by such failure.

YOU ARE ALSO HEREBY COMMANDED to appear show cause why no judicial order compelling production of the following records shall issue:
any and all personal field notes or rough interview notes in your possession or control concerning the above-entitled cause now pending in the above-entitled Court or any other incident, including any and all notes and/or logs pertaining to the training, qualifications, or certification of K-9 “Rookie.”

Alternatively, this motion will be struck if you deliver the above-described records to the defendant’s attorney or his designee by 4:00 P.M. on August 18, 2004. The defendant’s attorney designates the Law Offices of Dennis Hindman at 306 Flora Street, Bellingham, Washington as an acceptable recipient and will strike the above-described motion if the above-described records are delivered there by August 18, 2004.

If you fail to produce the above-mentioned records and fail to attend the show cause hearing, you will be deemed guilty of contempt of Court and liable to fine and imprisonment until the fine is paid, and also liable to pay all loss and damage occasioned by such failure.

HEREIN FAIL NOT AT YOUR PERIL.

DATED at Seattle, Washington, this 11th day of August, 2004.

THE MACDONALD LAW OFFICE

By: ________________________
F. Hunter MacDonald, #22857
Attorney for Defendant
WASHINGTON (AP) - Congress went to pot and to the dogs Wednesday.

Jacko, Quan and Skeet - law enforcement canines - were brought before the House Homeland Security Committee to Demonstrate their skills. They performed flawlessly, finding hidden explosives and a bag of marijuana that had been placed in a desk.

Lawmakers are considering federal standards for how these dogs are bred and trained, and a possible boost in funding. The canines sniff out explosives, narcotics and suspects at crime scenes, border crossings, airports and - coming soon - mass transit systems and commuter trains.

``There's always a need for more (dogs) but they have to be well trained and used correctly,'' said Special Agent Terry Bohan, who heads the canine training at the Bureau of Alcohol, Tobacco, Firearms and Explosives.

The bureau has trained about 500 explosives detection canines and their handlers, who work for the Justice Department across the nation and in 16 other countries.

Homeland Security's Customs and Border protection has about 1,200 dogs. The Transportation Security Administration has more than 350 dogs at airports and has announced a plan to bring dogs into mass transit and commuter rail security in ten cities across the country.

Still, it's unclear just how much dogs are helping U.S. law enforcement officials.

``The first thing we've got to find out is what exactly are we doing now,'' said Rep. Mike Rogers, R-Ala., who chairs the subcommittee that held the hearing. ``Second is to quantify what's the best way to get from what we have to
what we need.''

Two-year-old yellow lab Quan and his handler, special agent Craig Chillcott, graduated last spring from a three-month ATF training program.

Quan on Wednesday sniffed several identical FedEx boxes before correctly identifying the one that contained a block of C-4, a plastic explosive.

Chillcott's last dog partner, Cascade, retired to become his pet last year. In their eight years as partners, the two worked the Columbine school shootings, the Washington-area sniper murders, the Birmingham, Ala., abortion clinic bombing and numerous Super Bowls.

Mike Merickel, an officer and canine trainer for U.S. Customs and Border Protection, said dogs are dependable law-enforcement partners.

``They are always ready to work,''' Merickel said, ``unlike with people partners, who are sometimes having bad days.''

Jacko's handler, border patrol agent Clayton Thomas, said the tan and black Belgian Malinois' had found more than 34,000 pounds of marijuana, more than 800 pounds of cocaine and 218 concealed humans during seven years of the job.

Jacko won the national ``Paws to Recognize'' award last month in New York, a prestigious honor in the world of hero hounds.

TSA dogs were not part of the demonstration Wednesday. While the Homeland Security and Justice dogs are trained for ``passive response'' — they sit when they locate explosives, drugs or people — the TSA dogs bark and make a scene.

Homeland Security spokeswoman Paula Keicer said it was difficult getting the explosives and marijuana into the highly secured congressional office building, even for a demonstration. She wouldn't go into detail.

*ab abusu ad usum non valet consequentia -- the usefulness of something is not invalidated by the consequences of its abuse.*
The Founding Fathers, those sterling folk we’ve been taught to revere, were soft on crime. They were a bunch of liberal whiners who considered it more important to protect criminals than to give the police effective tools to fight crime.

This is the absolute truth. Why else, when they wrote the Bill of Rights (the first 10 amendments to the Constitution), did five of their 10 basic statements of liberty focus on protecting accused crooks?

Even more outrageous: The Founders believed criminal suspects have inborn rights, while government agencies merely have delegated powers. Powers that can be revoked by the people at any time and must always be strictly limited.

In the blind eyes of justice and the highest law of the land, criminal suspects and individual police officers have exactly the same rights, while police agencies have no rights at all. Yep, if the Founders were around today, they might be card-carrying (although also gun-toting) members of the ACLU.

And for that we should all be glad.

When you read the Bill of Rights you see right away that Amendments 5, 6, 7, and 8 focus on protecting accused criminals. Jury trials. No forced self-incrimination. No excessive bail or fines. Right to counsel. Right to confront accusers and present defense witnesses. No cruel or unusual punishment. Indictments only by grand jury. No re-trying someone after he’s been found to be not guilty.

