San Diego District Attorney

D.A. LIAISON LEGAL UPDATE

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Remember 9/11/01; Support Our Troops

***This Edition Dedicated to*:**

Officer Michael Crain, Riverside P.D., murdered in the Line of Duty Feb. 7, 2013
Detective Jeremiah MacKay, San Bernardino S.O., murdered in the Line of Duty Feb. 12, 2013.
Sgt. Loran "Butch" Baker, and ***Detective Elizabeth Butler***, Santa Cruz P.D., murdered in the Line of Duty Feb. 26, 2013.

***And in Memory Of*:**

Edwin L. Miller, Jr. Died March 3, 2013: Former San Diego District Attorney, 1971-1995: The consummate professional and a true friend.

THIS EDITION'S WORDS OF WISDOM:

"*Participating in a gun buy back program because you believe criminals have too many guns is like having yourself castrated because you believe the neighbors have too many kids.*" (Unknown)

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***Case Law*:**

***ADMINISTRATIVE NOTES*:**

***Social Media*:** I get periodic requests to "friend" someone through various social media sources such as *Facebook* and *LinkedIn*. I always delete those invitations without a response. It's nothing personal, so please don't take offense. It's just that I don't believe such forms of communication, open to anyone and everyone who might choose to research your background, are always in our best interest as law enforcement professionals. Particularly if you're employed in some capacity that requires court appearances and testimony, or otherwise wish to keep your personal life separate from your professional life, then you might give some thought to the wisdom of participating in these easily accessible sources of personal information. At the very least, I would caution you to be selective in your posted comments, not to mention in the pictures you post of family members or friends, should you not want them used for some ulterior purpose or perhaps taken out of context and thrown back in your face. It happens.

***CASE LAW*:**

***Inadvertent Pre-Trial Suspect Identifications*:**

***Perry v. New Hampshire* (Jan. 11, 2012) __ U.S. __ [132 S.Ct. 716; 181 L.Ed.2nd 694].)**

Rule: The reliability of a suggestive pre-trial identification is a jury issue with outright suppression of the evidence by the court being appropriate as a due process violation only when there is law enforcement involvement in the setting up of the circumstances.

Facts: At around 3:00 a.m. on August 15, 2008, Joffre Ullon called the Nashua, New Hampshire, Police Department and reported that he and his wife, Nubia Blandon, were watching an African-American male trying to break into cars parked in their apartment building parking lot. Officer Nicole Clay responded to the call. Upon arriving at the scene, Officer Clay heard what sounded like a metal baseball bat hitting the ground. She then saw defendant—an African-American male—standing between two cars holding a couple of car stereo amplifiers. As defendant approached Officer Clay, she could see a metal bat lying on the ground behind him. When asked where he got the amplifiers, defendant claimed that he'd found them on the ground. Meanwhile, Blandon notified her neighbor, Alex Clavijo, that she had seen someone break into his car. He came down to

the parking lot and found one of the rear windows to his car to be shattered. He also found that the speakers and amplifiers from his car stereo were missing, as were a baseball bat and a wrench. While defendant was detained in the parking lot by another officer, Officer Clay contacted Blandon in her fourth floor apartment. Blandon told Officer Clay what she'd seen. When asked for a specific description of the suspect, Blandon responded by pointing to her kitchen window and telling Officer Clay that the person she'd seen breaking into Clavijo's car was standing in the parking lot next to the other police officer. That person, of course, was defendant, who was promptly arrested. When shown a photographic array a month later, Blandon was unable to identify defendant. Charged in New Hampshire state court with "theft by unauthorized taking," defendant filed a pre-trial motion to suppress any evidence of Blandon's parking lot identification arguing that the admission of evidence of the "one-person showup" at trial would violate his constitutional "due process" rights. The trial court denied defendant's motion and allowed Officer Clay to testify to Blandon's identification of defendant in the parking lot. Defendant was convicted and appealed. The New Hampshire Supreme Court affirmed. The United States Supreme Court granted certiorari.

