TABLE OF CONTENTS

TABLE OF CONTENTS (cont'd)

ALABAMA

THE CONDUCT OF TRAILING DOGS IN ENTERING A HOUSE NOT OWNED BY THE DEFENDANT WAS SUFFICIENT TO REQUIRE THE ADMISSION OF EVIDENCE ESTABLISHING THE MOTIVE OF THE OWNER OF THAT HOUSE TO COMMIT THE CRIME WITH WHICH THE DEFENDANT WAS CHARGED.

McDonald v. State – Feb. 10, 1910 [**165 Ala. 85**].
Facts: While tracking an arson suspect, trailing dogs entered a house not owned by the Defendant. Subsequently, the dogs continued on the suspect's trail to the house of the Defendant. At trial, evidence was elicited indicating that the owner of the first house that the dogs entered possessed a motive to commit the arson.
Held: Where there is evidence tending to connect another with the commission of the crime with which the prisoner is charged, and the evidence adduced against the prisoner is circumstantial, the defendant may adduce any legal evidence tending to fix guilt of the offense on another and to show motive on that other's part to commit the offense. There can be no doubt that, had the owner of the first house that the dogs entered been on trial for this crime, the conduct of these dogs in trailing into his house would have been evidence for the jury of his guilt of the arson.

THERE WAS NO ERROR IN THE TRIAL COURT'S SUSTAINING OF THE OBJECTION TO THE DEFENDANT'S QUESTION OF A DOG HANDLER ON CROSS-EXAMINATION WHERE THE COURT INSTRUCTED THE DEFENDANT THAT HE WOULD ALLOW HIM TO ASK WITNESS ANYTHING HE KNEW ABOUT THE DOGS, IF HE WAS THERE WITH THEM, ETC.

Jones v. State – Jan. 30, 1917 [16 Ala. App. 7].
Facts: Bloodhounds trailed the track of a man from the scene of the killing to the home of the defendant. At trial, the handler of the bloodhounds testified that he was in the bloodhound business, and that he kept trained dogs to hunt human beings; that he went with these dogs to where victim was; that the dogs, after having circled the hill from where the victim lay, took up a track 8 or 10 feet from the dead man, and followed it 3 1/2 miles through the mountains into the house where the defendant lived; that in following the trail with the dogs he saw the track of one man all the way in soft places; that he measured the track, and that afterwards he measured the shoe of the defendant, and the measurement was the same, etc. On cross-examination of this witness, the State's objection to the following question was sustained: "Did you ever trail a man down by these dogs in this town or this county, or any other?"
Held: It is a well-settled principle of law that, when dog tracking evidence is admitted, a defendant should have the fullest opportunity, by cross-examination, to inquire into the breeding and training of the dogs, and into all circumstances and details of the hunt. The sustaining of the objection to the question on cross-examination might have been error had

not the court instructed the defendant that he would allow him to ask witness anything he knew about the dogs, if he was there with them, etc. Under this permission from the court, the defendant was accorded all the rights contemplated by the principle of law above mentioned; therefore there was no error in the court's having sustained objection to the question. The question as propounded was faulty in itself, for the facts or circumstances so sought to be brought out must be such as would have a proximate tendency to shed light upon the conduct of the dogs on the occasion which is the subject of investigation.

THE TRIAL COURT ERRED IN PERMITTING A DOG HANDLER TO TESTIFY AS TO HIS OPINION REGARDING WHY TRACKING BLOODHOUNDS LEFT THE TRAIL OF A SUSPECT.

Aaron v. State – Jul. 14, 1960 [**271 Ala. 70**].
Facts: Bloodhounds tracked a rape suspect. The dogs quit "trailing" or "tracking" at a clearing in a wooded area adjacent to a graveled country road. On direct examination, the dog handler was asked "Now, what significance did you attach to the fact your dogs stopped [at the clearing], what conclusions do you draw from that?" The handler answered "Well, the man got off the ground there, he rode off or something"
Held: The trial court erred in permitting a dog handler to testify as to his opinion regarding why tracking bloodhounds left the trail of a suspect. The cause moving the dogs to abandon the trail was a matter of deduction from all the facts and circumstances in evidence, carefully weighed and considered, and was not a fact to which a witness can testify. Witnesses are not allowed to reason to a jury. There is no basis for a distinction between expert witnesses and others which would take even experts out of the general rule against drawing out reasons which conduce to an act or omission to which they depose.

