



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 363

February 28, 2013

DRUG DOG'S SNIFF TEST BASED ON RESIDUAL ODOR
DURING LAWFUL TRAFFIC STOP
ESTABLISHES PROBABLE CAUSE TO SEARCH

Reference:

Florida United States Supreme Court
v. No. 11-817
Clayton Harris 586 U.S. _____

FACTS:

Officer Wheatley, a K-9 officer with the Liberty County Florida Sheriff's office pulled over a vehicle being driven by HARRIS because the vehicle had an expired license plate. HARRIS was "visibly nervous", unable to sit still, shaking, and breathing rapidly. There was also an open can of beer in the truck's cup holder. Officer Wheatley asked HARRIS for consent to search the truck, but HARRIS refused. Officer Wheatley retrieved his K-9, Aldo, from the patrol car and walked him around HARRIS's truck for a "free air sniff." Aldo alerted at the driver's-side door handle signaling that he smelled drugs there. Officer Wheatley concluded that based on Aldo's alert he had probable cause to search the truck. His search did not turn up any of the drugs Aldo was trained to detect (methamphetamine, marijuana, cocaine, heroin, and ecstasy) but it did reveal 200 loose pseudoephedrine pills, 8,000 matches, a bottle of hydrochloric acid, two containers of antifreeze, and a coffee filter full of iodine crystals - all ingredients for making methamphetamines. HARRIS was arrested and charged with possessing pseudoephedrine for use in manufacturing methamphetamine.

While out on bail, HARRIS had another run-in with Officer Wheatley and Aldo. On that occasion HARRIS was pulled over for a broken brake light. Once again Aldo alerted on the driver's-side door handle. Based on the alert, the truck was searched but no contraband was discovered.

HARRIS moved to suppress all of the evidence collected arguing that Aldo's alert had not given Officer Wheatley probable cause for a search.

Officer Wheatley testified that he had completed a 160-hour course in narcotics detection and that Aldo had completed a similar, 120-hour course. Aldo had received a one year certification. The Officer also testified that both he and Aldo complete an additional 40-hours of in-service training annually and also train four hours a week to maintain that certification. The trial court accepted the testimony and concluded the search was proper because the probable cause was based on Aldo's alert. The Florida Supreme court disagreed and reversed. The State of Florida appealed the decision to the U.S. Supreme Court.

ISSUE:

Does the "alert" of a drug-detection dog during a traffic stop provide probable cause to search a vehicle?

Held. Yes - in testing whether an officer has probable cause to conduct a search, all that is required is the kind of "fair probability" on which "reasonable and prudent people act." (citing Illinois v. Gates see bulletin no. 73.)

REASONING:

1. A police officer has probable cause to conduct a search when "the facts available to him would warrant a person of reasonable caution in the belief that contraband or evidence of a crime is present (see Texas v. Brown bulletin no. 68).
2. Training and testing records supported Aldo's reliability in detecting drugs. Evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert.
3. If the dog alerts to a car in which the officer finds no narcotics, the dog may not have made a mistake at all. The dog may have detected substances that were too well hidden or present in quantities too small for the officer to locate or the dog may have smelled the residual odor (a well-trained drug-detection dog *should* alert to such odors) of drugs previously in the vehicle or on the driver's person (emphasis added).
4. The question - similar to every inquiry into probable cause - is whether all the facts surrounding a dog's alert received through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime. A sniff is up to snuff when it meets this test.
5. A defendant, however, must have an opportunity to challenge such evidence of a dog's reliability, whether by cross-examining the testifying officer or by introducing his own fact or expert witness. The defendant may contest the adequacy of a certification or training program as well as the dog's (or handlers) history in the field.

NOTES

Besides Illinois v. Gates, bulletin no 73 and Texas v. Brown bulletin 68, mentioned above, the U.S. Supreme Court also cites several other cases as authority. See Maryland v. Pringle, bulletin no. 275 - search of vehicle based on probable cause; Stafford v. Redding, bulletin no. 341 - strip search of student violated Fourth Amendment. In addition, you might want to review other cases involving probable cause based on canines: U.S. v Place, bulletin no. 75 - sniff test discloses presence of narcotics; Pooley v. State, bulletin no. 96 - seizure of suitcase based on dog sniff satisfies probable cause; Gibson v. State bulletin no. 98 - investigatory seizure of package based on dog sniff upheld; Wilkie v. State bulletin no. 100 - dog tracked suspect by scent established probable cause to arrest; and Illinois v. Caballes, bulletin no. 292 - dog sniff alert of legally stopped vehicle justified.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

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