Held: The United States Supreme Court, in an 8-to-1 decision, affirmed. Defendant's contention on appeal, as it was with the trial court, was that the "*due process*" clause, as contained in the 5th and 14th Amendments (providing that a person may not be "deprived of life, liberty or property without due process of law,") prohibits the introduction of evidence of questionable reliability. However, as was ruled by the trial court as well as New Hampshire's Supreme Court, the exclusion of the questionable evidence by the trial court is not generally appropriate. The general rule is that the relevance of such evidence is typically governed by state and federal statutory rules of evidence, and is commonly a question, within such statutory guidelines, for a jury to decide. The due process clause may only be invoked when there is some governmental involvement. In the case of an allegedly suggestive suspect identification procedure, the constitutional due process protections may only be invoked where there is an "improper police arrangement of the circumstances surrounding (the) identification." The Court rejected defendant's argument that due process should be extended to any potentially unreliable evidence irrespective of the government's involvement. In this case, the police did not set up the situation where defendant was identified by the witness Nubia Blandon. She was merely asked for a more detailed description of the suspect when she spontaneously pointed out the window to defendant standing in the parking lot. Whether or not the fact that defendant was the only African-American male in the parking lot at that time, standing next to a uniformed police officer, so taints Blandon's identification of him as the thief is a question for the jury. Defendant's Sixth Amendment rights to counsel, confrontation, and cross-examination, are sufficient to insure that Blandon's identification isn't given too much weight or otherwise lead to an erroneous verdict.

Note: In addition to this, in the case of most "*inadvertent identifications*" (i.e., where the victim or witness has not been prompted to identify a specific person and where he or she just happens to pick the suspect out of any number of people who happen to be in the area), I've always argued that such a spontaneous random identification is most often inherently reliable. In this particular case, defendant apparently being the only Black

male in the parking lot, and where the thief was also a Black male, the defense had a good argument that the identification was unreliable. But that argument must be made to the jury; not to the trial court in a pre-trial suppression motion. Here, with the dropping of the baseball bat as the officer approached and defendant carrying the just-stolen amplifiers at 3:00 in the morning, there was more than enough evidence to corroborate Blandon's identification. But the point here is that the reliability of any specific evidence is typically a jury issue with outright suppression of the evidence before trial being appropriate only when there is some governmental (i.e., law enforcement) involvement in the setting up of the circumstances. So how to you avoid such suggestiveness when you, as a law enforcement officer, purposely set up a single-person curbstone lineup? You don't. But you can offset it by informing the witness that they are not to assume anything merely because you have a person detained, and that they should feel free to say so if they can't identify him, or if they're not sure. With this type of an admonishment, I've never had a problem getting a pre-trial curbstone lineup identification into evidence.

***Warrantless Searches of a Vehicle's SDM with Probable Cause*:**
***Warrantless Searches of Vehicles as the Instrumentality of the Crime*:**
***Vehicles and Expectation of Privacy*:**

People v. Diaz **(Feb. 6, 2013) 213 Cal.App.4th 743**

Rule: The warrantless search of a vehicle's "sensing diagnostic module," upon the vehicle being involved in a vehicular manslaughter, is lawful and not in violation of an expectation of privacy. The vehicle itself may be searched without a warrant based upon probable cause and as the instrumentality of the crime.

Facts: Defendant and her boyfriend, Zachary Palumbo, did some heavy drinking at a bar in Riverside County. At around midnight, when they were ready to leave, Palumbo, a former police officer, recognized that defendant was too intoxicated to drive. However, she refused to give him her keys so Palumbo walked home by himself. Defendant drove off alone in her Chevrolet Tahoe truck, heading south on Knabe Street, in Corona. Driving at between 84 and 77 miles per hour in a 50 mph speed zone, defendant swerved over into the north bound lanes, hitting a Honda Accord head on. The driver of the Honda, 18-year-old Rachel Elliot, was killed. CHP Officer Jack Penneau arrived at the accident scene minutes later and contacted defendant. The officer noted a strong odor of alcohol on defendant's breath, bloodshot eyes, and slurred speech. After performing poorly on a field sobriety test, defendant was arrested. A later blood test showed that she had a blood/alcohol level of .23% at the time of the accident. Defendant's truck was impounded. Officers of the CHP's "MAIT" ("Multidisciplinary Accident Investigation Team") supervised the inspection of defendant's Tahoe. While basically taking the car apart, the condition of defendant's vehicle was examined (e.g., acceleration, braking, steering, and suspension), determining that, at least before the accident, it had been in good working condition. As a part of this inspection, but more than a year after the accident, the information contained in the vehicle's "*Event Data Recorder*" (or "*EDR*," which is a part of the vehicle's "*Sensing Diagnostic Module*," or "*SDM*") was downloaded. To download the data from the SDM, the investigators had to go under the

driver's seat and cut through the carpet. Interpreting the data from the EDR, the officers were able to determine defendant's speed five seconds before the accident (84 mph), and up until the point of impact (77 mph). It was also noted that she never attempted to apply her brakes during this last five seconds before the collision. After being extradited from Mexico, where she'd fled to avoid prosecution, defendant filed a motion to suppress the contents of her vehicle's SDM. Defendant's motion was denied. A jury eventually convicted her of involuntary manslaughter (P.C. § 192(b)), as a lesser included offense to an alleged second degree murder charge, and vehicular manslaughter with gross negligence while intoxicated (P.C. § 191.5(a)). Sentenced to 10 years in prison, defendant appealed.