FOR DOG-TRACKING EVIDENCE TO BE ADMISSIBLE, THE STATE MUST ESTABLISH THE FOLLOWING:
(1) THE TRAINING AND RELIABILITY OF THE DOG,
(2) THE QUALIFICATIONS OF THE PERSON HANDLING THE DOG, AND
(3) THE CIRCUMSTANCES SURROUNDING THE TRACKING BY THE DOG.

Gavin v. State – Sep. 26, 2003 [**891 So. 2d 907**].
Facts: Tracking dogs were used to track the Defendant. To lay the foundation for the admission of dog-tracking evidence at trial, the dog handler testified that he had been a dog handler for the Limestone Correctional Facility for 18 years. He said that his primary responsibility as a dog handler was to "train tracking dogs for the primary purpose of tracking escaped inmates, and also to assist any outside law enforcement agency when they have a felony suspect that they need in the woods or need help apprehending, or to assist for a lost child." The handler testified that for tracking he uses beagles trained "to run the first human track they encounter." The dog handler testified that when he first arrived at the scene on the night of March 6, 1998, he immediately began gathering information

about the suspect and the circumstances of the suspect's flight. He ascertained that the suspect had fled into the woods after firing at Investigator Smith, and that Investigator Smith had chased him for "about 20 yards" but had stopped short of the woods. The handler stated that he then requested that Investigator Smith show him the exact spot he stopped chasing the suspect so that his dog would not track Investigator Smith's scent instead of the suspect's scent. Once he determined the location to begin the tracking, he got his dog out of his vehicle, carried the dog to the location, and placed the dog on the ground. According to the dog handler, in "less than five seconds, the dog picked the track up" and led him into the woods. The handler said that the dog was barking while tracking, which, he said, is an "indication telling me the dog was running the man." After approximately 10 minutes of tracking in the woods, the handler testified, he and the dog came upon a creek, at which point the dog picked his head up off the ground, which indicates that the dog "can smell the suspect" in the vicinity. The handler testified that he then waded into the creek, at which point he saw the Defendant standing in the creek hiding behind an overhanging bush. On cross-examination, the handler testified that he had been working with the beagle he had used to track the Defendant for five years.
Held: In this case, the State laid a sufficient foundation for admission of the dog-tracking evidence. The dog handler testified that he had 18 years' experience in training and handling dogs, that his dogs were trained to track human beings, and that he had been using the dog he used to track the Defendant for five years. Although the handler did not testify to the dog's previous record in tracking human beings, such as how many times the dog had been used and the success rate of the dog, the absence of testimony regarding the dog's "track record" goes to the weight of the evidence, not its admissibility. In addition, the handler testified to the circumstances regarding the tracking of the Defendant from the location that Investigator Smith had stopped his pursuit.

THE RESULTS OF DOG-TRACKING CAN PROVIDE PROBABLE CAUSE TO ARREST. ISSUES OF PREDICATE AND WEIGHT OF THE EVIDENCE ARE TRIAL ISSUES.

State v. Montgomery – Mar. 3, 2006 [**968 So. 2d 543**].
Facts: Police dogs tracked Defendant from shoes and socks found at the scene of a burglary. Police handcuffed Defendant, advised Defendant of his Miranda rights, questioned Defendant regarding the burglary, and took Defendant to the police station. At the police station, police again advised the Defendant of his Miranda rights. Defendant confessed to being involved in the burglary. Police arrested the Defendant.
At the suppression hearing, the arresting officer testified that at the time the Defendant was handcuffed and taken to the jail, the only evidence the officer had indicating that the Defendant had been involved in the burglary was that, after approximately four or five hours of tracking, the dogs found the Defendant. Additionally, the officer confirmed that the only circumstance connecting the Defendant to the shoes and sock found at the scene of the burglary was the owner of the store that had been burglarized's statement that the suspects had run away from the store in the direction of the area in which the shoes and sock were found.

Held: Probable cause exists if facts and circumstances known to the arresting officer are sufficient to warrant a person of reasonable caution to believe that the suspect has committed a crime. In the instant case the facts and circumstances within the arresting officer's knowledge were that two suspects had left the scene of the burglary on foot and had not returned to what appeared to be the getaway vehicle. Trained dogs had been put on the scent of these individuals from clothing apparently left at the crime scene. The dogs tracked the scent for several hours to the Defendant, who was traveling with a companion on the roadside at approximately 5:00 a.m. These circumstances were sufficient to warrant a prudent person, or one of reasonable caution, to believe that the Defendant had committed the burglary.
The court also noted that "an alert by a trained drug-sniffing dog provides probable cause to search without a warrant." Additionally, "in the context of arrest *pursuant to a warrant*, an affidavit asserting that a trained dog tracked a suspect or alerted to the presence of illegal drugs is sufficient probable cause to obtain a warrant."

