

Vehicle Sniffs

Summary

The biggest issue with vehicle sniffs is actually not a canine issue. The biggest issue is detention time. Most courts state that an officer may only detain the vehicle long enough to conduct the normal business of a traffic stop. Therefore, a canine sniff must occur within this time constraint. Most courts state you have approximately 15 minutes to conduct the normal business of a traffic stop.

An investigative stop and/or detention of a vehicle for an exterior canine sniff must be supported by reasonable suspicion or consent. Drug courier profile, without more, does not create reasonable suspicion. Failure to consent to search cannot form any part of basis for reasonable suspicion. If the officer develops reasonable suspicion that the vehicle or occupants are involved in contraband trafficking or use, the officer may now detain them for approximately 45 minutes.

Absent reasonable suspicion or consent, the K-9 sniff must occur during the course of business of the stop. However, in the U.S. Court of Appeals *Eighth Circuit and Fourth Circuit*, if the dog is on-scene, a brief delay of a matter of minutes to have the dog sniff the exterior of the vehicle, is reasonable.

If you tell a person that a canine unit or drug dog is being requested, the person is detained. Consent may not be requested.

A canine sniff of the exterior of a vehicle is not a search. The vehicle must be lawfully detained, such as a traffic stop, roadblock, etc.

If the vehicle is parked in a public place, random and suspicion less dog sniffs of the exterior is not a search.

Once the canine sniff produces a positive alert, this alert establishes probable cause.

Under the automobile exception to the search warrant requirement, all parts of the vehicle may be searched without a warrant.

The dog may be used for the interior search (after the positive canine alert on the exterior).

You may impound and tow the vehicle to a different location and continue the warrantless search of the vehicle there.

There is one Federal case, **United States v Anchondo**, (156 F. 3d 1043 (1998) Tenth Circuit) that states:

If, after a positive canine alert on the exterior of the vehicle, no contraband is located in the vehicle, you may conduct a “search incident to arrest” search of the occupants. **There are several State cases that are in disagreement.**

Vehicle Sniff Cases:

1. **United States v Rivera**
(825 F. 2d 152 (1987) Seventh Circuit)

The automobile exception to the Fourth Amendment allows a warrantless search and seizure of a car as long as the search is justified by probable cause, even if the car is parked and stationary. Law enforcement agent’s delays in the search of the car by removing it to a garage and sniff tested by narcotic detection dog and until another sniff test was conducted, were reasonable.

2. **United States v De Soto**
(885 F. 2d 354 (1989) Seventh Circuit)

Probable cause was established when a narcotics-sniffing dog reacted positively to presence of drugs in the rear of an automobile that arrived at defendant’s building.

3. **United States v Fiala**
(929 F. 2d 285 (1991) Seventh Circuit)

One and one-half hour roadside detention of driver while troopers awaited arrival of drug sniffing dog was reasonable, where driver would have been detained anyway in county jail as a result of his arrest for driving without a valid license

4. **United States v Lozano**
(171 F. 3d 1129 (1999) Seventh Circuit)

The driver of a truck was arrested for a traffic violation. A narcotics dog arrived and “assisted in the inventory of the bed of the truck.” The dog alerted to duffel bags. The opening of the duffel bags in the bed of the truck was a valid inventory search where it was conducted pursuant to the police department’s standard routine verbal policy of opening all closed containers that might contain valuables.

5. **Illinois v Lidster**

(540 U.S. 419 (2004) U.S. Supreme Court

Brief stops of motorists at highway checkpoint at which police sought information about recent fatal hit and run accident on highway, was reasonable.

The motorists who were systematically stopped so police could ask them about information on the accident and hand each driver a flyer requesting assistance in identifying the vehicle and driver involved, was reasonable, and thus did not violate the rights of a motorist who was arrested for driving under the influence when he arrived at stop.

6. **U.S. v. Washburn**

U.S. Court of Appeals Seventh Circuit
383 F.3d 638 – September 09, 2004

Police had probable cause for warrant to search suspect's vehicle for evidence of narcotics activity even though codefendant/informant who had described vehicle and set up controlled buy with suspect/driver had become informant in hopes of receiving consideration. Informant had implicated himself in narcotics trafficking thus providing indicia of reliability, officers were able to test reliability of informant's information by observing events predicted by him including description of vehicle and presence of black bag in specific location inside vehicle, second codefendant also named suspect, and **drug dog alerted to vehicle after suspect was detained.**

Police officers' alleged falsification of time when they confirmed identity of federal narcotics trafficking suspect's vehicle's license plate, and of time when drug dog arrived at vehicle, did not require trial court to sua sponte (to act spontaneously without prompting from another party) depart downward from Sentencing Guidelines on grounds of police misconduct.