Held: The Fourth District Court of Appeal (Div. 2) affirmed. Defendant's argument on appeal was that the warrantless search of her vehicle and the seizure and downloading of the data from her vehicle's SDM was illegal. Specifically, while conceding that her car was lawfully in the custody of the police and that the officers had probable cause to access the data in the SDM, defendant contended that she had a reasonable expectation of privacy in the contents of the SDM and that seizing that information without a search warrant violated the Fourth Amendment. The Court disagreed. Under the case law, when probable cause exists to believe that a car contains relevant evidence of a crime at the time the car comes into police custody, it may be searched without a warrant to the same extent a magistrate could have authorized. With probable cause to believe that the SDM contained evidence of her speed and braking—two things that are always relevant in determining the causes of a collision—no search warrant was needed to retrieve that information. A second legal justification for conducting a warrantless search of a vehicle is when the vehicle itself is the "*instrumentality of the crime*," as opposed to merely being a container of evidence. Here, with evidence showing that defendant was driving while under the influence of alcohol, during which she violated several traffic infractions, directly causing a head on collision with another vehicle and killing the driver of that other vehicle, defendant's vehicle was the instrumentality of her crimes. Lastly, the Court noted that a person is entitled to Fourth Amendment protection only when, by her conduct, (1) she has exhibited an actual expectation of privacy and, under the circumstances, (2) the person's subjective expectation of privacy is one that society recognizes as reasonable. It has long been recognized that vehicles have a diminished expectation of privacy. In this case, the Court found that defendant did not have any expectation of privacy in the data contained in the SDM; i.e., the vehicle's speed and braking. There is no expectation of privacy in one's speed on a public highway in that speed may readily be observed and measured through other methods (e.g., radar, pacing, estimation). Also, when braking, one's brake lights are visible to anyone within view. The MAIT team's accident reconstruction experts already had a good idea of defendant's speed and whether or not she applied her brakes based upon the existing physical evidence, even before accessing the SDM data. Also, the data recovered from the SDM wasn't anything in which defendant had an expectation of privacy. For these reasons, no warrant was necessary to download the data in the SDM in defendant's vehicle.

Note: The Court also mentioned that V.C. § 9951 requires law enforcement to obtain a court order (with limited exceptions, including consent, not applicable here) before

retrieving information from an SDM. However, that section only applies, by its terms, to vehicles manufactured on or after July 1, 2004. Defendant Tahoe was a 2002 model. There was one California case finding that even where the warrant requirement of section 9951 does apply, ignoring that statutory rule does not violate the Fourth Amendment and therefore does not require the suppression of any evidence. (See *People v. Xinos* (2011) 192 Cal.App.4th 637, 653-654.) However that case has since been depublished making it unavailable for citation. With this new decision, however, which also found that the Fourth Amendment does not apply, the rule of *Xinos* seems to have survived. But my advice is to follow the dictates of section 9951 whether or not the Constitution requires it. You shouldn't need the threat of suppression to motivate you to follow the law. It is also interesting that the Court discussed the "*instrumentality of the crime*" theory for finding the warrantless search of defendant's vehicle to be lawful. This is a theory that hasn't been used by an appellate court in a published California decision in 25 years. Also, the cases that do exist are confusing and inconsistent as to when and if this theory applies. Defendant made that argument; i.e., that this theory has been discredited. But the Court specifically held that the "instrumentality of the crime" theory is alive and kicking. Lastly this decision provides a lot of interesting details on the SDM and the EDR, also known as the "black box," which, being irrelevant to the legal issues involved, I skipped over. But you might want to check out the entire case if you're interested in this topic.

***Residential Warrant Searches; Detentions of Occupants*:**

Bailey v. United States **(Feb 19, 2013) __ U.S. __ [133 S.Ct. 1031; 185 L.Ed.2nd 19]**

Rule: The detention of an occupant of a residence which is searched pursuant to a search warrant is lawful only so long as the detained occupant is present, or within the immediate vicinity, of the residence being searched, at least under this legal theory.