There’s one other crook-protecting amendment, the Fourth. We’d better look at that one quickly,
because that loud sucking sound you hear is the Fourth Amendment running down the drain. Here’s the full text:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

We’re losing those protections fast particularly every time we hop in our cars. No big deal, you say? A good thing, even? The Fourth gives crooks too many advantages over police? Some people think so. But when the Fourth is gone, police and criminals alike (not to mention the rest of us) will live in a miserable and more dangerous world.

Like all the Founders’ other soft-on-crime amendments, the Fourth rose out of English legal tradition. But more than the others, the Fourth was inspired by real abuses American colonists suffered at the hands of their British rulers before the Revolutionary War.

And here’s an irony for you. Today, the Fourth Amendment is being destroyed because courts and legislatures are okaying broader search power in the name of “fighting crime.” Specifically fighting druggies and terrorists. Yet the Fourth Amendment was written, in part, because the British had used ever-broader search powers in the name of “fighting crime.” Specifically fighting smugglers and tax evaders.

Of course the Founders actually wrote all ten amendments to confirm their belief that everyone has a pre-existing right to a broad range of freedoms. Any of us can end up accused of a crime, whether a murder we didn’t commit or a drug crime whose evidence was planted on us by an enemy. Any of us can come under suspicion by government agents eager to search through our
homes, cars, businesses, communications, or paperwork.

Something must stand between individuals and the overwhelming, often arbitrary, power of government. The Fourth has been our best hope.

Until the twentieth century, the Fourth Amendment remained strong in America. Memories were long. School children were taught the horrors of government agents busting down doors, ransacking property, and plowing through people’s private possessions and doing it all on flimsy evidence, or no evidence at all. After World War II, the example of Nazi Germany made Fourth Amendment protections seem even more vividly important. I remember being taught that the number one difference between a police state and a free country was that in a free country “the authorities” couldn’t stop you at will. They couldn’t search you just because they felt like it. They couldn’t demand, “Your papers, please.” They couldn’t kick down your door at night and ransack your possessions.

Until about forty years ago, our homes and possessions were considered sacred. No warrant, no entry, no search except in the most extreme urgent circumstances, for instance, when someone’s life was in immediate peril.

Then came the War on Drugs and we forgot our traditions, our history, our protections, our rights. First, police needed “no-knock” raids because drug users might flush their stash if given any warning. Then “no-knock” raids started to be used even where there was no possibility of the suspect flushing evidence down the toilet. Then came ever-expanding rights to search vehicles, drivers, and passengers. Then came checkpoints for drunk driving. Which gave rise to checkpoints for every non-criminal triviality from insurance to seat-belt use. And on it goes.

In the latest Supreme Court judgment against the Fourth, Illinois v. Roy I. Caballes, the black-robed lawyers decreed that drug dogs could be set to sniffing any vehicle at any traffic
stop even where police had no reason at all to suspect drug use or drug selling. Your vehicle. My vehicle. Your daughter’s vehicle. Anyone’s.

After Caballes was announced in January 2005, Sgt. Dave Huntimer of the Sioux Falls, South Dakota, police department told his local TV station, “This sends an excellent message that if you use drugs or if you transport drugs in the United States, we’re going to use whatever tools are available to catch you.” He added, “You are going to see nothing but more dogs being used in ... more roles.” And, “It’s very non-intrusive.”

I can tell you that, as a kid who grew up on World War II films featuring uniformed German officers and their fierce German shepherd dogs, I’d find it extremely intrusive to have a police dog sniffing around me for no reason at all.

In the Caballes decision, Justice John Paul Stevens wrote that since a person can have no “legitimate” privacy right to contraband, then a dog-sniff that’s intended only to reveal the presence of contraband does not violate rights.

Stretch that opinion just a little further and you reach a point where any search that turns up something illegal automatically becomes a legal search.

Stevens’ position is closer to King George’s than to Madison’s, Jefferson’s, or Patrick Henry’s.

But King George didn’t know about database searches, drug-sniffing dogs, infra-red technology, satellite imaging, aerial cameras, chemical sniffing, microphones, phone taps, keystroke loggers, and a host of other modern search and surveillance technologies all of which present both the ability and the profound temptation to search anybody and everybody just in case they might be up to no good.

Down that road lies the police state. At the end of that road, we won’t find a crime-free society,
though the prisons will be full. At the end of that road, we won’t find good citizens, working together with trusted and valued police officers, both committed to justice. At the end of that road, police won’t find themselves respected and valued for their role in protecting the rest of us.

We’ll find merely millions of cowed and resentful citizens who’ll consider police their oppressors and their enemies. And no one not even the police will benefit.

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ENEMY AT THE GATE
Complete issues of S.W.A.T. from October 2001 to the present are available for download as PDF files at www.swatmag.com Get the information you need NOW!
SNIFFING OUT THE TRUTH ABOUT DRUG DOGS:

AN INTERVIEW WITH REX CURRY

How good are drug dogs at their jobs? Attorney Rex Curry has been looking at that question for years.

