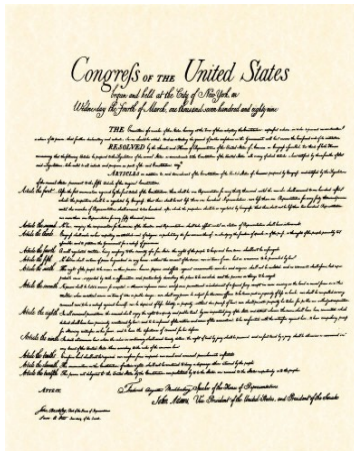


Fourth Amendment: K9 Extension Case Law Spring 2023

Terry R. Derden
Chief Legal Advisor



TODAY'S FOCUS



"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

"The ultimate touchstone of the Fourth Amendment is reasonableness."

- Brigham City v. Stuart, 547 U.S. 398 , 403 (2006).

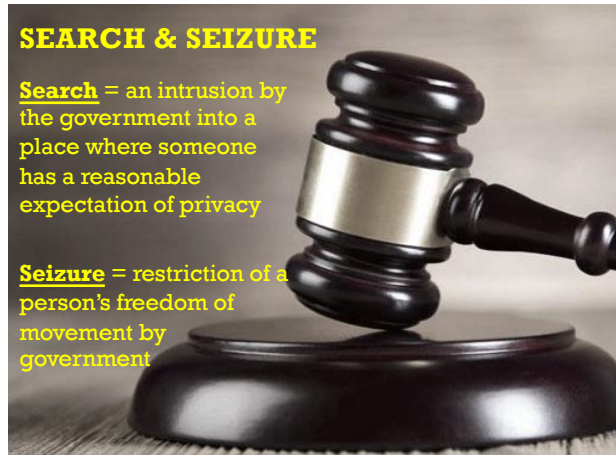


The Fourth Amendment requires search warrants be issued "upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

SEARCH & SEIZURE

Search = an intrusion by the government into a place where someone has a reasonable expectation of privacy

Seizure = restriction of a person's freedom of movement by government



Do Vehicles (or persons when out in public) deserve the same protection under the 4th Am. as a home?

- Historically, they do not get it. Once vehicles started coming into play as places to be searched independent of a residence, the court were willing to give law enforcement more latitude. Same with persons. See *Carroll* or *Terry v. Ohio* and their case law.
- These recent cases from our Supreme Court suggest (whether intentional to not) that the Court intends to afford citizens more protections under the privacy right granted by the Fourth Amendment.



The Fourth Amendment draws "a firm line at the entrance to the house..."



3 Methods to enter a Vehicle Without a Warrant or Consent

- "THE CARROLL DOCTRINE"
- *MICHIGAN v. LONG*'s "TERRY" FRISK OF VEHICLE
- SEARCH INCIDENT TO ARREST: "*Arizona v. Gant*"



Vehicle Consent

K9 Search of Vehicle “Free Air Sniff Theory”



Illinois v. Caballes

543 U.S. 405 (2005)

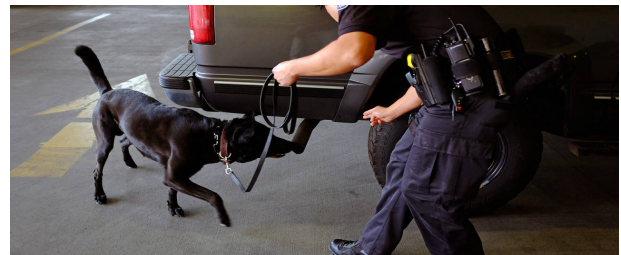
USSC ruled: “conducting dog sniff [does] not change the character of the traffic stop that is lawful at its inception and otherwise executed in a reasonable manner.”

2 PART ANALYSIS:

- 1) Is stop lawful at its inception?
- 2) Is length of stop reasonable?



RULE: Use of a police K9 to search the exterior of the car during a lawful traffic stop is allowed when there is no reasonable suspicion as long as the length of the stop is not extended.