Facts: Local police officers obtained a search warrant for a .380-caliber handgun, believed to be located in a basement apartment at 103 Lake Drive, in Wyandanch, New York. The offices' information came from a confidential informant who also provided a physical description of the occupant of the apartment. In preparation for executing the warrant, detectives were surveilling the apartment when they observed two individuals, either one of whom could have been the described occupant, leave the apartment, get into a vehicle, and drive away. Defendant Chunon Bailey was later determined to be one of these subjects. The detectives followed the suspects for about a mile (about five minutes) and then made a traffic stop as the searching officers entered defendant's apartment. Both suspects were patted down but no weapons were found. However, a ring of keys was found in defendant's pocket. Defendant at first acknowledged that he lived at 103 Lake Drive even though his license showed a different address. When told that his apartment was being searched, and that he was being detained pending the outcome of that search, he changed his mind and denied living there, declaring that anything found in the apartment was not his. Defendant and his companion were transported back to the apartment. A gun and drugs were found in the apartment. It was also discovered that one of the keys on defendant's key ring fit the door to the apartment. Defendant was charged in federal court with possession of cocaine with intent to distribute, possession of a

firearm by a felon, and possession of a firearm in furtherance of a drug-trafficking offense. His motion to suppress his house key and his statements made to the detectives was denied. A jury convicted him of all three counts. The federal Second Circuit Court of Appeal affirmed, holding that law enforcement may detain the occupant of premises subject to a valid search warrant when that person is seen leaving those premises and the detention is effected as soon as reasonably practicable. (See *United States v. Bailey* (2nd Cir. 2011) 652 F.3rd 197.) The United States Supreme Court granted certiorari.

Held: The United States Supreme Court, in a 6-to-3 decision, reversed. *Michigan v. Summers* (1981) 452 U.S. 692, held that detaining a resident of a home found on a walkway outside his house, where a search warrant was to be executed, and moving him inside where he was held while the house was searched, was lawful. *Summers* was the basis for the trial court's and the 2nd Circuit Court of Appeal's respective opinions that, while a person's apartment is being searched, stopping and detaining that person after he had just left his apartment, but as soon as it was reasonably practical to do so, was also lawful. The majority of the Supreme Court disagreed that *Summers* applied to this situation. The rule of *Summers* was based upon three reasons; to minimize the risk of harm to the officers and other occupants during a lawful search of a residence, to facilitate an orderly search through the cooperation of the residents, and to prevent flight in the event evidence is discovered. (1) *Risk of Harm*: *Summers* recognized that while executing a search warrant, occupants of a residence are often motivated to become disruptive, dangerous, or otherwise act to frustrate the search. Therefore, the safety of the officers and other occupants demands that the officers retain "unquestioned command of the situation." The authority to detain the occupants during the executing of a warrant, including those who might not even be suspected of any criminal activity, is therefore necessary. But this rationale does not extend to one who has left the premises. Such a person, not being at the scene of the search, no longer constitutes such a danger. The fact that it is possible that he could return does not justify stopping and detaining him any more than stopping and detaining anyone else who, not being present, may later intrude upon the search (at least until that person does in fact arrive on the scene). Defendant, in this case, had left the scene. *Summers* did not allow for his detention once he left the immediate vicinity of the apartment. The Court further rejected the Government's argument that trying to detain him before he left the scene might have prematurely alerted the occupants, noting that the officers had the option of not detaining him at all. If defendant was considered dangerous, or involved in criminal activity, the he could have been subjected to a detention as authorized by *Terry v. Ohio* (1968) 392 U.S. 1. But that issue was not before the Supreme Court (see note, below). (2) *The Orderly Search of the Premises*: If the occupants of a residence being searched are allowed to randomly walk around, the orderly completion of the search may be affected. Also, unrestrained occupants may hide or destroy evidence, seek to distract the officers, or simply get in the way. But this rationale is irrelevant after the occupant has left the premises, as did defendant in this case. (3) *Preventing Flight*: The integrity of the search itself might be affected should the officers have to keep track of unrestrained occupants who, upon discovery of incriminating evidence, may be subject to arrest. And under such circumstances, the search may be rushed, causing unnecessary damage to property or compromising the careful execution of the search. Also, the possibility of these persons