***GAVIN V. STATE*, 891 So. 2d 907, 971 (Ala. Crim. App. 2003) STATES THE FOUNDATIONAL REQUIREMENTS FOR THE ADMISSION OF DOG-TRACKING TESTIMONY.**

Vanpelt v. State – Dec. 18, 2009 [**2009 Ala. Crim. App. LEXIS 166**] (SUBJECT TO FORMAL REVISION BEFORE PUBLICATION IN THE ADVANCE SHEETS OF THE SOUTHERN REPORTER).
Facts: To lay the foundation for the admission of dog-tracking testimony, the search coordinator for Huntsville Emergency Medical Services, Inc. search-dog unit testified that he has been coordinating dog searches with the group for 15 years and has done a great deal of study regarding dog searches. The coordinator explained that he is familiar with the dogs that performed the search in this case and that he helped train those dogs. The coordinator described in detail the process used to train the dogs and the specialized training the dogs received. He further stated that all four search dogs were certified and "considered mission ready in both live and cadaver." Based on this foundation, the trial court permitted the coordinator to testify that the dogs had a very high level of interest in the backseat and trunk of victim's vehicle and a slight indication to a corner on the porch of the defendant's mobile home. On appeal, Defendant argued that the State failed to lay the proper foundation for the admission of this dog-tracking evidence.
Held: Dog-tracking evidence is admissible if "the State establishes 'the training and reliability of the dog, the qualifications of the person handling the dog, and the circumstances surrounding the tracking by the dog.'" *Gavin v. State*, 891 So. 2d 907, 971 (Ala. Crim. App. 2003). "[T]he foundational evidence need not be overwhelming or specific, but must be sufficient to indicate reliability of the evidence." *Id.* The State established a proper foundation for the admission of the dog-tracking evidence and presented sufficient evidence to indicate that the evidence was reliable.

Aaron v. State, 271 Ala. 70 (Ala. 1960)
Holding: The trial court erred in permitting a dog handler to testify as to his opinion regarding why tracking bloodhounds left the trail of a suspect.

Facts:

- Bloodhounds tracked a rape suspect. The dogs quit "trailing" or "tracking" at a clearing in a wooded area adjacent to a graveled country road.
- On direct examination, the dog handler was asked “Now, what significance did you attach to the fact your dogs stopped [at the clearing], what conclusions do you draw from that?” The handler answered “Well, the man got off the ground there, he rode off or something”

Reasoning: The cause moving the dogs to abandon the trail was a matter of deduction from all the facts and circumstances in evidence, carefully weighed and considered, and was not a fact to which a witness can testify. Witnesses are not allowed to reason to a jury. There is no basis for a distinction between expert witnesses and others which would take even experts out of the general rule against drawing out reasons which conduce to an act or omission to which they depose.

Burks v. State, 240 Ala. 587 (Ala. 1941).

Holding: Witness’s testimony that one of the bloodhounds had been trained and used by the witness for two years, both dogs trail human beings, and witness had ten years' experience in handling bloodhounds was sufficient prima facie predicate as to the training and experience of the dogs to trail human beings.

Facts:

- Blood hounds followed the defendant’s tracks to his residence.
- At trial, a witness testified that one of the blood hounds had been trained and used by the witness for two years, both dogs trail human beings, and he had ten years' experience in handling blood hounds.

Reasoning: “There was a sufficient prima facie predicate as to the training and experience of the dogs.”

Orr v. State, 236 Ala. 462 (Ala. 1938).

Holding: “There was sufficient evidence to show that the dogs that were put upon the trail at or near the spot of the shooting, and where the slayer was seen by one of the witnesses, had been so well trained and experienced in tracking human beings to lay a proper predicate for proof of their conduct in tracing the suspect and which evidence, as well as the probative force of same, was properly submitted to the jury for the purpose of locating and identifying the person who shot White.”

Loper v. State, 205 Ala. 216 (Ala. 1920).

Holding: Training and qualifications of trailing dog admissible to show that trailing dog was trained to follow human tracks.