Once R.A.S. is established and the person is now being detained for a drug investigation, the police K9 dog may be used to sniff the exterior of the vehicle and the length of stop is no longer a concern as officer is investigating.

ALERT of Exterior = Probable Cause

USSC holds in *Florida v. Harris* that “an alert by a properly-trained drug dog generally provides probable cause to search a vehicle.

And going back to Carroll Doctrine... Remember...

When P.C. is established that a vehicle contains contraband “it justifies the search of every part of the vehicle and its contents which could conceal the object of the search.”

K9s & TRAFFIC STOP EXTENSION CASES



Rodriguez v. United States, USSC (2015)

Police may conduct certain unrelated checks during a lawful t-stop but may not prolong a t-stop absent reasonable suspicion ordinarily demanded to detain an individual.

Here the 7 minute wait for K9 to arrive after business of stop was concluded was ruled unlawful extension.

The Court states no “*de minimis*” exception exists so any delay that is a deviation from the purpose of the stop is unlawful.

Rodriguez v. United States, USSC (2015)

The initial deputy (#1) who made stop will not be found to have prolonged the stop, so long as he or she continues to pursue and does not abandon the original purpose of the stop.

So Deputy #1 has to address the traffic violation, run information on driver (and passengers) and/or address safety concerns with vehicle or with people involved in order to not delay.

Rodriguez v. United States, USSC (2015)

Two Versions of a T-Stop with K9

Option 1: NOT EXTENDING STOP....

K9 and K9 deputy can do free air sniff of vehicle as long as purpose of stop not abandoned and stop not extended.



Rodriguez v. United States, USSC (2015)

Option 2: DEPUTY #1 develops R.A.S. then ... detention and investigation take as long as needed till R.A.S. dissipates.



State v. Linze

(Idaho Supreme Court, 2016)

Idaho Supreme Court rules the deputy's authority for seizure during t-stop ends when tasks tied to purpose of t-stop “are or reasonably should have been completed.”

And when there is no R.A.S., then the Deputy #1 cannot participate in anything unrelated to the t-stop.

State v. Behrens

(4th Judicial District, 2017)

Officer deviated from purpose of stop and writing of citation for **30 seconds** to talk to the K9 Handler when he arrived about safety and then acted as cover officer during sniff.

Any time we abandon stop = unconstitutional delay.

If a K9 sniff extends the stop when an officer does not have R.A.S., then the 4th Amendment is implicated and it is an unlawful seizure.

State v. Hansen

(4th Judicial District, 2017)

Officer asks driver to get out of vehicle for the K9 sniff with no R.A.S.

While Pennsylvania v. Mimms allows the officer to control driver's movements, if driver is not being removed for purposes of the traffic violation, then this is also an unlawful extension.

State v. Riley

(Idaho Supreme Court, Jan 2022)

- District court used officer's body camera to build a timeline of the case and found that at the time of the K9 alert, the stop should have already been completed.
- Literally, found the dog alerted 40 seconds before the citation was completed, but that there was at least 48 seconds before the citation was completed that Deputy #1 spent not on the purpose of the stop.
- The Idaho Supreme Court then re-does the math, again using the videos and their time stamps and finds that the two possible extensions could not have lasted more than 28 seconds so the K9 alert is not made when there was an extension by a matter of seconds.

"Although the conversations temporarily deviated from the original purpose of the stop, these 28-second detours did not extend the duration of the stop beyond the time when reasonable suspicion of a new crime arose."

