

Recent Case Report

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People v. Stillwell

(2011) __ Cal.App.4th __ [2011 WL 3035109]

Issues

(1) Did POST certification establish the reliability of a drug detecting dog (K9)? (2) Does an alert by a K9 establish probable cause to search? (3) Did a K9 conduct an unconstitutional “search” when he sniffed inside the bed of a pickup truck?

Facts

At about 11 P.M., a reserve police officer in Marysville, Matthew Minton, stopped a pickup truck because the truck’s license plate was obscured and the license plate light was out. There were two people in the truck: the driver was Robin Briggs; the passenger was Darla Stillwell. Having observed signs that Briggs was under the influence of drugs, Minton radioed for assistance from Officer Christopher Miller who had more experience in such matters. Officer Miller and his K9 Tommy arrived about two minutes later. In response to questioning by Officer Minton, Briggs said he had taken methadone earlier that day, at which point Officer Minton asked Briggs if he would consent to a search of his truck. He refused.

Officer Miller then walked Tommy around the truck and, when they reached the truck’s bed, Tommy “stood up on his hind legs with his front paws on the side of the truck and sniffed over the bed of the pickup” where a backpack was located. At that point Tommy sat and stared in the direction of the backpack, a signal to Officer Miller that he had detected drugs inside. Officer Miller then opened the backpack and found several items that appeared to be parts of a methamphetamine lab.

After the defendants were arrested, officers with the Yuba-Sutter Narcotics Enforcement Team obtained a warrant to search their home and, in the course of the search, they found more evidence of methamphetamine production. When the defendants’ motion to suppress the evidence was denied, they pled no contest to several charges related to possession and trafficking in drugs.

Discussion

Briggs and Stillwell argued that their motion to suppress the evidence should have been granted for the following reasons. The court disagreed.

TOMMY’S RELIABILITY: The defendants contended that prosecutors failed to prove that Tommy was competent in detecting illegal drugs. Specifically, they asserted that the competence of a drug detecting dog depends on his success rate, and that prosecutors presented no evidence on this issue. The court pointed out, however, that a dog’s reliability may be established through proof of his POST certification which “involves the hiding of different types of drugs in various weights in vehicles and buildings. To obtain certification, the dog must locate all of the required odors in both environments.” Having determined that “Tommy has been certified every time he has been tested” and that Tommy “was up to date on his certifications” at the time of the search, the court ruled that prosecutors had established Tommy’s reliability.

PROBABLE CAUSE BASED ON DOG'S ALERT: Next, the defendants argued that an alert by a certified drug detecting dog cannot, in and of itself, establish probable cause to believe there are drugs in the place or thing to which he alerted. But the court summarily rejected this argument, pointing out that it is settled law that such an alert does, in fact, provide probable to search.¹

The question, then, was whether Tommy had alerted to the backpack. Here, the court pointed out that "Officer Miller is trained to read Tommy, watch his behavior, how he reacts. When Tommy is sniffing the air around a vehicle, Officer Miller watches for any change in Tommy's behavior, such as a deviation from his standard high/low search pattern or the use of a 'cone pattern' to work back to the source of the odor. . . . When Tommy locates the source of an odor, his 'passive alert' is to sit and stare at the location where he found the controlled substance."

The court then concluded that there was considerable proof that Tommy had signaled to Officer Miller that there were drugs in the backpack. Said the court:

At the rear tire on the driver's side, Officer Miller noticed a change in Tommy's behavior. First, Tommy "snapped" back from circling around the truck and redirected his search by doubling back. Officer Miller kept walking around the truck, because he did not want to influence Tommy's decision to redirect the search. Tommy next used a "scent cone" search pattern, working right to left in an attempt to find the odor. Tommy then stood up on his hind legs with his front paws on the side of the truck and sniffed over the bed of the pickup. After sniffing the air in that area, Tommy immediately dropped down into his "sit/stare" alert.

Based on this testimony, the court ruled that Tommy's actions constituted an alert which, in turn, established probable cause to believe there were drugs inside the backpack.

TOMMY'S ENTRY INTO THE TRUCK BED: Finally, the defendants claimed that Tommy did two things that exceeded the permissible scope of a search for drugs. First, just before alerting to the drug bed, he "stood up on his hind legs with his front paws on the side of the truck." But such a "minimal and incidental contact," said the court, "did not amount to a constitutionally cognizable infringement."² Second, the defendants argued that Tommy conducted an unconstitutional search when he stuck his nose "over and inside the bed of the truck." But the court ruled that "Tommy's instinctive actions of following the odor from the ground up to the source (even though these actions may have caused him to sniff in the bed of the truck) did not violate the Fourth Amendment."³

Consequently, the court ruled that the trial court properly denied the defendant's motion to suppress. POV

¹ See *Illinois v. Caballes* (2005) 543 U.S. 405, 410; *Indianapolis v. Edmond* (2000) 531 US 32, 40; *Estes v. Rowland* (1993) 14 CA4 508, 529 ["[O]nce a dog alerts to the presence of narcotics the search [becomes] a probable cause search"].

² ALSO SEE *U.S. v. Olivera-Mendez* (8th Cir. 2007) 484 F.3d 505.

³ ALSO SEE *People v. Amick* (1973) 36 Cal.App.3d 140.