7. **Illinois v Caballes**

(125 S. Ct. 834 (2005) U.S. Supreme Court

Dog sniff conducted during a lawful traffic stop that reveals no information other than location of contraband that no individual has any right to possess, does not violate the Fourth Amendment. Use of a well trained narcotics detection dog, one that does not expose non-contraband items that otherwise would remain hidden from public view, during lawful traffic stop does not violate the Fourth Amendment.

Where lawful traffic stop was not extended beyond time necessary to issue warning ticket and to conduct ordinary inquiries incident to such a stop, another officer's arrival at scene while stop was in progress and use of narcotics detection dog to sniff around the exterior of motorist's vehicle does not have to be supported by some reasonable, articulable suspicion.

8. **Arizona v Gant**

(129 S. Ct. 1710 (2009) U.S. Supreme Court

If there is probable cause to believe a vehicle contains evidence of criminal activity, police may lawfully search any area of the vehicle in which the evidence might be found.

Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest, and when these justifications are absent, a search of an arrestee's vehicle will be unreasonable **unless police obtain a warrant or show that another exception to the warrant requirement applies.**

NOTE: Gant has no effect on K-9. If the dog alerts to a vehicle, that alert gives you probable cause to believe the vehicle contains evidence of criminal activity. Now you conduct a warrantless search, pursuant to the Automobile Exception to the search warrant requirement. Gant is actually a positive case for K-9, as K-9 demand and usage should increase. Gant **does** affect patrol, however if the agency has a policy regarding inventory searches, that is another exception to the search warrant requirement.

9. U.S. v. Jones

U.S. Supreme Court
132 S.Ct. 945 – January 23, 2012

Note: although this is not a K-9 case, it has K-9 implications.

The Fourth Amendment protects the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” Here, the Government’s **physical intrusion** on an “effect” for the purpose of obtaining information constitutes a “search.”

Trespass (**physical intrusion**) alone does not qualify as a “search,” under Fourth Amendment, rather, it must be conjoined with attempt to find something or to obtain information.

A vehicle is an “effect” as that term is used in Fourth Amendment, which provides that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.”

Editors note:

Jones is problematic for K-9 training and deployment. K-9’s should *not* physically intrude upon effects, such as a vehicle. Therefore, K-9 training should stress not allowing the K-9 to touch, physically intrude, upon any effect, such as a vehicle. In addition, in a handler directed search, the handler should also not physically intrude upon the item being sniffed by the dog.

The K-9 should be trained to sniff the public airspace that surrounds any effect. The dog must not be allowed to touch, physically intrude, upon the effect. That would include the K-9 jumping upon or into an effect, such as a vehicle. That intrusion may easily be construed as a search. However, some courts that have addressed this issue, have concluded that a trained dog’s instinctive acts—performed without police encouragement or facilitation—do not violate the Fourth Amendment.

In a recent USCA Ninth Circuit case, U.S. v Thomas, the Court was concerned about the K-9’s physical intrusion upon a truck. See, [United States v Thomas](#)

10. **U.S. v. Bueno**

U.S. Court of Appeals Seventh Circuit
703 F. 3d 1053 – January 07, 2013

Continued detention after trooper issued written warning to driver eleven minutes into the stop of his van was justified in light of the circumstances that developed during the stop. Trooper was justified in prolonging the stop for a few minutes to ask passenger about his business and the packages of unknown contents and origins that he was transporting in order to confirm or dispel his suspicions of criminal activity, and passenger consented to the search of the van within minutes, leading to positive narcotics dog alert.

Once narcotics dog alerted to the presence of narcotics in brick-shaped objects wrapped in plastic which were inside defendant’s van, trooper had grounds to search the van and detain defendant further. Trooper did not need to open the plastic-wrapped objects to confirm the contents as he was entitled to rely on his common-sense judgment in making probable cause determination.