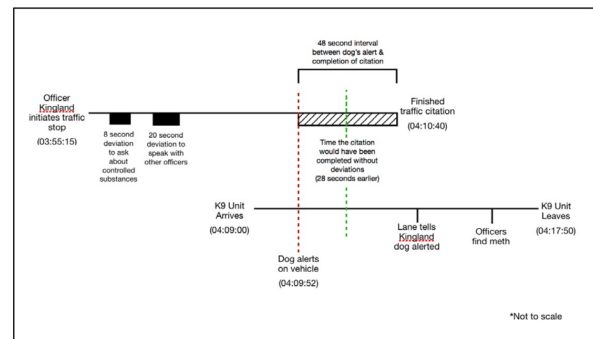


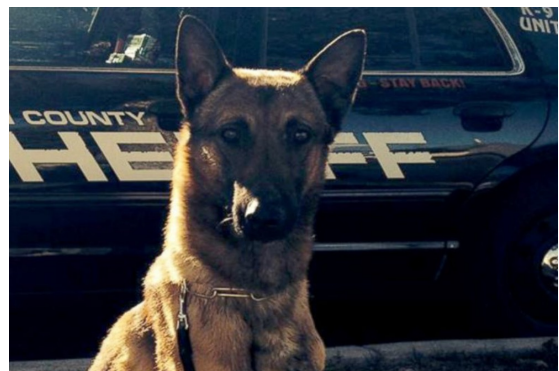
Figure 1. Timelines of the stop.

State v. Riley

(Idaho Supreme Court, Jan 2022)

"Neither deviation, individually or combined, prolonged the actual length of Riley's stop because the dog alerted before the traffic stop was completed regardless of whether the detours occurred. Thus, our standard under *Rodriguez* remains satisfied—the deviations did not "prolong" or "add time" to the overall duration of the traffic stop. Therefore, we reverse the district court's order granting Riley's motion to suppress."

"K9 Trespassing"???



State v. Randall (Idaho Supreme Court 2021)

Randall was stopped by ISP for a traffic violation. During the initial interaction, the officer suspected Randall was involved in drug trafficking. Randall consented to a drug dog sniffing the exterior of the vehicle. The dog moved towards the open driver's window and leapt into the car through it. The dog's back legs were caught outside of the vehicle, so the officer gave it a boost into the vehicle. The officer testified that while in the vehicle, the dog moved between the front and back seats and alerted to the presence of illegal drugs. Once the dog leapt out of the vehicle, the officer directed the dog to sniff around the vehicle. During this sniff, the dog leapt back into the vehicle through the window. Once the dog reemerged from the vehicle, the officer redeployed the dog to the trunk. After the sniff, the officer conducted a warrantless search of the vehicle, finding sixty-five (65) pounds of marijuana in the trunk. Randall was arrested for trafficking marijuana.

QUESTION: Did the dog's entry into the vehicle constitute a search under the Fourth Amendment?

Answer: Yes. A trespass for the purpose of obtaining information is a search under the Fourth Amendment. While Randall consented to an exterior sniff, he did not authorize entry of his car.

"We recognize that, unlike GPS devices, drug dogs have volition and an intrusion by a drug dog may not be at the specific direction of officers. However, we will not regard drug dogs as highly trained tools of law enforcement when their behavior is consistent with the limitations of the Fourth Amendment, and then regard them as mere dogs when their behavior runs afoul of it."

When a police K9 enters a vehicle, either by hopping into the vehicle without consent, a warrant, or under an exception to the warrant requirement, this constitutes an unreasonable search under the Fourth Amendment.

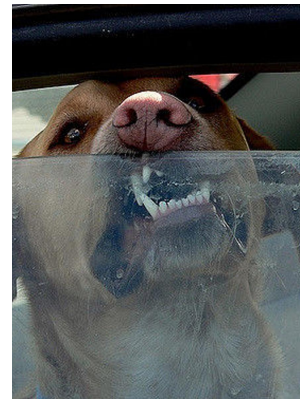
State v. Howard (Idaho Supreme Court, Oct 2021)

Police officers stopped Howard for a traffic violation and arrested him after discovering an outstanding warrant for his arrest. The officers brought a drug-sniffing dog to sniff the exterior of the vehicle. During the dog's sniff of the vehicle, the dog momentarily stuck its nose through an open window, after which it alerted to the presence of drugs, and a search of the vehicle revealed meth, heroin, and drug paraphernalia.