leaving the scene with the evidence being sought is also a consideration. In these instances, however, as in the present case, where the occupant has already left the scene of the search, these problems don't apply. Also, to allow a detention where the occupant is already away from the scene may be subject to abuse, such as where he is already miles away. "The interest in preventing escape from police cannot extend this far without undermining the usual rules for arrest based on probable cause or a brief stop for questioning under standards derived from *Terry* (*v. Ohio*)." Therefore, under the rule of *Summers*, "(t)he categorical authority to detain incident to the execution of a search warrant must be limited to the immediate vicinity of the premises to be searched." The case was remanded to the Second Circuit Court of Appeal for a determination whether some other legal justification, other than under the rule of *Michigan v. Summers*, for detaining defendant applied.

Note: The trial court had also held as an alternative theory that the detectives were justified in detaining defendant and his companion based upon a reasonable suspicion that they were involved in criminal activity, per *Terry v. Ohio* (1968) 392 U.S. 1. The Second Circuit Court of Appeal did not decide this issue, resting it affirmation upon the *Summers* argument alone, and thus did not determine whether *Terry v. Ohio* applied. As a result, whether or not *Terry v. Ohio* allowed for defendant's detention in this situation was not discussed by the United States Supreme Court. The Court did acknowledge, however, that in those circumstances where there is in fact such a reasonable suspicion, the person may be detained under *Terry*. Or, if probable cause existed, the subjects might also have been legally arrested. Further, the Court declined to define what it means by "*immediate vicinity*," noting only that a mile away is definitely not within that geographical boundary.

Dog Sniffs and Probable Cause:

Florida v. Harris **(Feb. 19, 2013) __ U.S. __ [133 S.Ct. 1050; 185 L.Ed.2nd 61]**

Rule: A drug-detection dog's reliability, establishing probable cause for a search, is better determined by the dog's performance during training under controlled circumstances than by what happens in the field. Probable cause is determined by a consideration of the totality of the circumstances, and not according to a strict checklist.

Facts: Deputy William Wheetley, a K-9 Officer with the Liberty County, Florida, Sheriff's Office, along with this dog, Aldo, made a traffic stop on defendant's pickup truck in June 2006, for having an expired license plate. Defendant appeared to be visibly nervous, was unable to sit still, was shaking, and breathing rapidly. There was also an open can of beer, visible in a cup holder. Deputy Wheetley asked defendant for permission to search his truck. Defendant declined. So Deputy Wheetley got Aldo out to do a "free air sniff." Aldo is a German Shepard, trained to detect methamphetamine, marijuana, cocaine, heroin, and ecstasy. Aldo alerted at the driver's-side door handle, signaling, through a distinctive set of behaviors, that he smelled drugs there. Based upon this, Deputy Wheetley conducted a search of the truck. The search resulted in the discovery of 200 loose pseudoephedrine pills, 8,000 matches, a bottle of hydrochloric

acid, two containers of antifreeze, and a coffee filter full of iodine. Deputy Wheetley knew these items to be ingredients needed in the making of methamphetamine. However, Aldo was not specifically trained to detect any of these items. Deputy Wheetley later surmised that Aldo had alerted on the door handle because defendant, who later admitted to manufacturing and using methamphetamine, had put his unwashed hands on the door handle and that Aldo was alerting to the residual odor. Defendant was arrested. While out on bail, Deputy Wheetley stopped defendant a second time; this time for a broken brake light. Aldo alerted again on the same door handle. A search of the truck this time failed to locate anything of interest. Charged in state court with possessing pseudoephedrine for use in manufacturing methamphetamine, all as a result of the first traffic stop, defendant's motion to suppress the evidence found in his truck, was denied. At this motion, Deputy Wheetley testified to his and Aldo's training and experience (see below). Defendant pled no contest and appealed. A state court of intermediate appellate jurisdiction affirmed. However, the Florida Supreme Court reversed, ruling that there had been an insufficient showing of probable cause to justify the search of defendant's truck. (See *Harris v. State* (Fla. 2011) 71 So.3rd 756.) The United States Supreme Court granted certiorari.

