Cadaver Dog's Alert as Reasonable Suspicion, not Probable Cause

By Terry Fleck

Under the Federal and State court system, there are two different descriptions of police working dogs:

Human Sent Detector Dogs:

The police service dog, search and rescue dog, tracking dog, trailing dog, scent identification dog, etc:

The Federal and State case law states that when one of these types of dogs alerts to or locates human odor, that alert is only one reasonable suspicion indicator.

Reasonable suspicion is defined as a "particularized and objective basis for suspected legal wrongdoing". In this case, the wrongdoing may be a suspect, a track or trail of a suspect or scent line up.

The dog alert is simply one indicator of wrongdoing. Now, the peace officer in charge of the case must develop other reasonable suspicion indicators to develop probable cause. "Probable cause exists when under the totality of circumstances known to the arresting officer; a prudent person would have concluded that there was a fair probability that the defendant had committed a crime."

These other reasonable suspicion indicators may be direct or circumstantial evidence.

The bottom line to a human scent K-9 handler is this; the dog alert must be corroborated by other evidence.

Contraband Substance Detector Dogs:

The narcotic dog and explosive dog.

The Federal and State case law states that when one of these dogs alert or locate contraband, the dog's alert equals and gives the peace officer probable cause.

Once the peace officer has the dog alert, which equals probable cause, now the peace officer may apply for a search warrant, search without a warrant, based upon one of the exceptions to the search warrant requirement, or arrest.

However, in order for the alert from a contraband dog to equal probable cause, the dog must be trained, certified and reliable.

Trained, certified and reliable:

These three legality principles, trained, certified and reliable, apply to both types of dogs. If this case goes to court, the defense will attack these three areas. SAR dogs have already been held to these principles in court.

Cadaver Dogs:

The question that remains is the cadaver or human remains dog. Is this dog a human scent dog or a contraband substance dog?

There is no Federal or State case law, that I'm aware of, that addresses an alert from a cadaver or human remains dog as probable cause to obtain a search warrant, search or arrest.

Therefore, if the cadaver or human remains dog is placed in the contraband substance dog group, that alert would stand alone. If the cadaver or human remains dog is placed in the human scent dog group, that alert would have to be corroborated by other evidence.

Based upon review of the case law below, an alert from a cadaver dog is <u>only reasonable suspicion</u>. The dog alert must be corroborated by other evidence.

Federal and State Appellate Case Law on Cadaver Dogs:

FEDERAL:

Kerr v Lyford (171 F.3d 330 U.S. Court of Appeals Fifth Circuit, 1999)

The court found probable cause in this case, based upon these reasonable suspicion elements:

- Statements of the child witnesses implicating the Kerrs in their own sexual abuse and in Wilson's abduction, rape and murder;
- Medical examinations of the children that revealed scarring consistent with their tales of sexual molestation;
- Confessions and statements supplied by adult witnesses Geer, Martin, and Wanda Kerr, verified by polygraph, consistent with those of the children in implicating the Kerrs in the kidnapping, rape, and murder of Wilson;
- Corroborative physical evidence such as masks, knives, and other instrumentalities of restraint and torture that were referred to by the children;

- An infrared scanning device and a cadaver-sensing dog suggested the presence of human remains on the Kerr's property, and bones (albeit not conclusively human) were unearthed;
- The shed in the Kerrs' backyard--which had been identified by some of the children and the adults as the place where Wilson's body had been kept-- was also alerted to by the dog and, suspiciously, showed signs of recent washing and repainting.

STATE:

Trejos v. State (2007 Tex. App. LEXIS 4045 Court of Appeals of Texas, First District, Houston 2007)

The dog scent evidence was admissible, due to the fact that the dog was trained, certified and reliable:

We apply the three factors to determine whether Missy and Chloe were qualified cadaver dogs. The first factor is whether the type or breed of dog works well off-lead. Missy is a mixed-breed dog, a Sharpei-shepherd mix. Chloe is a Rottweiler. Deputy Pikett testified that mixed-breed dogs and Rottweilers are capable of performing as cadaver dogs, and that cadaver dogs are dogs that work well off-lead. Although his testimony does not directly show that these dogs work well off-lead, his testimony reasonably supports the inference. Thus, the first factor weighs slightly in favor of the implied finding that Missy and Chloe were qualified and reliable.

The second factor concerns the training of the dog to distinguish between human cadaver scents and animal scents. Before the search in 2001, Bickel and her dog Missy had been to at least 10 different training seminars in addition to training several times a week. Deputy Pikett testified that he had trained extensively with Missy and she is a very good dog. In 2000, Missy was certified by two local organizations and two national organizations, including the North American Search Dog Network and the Lone Star Search and Rescue Dog Association.