Facts:

- Trial court held as competent and sufficient to establish dog was trained to follow human tracks the evidence of the sheriff and the witness Brown as to the training and qualifications of the dog used to trail the defendant.

Gallant v. State, 167 Ala. 60 (Ala. 1910).
Holding: "It is a condition precedent to the admission of evidence of the acts of dogs in trailing human beings that the dogs in question were trained to take the scent of human beings." To establish this condition precedent, a witness is permitted to compare the trailing dogs in the relevant case with other dogs that that witness has seen perform trailing.

Facts:
- Trial court admitted dog trailing evidence. Additionally, trial court admitted witness testimony comparing the dogs used in this case with other trailing dogs that the witness had seen.

Reasoning: The evidence in the case showing the qualifications of the dogs in question was not full. However, trail court did not err in admitting the evidence. Also, trial court did not err in allowing a witness to compare the performance of the dogs in question with the performance of other dogs. "The statement of the witness in this connection went to show his qualification from observation to have and entertain an opinion as to when a dog was trained to track human beings, and did not involve a comparison of the [trailing] dogs [in this case] and others, as was the case on *Simpson's Trial*, 111 Ala. 6, 20 So. 572."

McDonald v. State, 165 Ala. 85 (Ala. 1910).
Holding: The conduct of trailing dogs in entering a house not owned by the Defendant was sufficient to require the admission of evidence establishing the motive of the owner of that house to commit the crime with which the Defendant was charged.

Facts:
- While tracking an arson suspect, trailing dogs entered a house not owned by the Defendant. Subsequently, the dogs continued on the suspect's trail to the house of the Defendant.
- At trial, evidence was elicited indicating that the owner of the first house that the dogs entered possessed a motive to commit the arson.

Reasoning: One accused of crime may show his own innocence by proof of the guilt of another; but the evidence of the guilt of the other must relate to the res gestaee of the event--the perpetration of some deed entering into the crime itself. Where there is evidence tending to connect another with the commission of the crime with which the prisoner is charged, and the evidence adduced against the prisoner is circumstantial, the defendant may adduce any legal evidence tending to fix guilt of the offense on another and to show motive on that other's part to commit the offense.
There can be no doubt that, had the owner of the first house that the dogs entered been on trial for this crime, the conduct of these dogs in trailing into his house would have been evidence for the jury of his guilt of the arson.

Hargrove v. State, 147 Ala. 97 (Ala. 1906).
Holding: The testimony of the owner of bloodhound that tracked the Defendant regarding the nature and training of the bloodhounds was competent and admissible.

Facts:
- Two blood hounds tracked the Defendant.
- The trial court overruled the defendant's motion to exclude the owner of the blood hounds' testimony that he was in the business of "running" bloodhounds, the two dogs were trained to trail human beings, one of the dogs had four years of training, the other dog was two years old and had experience also, and the dogs had trailed 60 or 70 persons in the last four years.

Richardson v. State, 145 Ala. 46 (Ala. 1906).
Holding: A dog handler cannot testify as to his opinion of why tracking dogs left the trail of a suspect.

Facts:
- Dogs tracked the Defendant.
- At trial the dogs' handler testified that he had handled dogs all his life, he knew the dogs he had with him would track human beings, and that they had previously trailed a track nine hours old. The handler also provided details about the tracking of the defendant.
- The trial court overruled the defendant's motion to exclude the above dog tracking evidence.
- On cross examination, the defendant's counsel proved that the dogs left the trail in the woods and went out into a field, that the witness called them back and put them on again on the track, and that the trail was several times lost.
- The solicitor asked the witness on redirect examination, "Why did the dogs quit and leave the trail and go out into the field?" The defendant objected to this question on the ground, among others, that it called for the conclusion of the witness. The trial judge sustained the objection, but only conditionally; remarking "that the witness could not testify as to why they did so, unless the witness was thoroughly acquainted with their habits and training." Thereupon the witness answered: "From what I know of these dogs, I would say that the reason the dogs quit the trail and went out into the field was because there was a body of men out in the front, and the dogs expected to find the person they had been trailing."