If a drug-sniffing dog's nose enters an open window of a vehicle while sniffing the exterior, does that constitute an unreasonable search under the Fourth Amendment?

HOLDING: When a drug dog intrudes into the interior space of a car during a drug sniff, without express or implied consent to do so, a search has occurred under the Fourth Amendment.

When using a drug-sniffing K9 to sniff the vehicle exterior, the dog's nose must remain outside of the vehicle, even if windows are open. Otherwise, the sniff escalates to an unreasonable search, requiring either consent, a warrant, or an exception to the warrant requirement.



State v. Ricks

(Idaho Court of Appeals, Feb 2023)

Deputy Orcutt and his drug dog arrived at the scene and began an exterior drug-detection sniff of Ricks' vehicle. During the sniff, the dog jumped on the rear-passenger door, jumped on the front-passenger door, and then inserted his nose into the open front-passenger window. After entering the vehicle, the dog gave a final alert when he "sat and began to stare at the window and then back at Deputy Orcutt.

Ricks argued the entry into the window based on *Randall* and *Howard* cases meant that the dog violated his 4th Amendment protection to the interior smell of the car and that since dog's final alert was after sticking nose through window, the ruling has to be same as Howard.

State v. Ricks

(Idaho Court of Appeals, Feb 2023)

The Court ruled these cases come down to facts and then testimony by the drug dog handler.

Here Deputy Orcutt made it clear that his dog had given him an indication that drugs were present before sticking his nose into the car... or what we call sourcing the odor. That therefore is probable cause for the automobile exception.

"Like courts in other jurisdictions, we conclude a dog's signaling behavior of a general alert--such as the dog's breathing, posture, body movements, and verbal responses--can constitute probable cause."

State v. Dorff

(Idaho Supreme Court, Nov 2022)

FACTS: Deputy #1 initiates t-stop for failure to maintain lane. Two men in vehicle: David (driver) and Pritchett (passenger). David has no DL or insurance. While Deputy #1 is speaking with David, K-9 deputy arrives. K-9 circles vehicle twice. The first time K-9 directed his nose close to the vehicle's seams but never touches the vehicle; he does enter the wheel well and the under-carriage areas with his snout. On the second pass, the K-9 touches vehicle exterior surface 3 times with his paws:

1. on the rear passenger side of the vehicle (briefly as he jumped up);
2. on the front passenger side of the vehicle (again, briefly as he jumped up); and
3. on the front driver side of the vehicle—this time planting his front paws to stand up on the door and window as he sniffed the vehicle's upper seams.

The K-9 deputy saw the K-9 alert when he stood up and put his front paws on the front driver side door and window. Following the alert, the deputies searched the vehicle and found methamphetamine.

A “search” occurs when a K9 trespasses against the exterior of a vehicle during a “free air” sniff if its physical contact with the vehicle amounts to “intermeddling” at common law. The K9 intermeddled with Dorff’s vehicle when it jumped onto the driver side door and window, planted two of its paws, and sniffed the vehicle’s upper seams. Accordingly, law enforcement conducted a warrantless and unlawful “search” of Dorff’s vehicle.



Takeaway:

LE trespasses by allowing K9 to touch exterior of the vehicle, but a free-air sniff of vehicle exterior is constitutional and not a search.

Practice Tips Going Forward

What Deputy #1 **must** do:

- Complete stop as normal as routine to possible.
- Develop a routine for your stops.
- Never deviate from purpose of stop.

What Deputy #1 **can** do:

- Request K9 before you make t-stop.
- Requests for backup/communication to others can happen while driver is doing something.
- Identify when you develop R.A.S. and thus transform from t-stop to investigation.

What K9 Deputy **must** do:

- Be in charge of K9's actions and call off sniffs when deputies fail to follow the protocols.
- Not let K9 breach the sanctity of the vehicle before alerting to an odor.
- Not let K9 physically touch vehicle prior to alert.



Terry R. Darden
Derden Consulting, Chtd.
 208-577-8240
www.derdenconsulting.com
terry@derdenconsulting.com

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