Here, almost **nine minutes** passed—nearly doubling the length of the stop—between the issuance of the written warning and the dog alert that gave K-9 Trooper Owen reason to detain Bueno further. Additionally, although K-9 Trooper Owen had already issued Bueno the written warning, he advised Bueno to wait in the police squad car—with the police dog pacing at his back, inside the squad car,—while he questioned Flores.

Even if this amounted to an impermissible inconvenience, however, we conclude that the continuation of Bueno’s detention beyond its otherwise lawful limits was justified in light of the circumstances that developed during the stop. We have recognized on numerous occasions that information lawfully obtained during a traffic stop may provide the officer with reasonable suspicion of criminal conduct that will justify prolonging the stop to permit a reasonable investigation.

Bueno also challenges his continued detention, contending that it was unreasonable for him to be detained during the search of the car and that his arrest was not supported by probable cause. These arguments are also unavailing. Once the dog alerted to the presence of narcotics, Trooper Owen clearly had additional grounds to search the van and detain Bueno further.

11. Florida v. Harris

U.S. Supreme Court
133 S.Ct. 1050 – February 19, 2013

The Court unanimously held that the Florida Supreme Court erred when it “created a strict evidentiary checklist” a state must satisfy to establish that an alert by a drug-detection dog provided probable cause to search a car. The Court concluded that “if a bona fide organization has certified a dog after testing his reliability in a controlled setting” (or “if the dog has recently and successfully completed a training program”), “a court can presume (subject to any conflicting evidence offered) that the dog’s alert provides probable cause to search.”

The Court criticized the Florida state court for treating field-performance records as more probative of the dog’s reliability than its training and certification records, which stem from controlled environments, and concluded that evidence of training, even without certification, can be sufficient to establish reliability. The Court emphasized that the defendant must have the opportunity to challenge the dog’s reliability by cross-examining the handler and presenting expert evidence.

Police officer has probable cause to conduct search when facts available to him would warrant person of reasonable caution in belief that contraband or evidence of crime is present.

Test for probable cause to search is not reducible to precise definition or quantification, and finely tuned standards such as proof beyond reasonable doubt or by preponderance of evidence have no place in probable-cause decision. All that is required is the kind of “fair probability” on which reasonable and prudent people, not legal technicians, act.

To establish that drug detection dog is reliable, State need not, in every case, present exhaustive set of records, including log of dog’s performance in the field. That approach would be inconsistent with flexible, common-sense standard of probable cause.

Evidence of drug detection dog’s satisfactory performance in certification or training program can itself provide sufficient reason to trust his alert. If bona fide organization has certified a dog after testing his reliability in controlled setting, court can presume, subject to any conflicting evidence offered, that dog’s alert provides probable cause to search.

Even if drug detection dog has not completed formal certification program, court can presume, subject to any conflicting evidence offered, that dog's alert provides probable cause to search, if dog has recently and successfully completed training program that evaluated his proficiency in locating drugs.

Defendant must have opportunity to challenge evidence of drug detection dog's reliability, whether by cross-examining testifying officer or by introducing his own fact or expert witnesses.

If a dog on patrol fails to alert to a car containing drugs, the mistake usually will go undetected because the officer will not initiate a search. Field data thus may not capture a dog's false negatives. Conversely (and more relevant here), 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 of drugs previously in the vehicle or on the driver's person. Field data thus may markedly overstate a dog's real false positives. By contrast, those inaccuracies—in either direction—do not taint records of a dog's performance in standard training and certification settings. There, the designers of an assessment know where drugs are hidden and where they are not—and so where a dog should alert and where he should not. The better measure of a dog's reliability thus comes away from the field, in controlled testing environments.

Harris cooked and used methamphetamine on a regular basis; so as Handler Wheatley later surmised, K-9 Aldo likely responded to odors that Harris had transferred to the driver's-side door handle of his truck. **A well-trained drug-detection dog *should* alert to such odors; his response to them might appear a mistake, but in fact is not.**

Editor's note:

No national K-9 best practices, such as SWGDOG; no State that has a K-9 standard / certification; no nationally recognized K-9 association; no nationally recognized K-9 expert, *endorses fielding an un-certified K-9 team.*

The Court did endorse a K-9 team that has “recently and successfully completed training program that evaluated his proficiency in locating drugs”. However, that endorsement, as stated in the above paragraph, *would only allow a K-9's proficiency in training, based upon those situations where the team recently completed K-9 training and were pending a certification process.*