Pot, Dogs, and the Constitution

Written materials for NORML’s Key West Legal Seminar
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TALKING POINTS

- Video snippets of K-9s in action and examples of Pot-training procedures.

- Tainted currency is problematic and very common. Helpful case: United States v. U.S. Currency $30 060.00, 39 F.3d 1039 (9th Cir. 11/08/1994).

- There is an element of subjectivity in the concept of a K-9 “alert” – that the alert or K-9’s reaction can be in the mind of the handler. Helpful case: United States v. Rivas, 157 F.3d 364 (5th Cir. 10/02/1998).

- K-9 alerts on rental cars are unreliable (Affidavit attached).

AFFIDAVIT OF DR. JAMES WOODFORD

1. Attorney Herbert Shafer of Atlanta asked me to comment about whether a dog strike on a rental car is reliable.

2. I have conducted odor testing of rental cars (for example, Wall Street Journal, page 8B, December 13, 1988). Over the years I noticed that rental cars are often used to transport drugs. A dog strike on a rental car has no more value than a strike on paper currency. This is because odors of drugs arise from the prevalence of microscopic traces of various drugs that infect rental cars. Drugs infect rental cars in various ways, as cargo in smuggling operations; people use drugs in rental cars and the cars get polluted. Residues of crack smoke adhere to the upholstery and carpeting. So do microscopic particles of powdered drugs (cocaine, heroin and
methamphetamine). The very drugs that dogs are trained for adhere to the upholstery and carpeting in rental cars.

3. I mailed a copy of my c.v. to Assistant United States Attorney Carol Kayser upon her request by telephone that I send her my c.v., and also tell her in a nutshell what I would testify to. I told her I would testify to the “unreliability of dogs” and I snail-mailed to her a copy of my c.v. I would simply point out here that a lot of my learning on this subject occurred from my research and study for the United States Patent on the odor of cocaine (U.S. Pat Off # 4,260,517). For details see, New York Times newspaper item: Mimicking the Odor of Cocaine for Police Use (April 11, 1981). My formulation of cocaine odor is the cocaine-odor standard reference material (SRM) tested, is accepted by the scientific community, and is used for training and proficiency testing of drug dogs by government agencies.

4. Some trial courts have suppressed dog strike evidence in cases I appeared in as an expert witness. For example, I am referred to in the Daily Appellate Report, page 15772 which cites a line of court cases I appear in involving dog strikes on United States paper currency. The court may recall a case years ago in Judge Tidwell’s court. Attorney Bruce Maloy had referred me to Attorney Jack Martin, who hired me to test paper money samples released to me by the Atlanta Federal Reserve Bank, responding to a Court Order. That is when I discovered that our paper money supply is grossly contaminated with drugs. We now know that dog strikes on paper money are untrustworthy because the money comes in contact with cocaine and gets infected with the odor of cocaine.

5. I testified that about 90% of currency in general circulation is contaminated; “Courts Reject Drug-Tainted Evidence, by Mark Curriden, American Bar Association Journal, page 22, August 1993. Drug dog strikes do not prove that paper money is linked to known criminality. Likewise, dog strikes on rental cars do not answer certain critical questions, with any degree of scientific certainty; questions about the time-frame and questions about whether the defendant’s mere association with a rental car fits a crime.
6. I do not know the percentage of rental cars that have hauled drugs or are infected with drug smoke and powdery particles that people drop on the seat or floor. However, I have examined and tested a substantial number of them. The upholstery absorbs and holds drug odors as it does with tobacco odors. A human can easily perceive the odor of a rental car in which others have smoked cigarettes. It’s easier for dogs to smell odors of various drugs, though humans can’t. Dogs will strike at the odor of crack or methamphetamine residues that can linger for months, even years, in the fabric in rental cars.

7. The science problem with rental cars that we must face is the same as we faced with drug-infected paper money, that is, K-9’s can not depict in court what they smelled at the scene that caused them to strike.

8. I participated in the federal dog strike case United States v Carr, 25 F.3d 1194, 1215, n. 6, 1994. I read the dissenting opinion in the Carr case (with reference to page 1212) where Judge Becker expressed his views on the “general inadmissibility of canine sniffing evidence” and explained his concerns about the, “highly prejudicial potential [of canine-alert evidence] in future proceedings”.

9. In U.S. v. Buchanan, 207 F.3d 344 (6th Cir. 2000) the appeal court stated on page 353, “Indeed, Judge Becker of the Third Circuit has set forth a compelling argument that there should be a strong presumption against the admissibility of such evidence.” Yet the court in Buchanan stated, “In response, the government concedes that the Sixth Circuit views such evidence as having minimal probative value, but argues that the evidence is nonetheless admissible.”

10. To supplement Judge Becker’s opinion that is cited in the margin of Carr (footnote 6, page 1215), I add here information that further substantiates his distrust of drug dog-strike evidence. First example, the ability of drug-dog Ringo, described by handlers as “a star at sniffing out a suitcase full of marijuana,” was debated in the Atlanta Journal after a series of questioned strikes. In Wall Street Journal discussion of dog sniffing problems: Rover’s Prowess may Be Mostly a Shaggy-Dog Tale, the police dog Harass was reportedly discredited in Court when Harass couldn’t perform the tests imposed by the Judge.
11. One major problem about dogs is what’s known in science as the “Clever Hans Effect”. Clever Hans was a horse famed for counting – indicated by tapping a hoof to show sums and perform other arithmetical feats. Hans was indeed clever, but not numerically. It was shown that the horse picked up a subtle signal from his handler. When the handler raised his own head at the appropriate moment, this signaled Hans to stop the tapping. Likewise, dog handlers can send clues when to strike. It is difficult to make sense of dog strikes such as to know how odors and other signals integrate with a dog’s emotional state and propensity to strike. There are differences in training such as, “Going from an American dog to an imported dog is like going from a Chevy to a Cadillac,” insists Sgt. Terry Benoit of the Portsmouth Police Department’s K-9 Training Unit.” Corporate Security Digest, November 26, page 5, 1990.

12. Dogs cannot be trusted not to strike for the wrong reasons. I have noticed this time and again, in a variety of settings. My training and experience in chemistry and my experience in court tell me that dogs are sometimes intentionally misused by handlers, “to see if the dog will strike,” directing them to strike. The same applies to rental cars. All authorities know that the prevalence of microscopic traces of drugs can be found in rental cars, not merely on money. Everybody trained must be aware of this by now.

13. In my opinion, dog strikes on rental cars should not be used to build inference-upon-inference and stack things into grand schemes. This is ‘pyramiding’ -- that is, stacking a dog’s ability to strike into a pile of speculations that grow to ever-greater heights.

Dated at Chattanooga, Tennessee, this ___ day of _______ 200__.

___________________________
James Woodford, Ph.D.
Subscribed and sworn to before me
This ___ day of _________200__.

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Notary Public

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The National Organization for the Reform of Marijuana Laws (www.norml.org)