Back in 2003, Curry argued a case in Florida challenging the reliability of a police drug dog. The dog had signalled drugs on Curry's client, but Curry showed that the dog didn't have adequate training, and if it did, police should have kept records proving that the dog was reliable for a decent wrap-up of the case, check this news story - http://www.mapinc.org/drugnews/v03/n1194/a04.html

Curry's argument prevailed, and the charges were thrown out. Police appealed, so far unsuccessfully. But the Attorney General of Florida is trying to get the U.S. Supreme Court to take the case. Curry has archived the court documents at his website - http://rexcurry.net/drugdogsmain.html - which also contains other details about drug dogs.

DrugSense Weekly interviewed Curry recently about the where the case is going, and drug-sniffing dogs in general.

DSW: What is the status of the Florida v. Matheson case you detail at your site? Is the case headed for the U.S. Supreme Court?

Rex Curry: You are in luck because you are one of the first to learn that the court has asked for a response (this is also visible from the court's docket entry) and I have been told the court asked for transcripts. This is peaking
interest in the case. Of course, it is already AT the
Supreme Court, the only question is whether the Court
will "bite" at the dog case and decide to hear oral
arguments and issue a written opinion.

DSW: How did you get involved with that case?

Curry: I developed the entire strategy from the beginning
and argued the original motion to suppress evidence and
filed the original appeal that started the trek to the U.S.
Supreme Court. The victim of the drug dog talked with me
last night about the case.

DSW: It seems from information at your website that drug-
sniffing dog training, quality and testing varies widely.
Is that correct?

Curry: Correct. Drug-sniffing dog training, quality and
testing varies widely.

DSW: How wide is the variation - for example, what is the
success rate of the best dogs vs. the success rate of the
worst dogs? How wide is the variation in the way success is
defined in dog training programs?

Curry: It is difficult to measure or quantify the width of
the variation. That is one reason why law enforcement does
not desire to keep records about their dogs. It prevents
attorneys from examining the issue. In a sense, one of the
ideas in the court case is "If you law enforcement officers
will not keep records, then we judges will make your lack
of records YOUR problem when we judges evaluate the dogs in
a motion to suppress evidence."

DSW: I've read that dogs are most competent when they've
trained on, at most, five different drug scents, and that
attempts to train them on a higher number of scents just
confuses dogs. Does that sound accurate? If so, does this
play into court cases? For example, can you as an attorney
find out what specific drugs the dogs were trained to
detect?

Curry: Well, five is not a magic number. And your question
points up the problem: Every dog is different. Each must
be evaluated individually and repeatedly, with records that
are maintained to enable evaluation and to note changes.
For example, dogs age and dogs become ill. That and other
changes can cause a good dog to go bad at any time. All of that plays into court cases and the reluctance of law enforcement to keep records on dog performance. Usually an attorney can find out what specific drugs the dogs were trained to detect, but believe it or not, even those types of records can be difficult to acquire. Once acquired, the records can be vague about the actual training procedures and performance.

DSW: I'm told (ahem) that the scent of marijuana can vary widely between different strains. Does this present a problem for the dog, or is there some basic component of cannabis that they will always recognize if they are competently trained?

Curry: The state of science is not even able to answer your question clearly at this time in the sense that scientists are not certain what the dog is smelling as compared with what you or I smell. For example, dogs are sometimes trained using "pseudo" drugs that are not actual drugs. Well, what if the dog is smelling something on pseudo drugs that is NOT always an illegal smell? What if the dog alerts to that smell, which is NOT an illegal component of the smell? That is a difficult question to answer, but could be aided with record keeping of the dog's performance in the field or "on the street." The world's oldest living medical marijuana patient also pointed out a problem with drug dogs. He said "I was in the airport recently and a dog sniffed my bag and walked away. I called to the handler and asked if the dog was trained for bombs or drugs, and the handler said 'for drugs.' So I told him to bring the dog back because I had marijuana in my bag." His medicine was in a bottle with a good cap, which can prevent air-flow, meaning that it can eliminate or reduce any Actual particles in the air that the dog would smell.

DSW: Given the problems with drug dogs explored at your website, why do you think they are so popular with police departments and municipal government?

Curry: Oh that is easy. You have to remember that there is a strong incentive for law enforcement not to CARE whether the dogs are accurate. The dogs can simply be props for lies, in that the dogs are there to overcome refusals to consent to search, and the dog provides law enforcement officers (LEOs) with the ability to say that an alert occurred even if there was no alert. And here is another
angle: some LEOs do not want a "drug dog," they want a "car dog," in that they want a dog that when shown a car will alert, as if to say "yes that is a car." For some LEOs the goal is to search whenever the LEO desires, period. The dog is simply a ruse to do so. That is why the dogs are so popular. Do not be confused with the idea that the idea that there are "problems with drug dogs." For some LEOs those are not problems at all. And again, that is why some LEOs have no interest in maintaining records about their dogs.