Spurlock testified that she and Chloe, the confirmatory dog, had received training at various seminars from dog trainers and from law enforcement personnel and that Chloe exhibited a meticulous attitude towards cadaver work. In November 2001, Chloe had received extensive training for one and one-half years, was certified within the volunteer group of which she and Spurlock were a part, but was not certified by any national organization. The local certifications were done by an outside evaluator that utilized the same standards as the national organizations. Only dogs who meet the standards will be used for a cadaver search. The State's witnesses established that these cadaver dogs had received training and were certified to be used in searches. The second factor weighs in favor of the implied finding that the dogs were qualified to conduct the cadaver search.

The third factor is whether the dog has been shown to be reliable in its prior experiences searching for cadavers. Bickel testified that as of November 9, 2001, Missy already had a good history of finding human remains. After receiving her certification, Bickel testified that she had never known Missy to indicate a false positive, such as alerting on animal remains. Spurlock testified that in Chloe's training she performed very well when distractions such as animal bones or fluids were put out in the field and was still able to find the human remains. Spurlock testified that she had tested Chloe using many different scenarios such as various fluid samples from the morgue and items buried as deep as five feet. Spurlock also testified that she and Chloe had conducted "numerous searches for remains" and that this case was the first time she had been called to court to testify about a cadaver search. Spurlock testified that during her training and searches, Chloe had never given an alert that was later proved false. Deputy Pikett similarly testified that based upon his training and dealing with Missy and Chloe, they were reliable each time he used them. The witnesses testified that a dog that could not consistently show its reliability in training was not used for actual searches. The witnesses' testimony established that Missy and Chloe had never falsely indicated human remains and that Missy and Chloe could consistently distinguish human remains from other scents. The third factor weighs in favor of the implied finding that the dogs were qualified.

The three factors, when applied to Missy and Chloe, support the trial court's implied finding that the dogs were qualified to search for cadavers. We conclude that the record supports the trial court's implied finding that the dogs were qualified to conduct the search for the cadaver.

People v King (04 Cal. App. Unpub. LEXIS 8280 Court of Appeal California, Fourth Appellate District, Division One, 2004)

The dog scent evidence was admissible, due to the fact that the dog was trained, certified and reliable:

- The dog's handler was qualified by training and experience to use the dog;
- The dog was adequately trained in distinguishing the odor of human cadaver scent;
- The dog has been found to be reliable in alerting on an area where a human cadaver scent has existed;
- The vehicle line-up wherein defendant's vehicle was placed and wherein the canine, Scout, and his handler participated was properly and fairly conducted;
- The defendant's vehicle and the scent within had not become stale or contaminated at the time of the line-up.

Clark v. State (140 Md. App. 540 Court of Special Appeals of Maryland 2001)

The dog scent evidence was admissible, due to the fact that the dog was trained, certified and reliable:

Dan has been certified as a qualified cadaver dog once a year since 1991 by the New England State Police Association (NESPA). He has also been certified as a cadaver dog once every two years since 1991 by the North American Police Work Dog Association. Testing for certification takes one week. In order to be certified, blood, tissue, or other human remains are hidden and the canine must find the hiding place. During certification, Dan never failed to find what was hidden. Moreover, he never, in training, alerted on "false holes," which are dug in attempts to deceive the dogs**.**

It is true that Dr. Mires testified that the fact that a cadaver dog alerted at a certain spot was "not enough by itself" to prove the presence (or presence at some time in the past) of human remains to a reasonable degree of scientific certainty. But here, the alert by Dan at the spot in the Clark family graveyard did not stand alone. Other circumstantial evidence pointed to the fact that there had been a clandestine burial at that spot:

- The fact that the Clark plot had been disturbed between October 14, 1992, and January 3, 1993;
- That appellant was present with his truck and shovel at the grave site on October 31, 1992;
- That a second cadaver dog alerted at the same spot two and one-half years after Dan's alert;
- And that the spot where the cadaver dogs alerted matched the spot, marked by an asterisk found on a map in appellant's truck on October 24, 1992.

Under all these circumstances we believe that there was adequate foundation for the admission of the testimony regarding the officers' interpretations of the actions of Dan and Panzer.

Sandra Anderson:

It should also be noted that there were several cases involving Sandra Anderson, a cadaver dog handler, who was convicted of planting evidence (human remains) at crime scenes:

- **Smith v Bobby** (2007 U.S. Dist. LEXIS 61361 United States District Court for the Northern District of Ohio, 2007)
- **State v. Kupaza** (2006 WI App 130 Court of Appeals of Wisconsin, District Four (2006)
- **People v Islam (**2005 Mich. App. LEXIS 3061 Court of Appeals of Michigan 2005

- **State v. Smith** (2002 Ohio 4402 Court of Appeals of Ohio, Ninth Appellate District, Wayne County 2002)

Summary:

As the majority of the United States cadaver dog industry is civilian based, it is important to understand the impact of case law. The actions of civilian cadaver dogs affect the law enforcement cadaver dog industry and vice-versa.

An alert from a cadaver dog is only reasonable suspicion. The dog alert must be corroborated by other evidence.