Held: The United States Supreme Court unanimously reversed the Florida Supreme Court, reinstating defendant's conviction. As it was in the trial court, the issue on appeal was whether the state had laid a sufficient foundation of Aldo's training and experience in the detection of drugs to substantiate the trial court's finding that there was probable cause to search defendant's truck. At the motion to suppress, Deputy Wheetley testified about both his and Aldo's training in drug detection. In 2004, Deputy Wheetley (and a different dog) had completed a 160-hour course in narcotics detection while Aldo (and a different handler) completed a similar, 120-hour course. That same year, Aldo received a one-year certification from Drug Beat; a private company that specializes in testing and certifying K-9 dogs. Deputy Wheetley and Aldo teamed up in 2005 and went through another 40-hour refresher course together. They also did four hours of training exercises each week to maintain their skill. These exercises involved Deputy Wheetley hiding drugs in certain vehicles or buildings while leaving others "blank," to see if Aldo would alert at the right places. Aldo's performance in those exercises was "*really good*," according to Deputy Wheetley. The State also introduced "Monthly Canine Detection Training Logs" consistent with this testimony. They showed that Aldo always found hidden drugs and that he performed "satisfactorily,"—the higher of two possible assessments—on each day of training. However, Deputy Wheetley also conceded that Aldo's certification (which he noted Florida law did not require) had expired the year before he arrested defendant. He also acknowledged that he did not keep complete records of Aldo's performance in traffic stops or other field work, maintaining records only of alerts resulting in arrests. The Florida Supreme Court had held that this was not enough to establish probable cause, finding that "the State needed to produce a wider array of evidence;" e.g.; "the dog's training and certification records, an explanation of the meaning of the particular training and certification, field performance records including any unverified alerts, and evidence concerning the experience and training of the officer handling the dog, as well as any other objective evidence known to the officer about the dog's reliability." The Florida High Court particularly stressed the need for

"evidence of the dog's performance history," including records showing "how often the dog has alerted in the field without illegal contraband having been found." That data, the Court stated, could help expose such problems as a handler's tendency (conscious or not) to "cue [a] dog to alert" and "a dog's inability to distinguish between residual odors and actual drugs." Per the Florida Court, an officer like Deputy Wheetley who did not keep full records of his dog's field performance could never have the requisite cause to think "that the dog is a reliable indicator of drugs." The United States Supreme Court, however, in reversing the Florida Supreme Court's decision, rejected the idea that a Court is to use such a rigid checklist in determining the existence, or non-existence, of probable cause. Citing *Illinois v. Gates* (1983) 462 U.S. 213, the Court noted that a trial court is to consider the "*totality of the circumstances*," employing a "flexible, common-sense standard" in determining whether probable cause exists. In determining probable cause, the issue is whether the police officer had "facts available to [him that] would 'warrant a [person] of reasonable caution in the belief' that contraband or evidence of a crime is present." All that is required is a "*fair probability*" on which "reasonable and prudent [people,] not legal technicians, act." The Florida Supreme Court's decision in this case, by demanding a rigid checklist of required information, "flouted" this "established approach to determining probable cause." Specifically, the Court noted that the evidence of Deputy Wheetley's and Aldo's training (as described above) was sufficient by itself to establish probable cause. Aldo's field experience, where alerts failed to result in the discovery of any drugs, was particularly irrelevant. Such "failures" were readily explainable by the fact that the drug odor to which Aldo alerted could well have been where drugs had been at one time, or as in this case, where an admitted abuser of methamphetamine had touched a vehicle's door handle. "A detection dog recognizes an odor, not a drug." The absence of field performance records, therefore, does not preclude a finding of probable cause as was advocated by the Florida Supreme Court. Similarly, while a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert, the absence of formal certification means nothing so long as the dog has recently and successfully completed a training program that evaluated its proficiency in locating drugs. "If the State has produced proof from controlled settings that a dog performs reliably in detecting drugs, and the defendant has not contested that showing, then the court should find probable cause." In this case, the State met that standard.

Note: I included a lot of detail above for the benefit of K-9 officers and prosecutors to illustrate specifically what is, and what is not, necessary to lay a sufficient foundation for the admissibility of dog-sniff evidence. But as a K-9 officer, don't take this case as the Supreme Court's permission to get sloppy in your record-keeping requirements. The Court specifically noted that defense attorneys remain free to challenge the reliability of a dog's drug sniffing abilities. A good defense attorney will take advantage of this and do anything and everything to discredit both you and the dog. But it is important to remember, also as noted by the Court, that what appears to be a false alert from a properly trained dog is likely to be no more than an indication of where drugs were before someone removed them, and not necessarily a false alert. Consistency displayed during training, where the circumstances are controlled, is a more relevant on the issue of the dog's abilities than what happens in the field. Good points to remember.