Reasoning: Under proper conditions it is permissible to admit evidence that dogs trained to track human beings were put on the trail at the scene of the crime and that after taking the trail they went to a location where Defendant was after the crime. Where a party wishes to introduce this evidence, it is proper to allow a witness, familiar with the dogs and accustomed to handling them, to testify that they are skilled in the trailing or tracking of men, and within what time, after the making of tracks, the dogs took up and followed the trail. The Defendant should have a full opportunity to inquire into the breeding and testing

of the dogs, and into any circumstances that could show either the dogs are unreliable or unskilled, or that the dogs acted on the trail in a manner that deprives the evidence of incriminating value.
The trial court did not err in declining to exclude the dog tracking evidence elicited on direct examination. **However**, the court should have excluded the handler's answer to the question on redirect on the ground that it was an opinion. The handler could not know why the dogs went into the field. It was a matter of inference only. The cause moving the dogs to abandon the trail and go into the field was a matter of deduction from all the facts and circumstances in evidence, carefully weighed and considered, and was not a fact to which a witness could testify. Witnesses are not allowed to reason to a jury. They must speak to and of facts. Like intention or motive or belief, to be inferred from facts, the jury must deduce the conclusion, unaided by the opinions, reasoning, or inferences of witnesses.

Simpson v. State, 111 Ala. 6 (Ala. 1895).
Holding: Trial court properly excluded from the jury the evidence of "two blood hounds, of the same breed of those employed to track the supposed criminal in this case and trained by the same man," that left the trail of a human being to pursue a sheep.

Facts:
- Defendant was trailed by bloodhounds a short time after a barn burned.
- At trial, the owner of the blood hounds testified that he had trained them to trail human beings, and that they would not leave a track of a person to follow another track.
- During cross-examination, defense counsel questioned the bloodhound owner about two other bloodhounds, which were trained by him and of the same blood or stock as the ones used in the case. The two bloodhounds apparently had left the trail of a human being to pursue a sheep during a different investigation. The trial court sustained an objection to the question.
- Defendant was convicted of arson in the third degree.

Reasoning: The test by comparison was not sufficiently certain to determine the reliability of the blood hounds employed in the case by reference to the qualities of the other two blood hounds.

Hodge v. State, 98 Ala. 10 (Ala. 1893).
Holding: Testimony regarding dog tracking of human being admissible, in connection with the other evidence, as a circumstance connecting the defendant with the crime.

Facts:
- Trial witness testified that a dog trained to follow human tracks was used to track the defendant to his home.
- Defendant's counsel objected to the evidence given by the witness. Trial court overruled the objection and allowed the evidence to go to the jury.

Reasoning: "It is common knowledge that dogs may be trained to follow the tracks of a human being with considerable certainty and accuracy."

Vanpelt v. State, 2009 Ala. Crim. App. LEXIS 166 (Ala. Crim. App. 2009) (SUBJECT TO FORMAL REVISION BEFORE PUBLICATION IN THE ADVANCE SHEETS OF THE SOUTHERN REPORTER)
Holding: Gavin states the foundational requirements for the admission of dog-tracking testimony.

Facts:

- To lay the foundation for the admission of dog-tracking testimony, the search coordinator for Huntsville Emergency Medical Services, Inc. search-dog unit testified that he has been coordinating dog searches with the group for 15 years and has done a great deal of study regarding dog searches. The coordinator explained that he is familiar with the dogs that performed the search in this case and that he helped train those dogs. The coordinator described in detail the process used to train the dogs and the specialized training the dogs received. He further stated that all four search dogs were certified and "considered mission ready in both live and cadaver."
- Based on this foundation, the trial court permitted the coordinator to testify that the dogs had a very high level of interest in the backseat and trunk of victim's vehicle and a slight indication to a corner on the porch of the defendant's mobile home.
- On appeal, Defendant argued that the State failed to lay the proper foundation for the admission of this dog-tracking evidence.

Reasoning: Because Defendant neither objected when this evidence was introduced at trial nor did he assert any of the foundation arguments he raised in this appeal; the appellate court reviewed this issue for plain error only. In Alabama, "[t]he admissibility of dog-tracking evidence upon a proper predicate has been recognized . . . for over a century." Dog-tracking evidence is admissible if "the State establishes 'the training and reliability of the dog, the qualifications of the person handling the dog, and the circumstances surrounding the tracking by the dog.'" *Gavin v. State*, 891 So. 2d 907, 971 (Ala. Crim. App. 2003). "[T]he foundational evidence need not be overwhelming or specific, but must be sufficient to indicate reliability of the evidence." *Id.* The State established a proper foundation for the admission of the dog-tracking evidence and presented sufficient evidence to indicate that the evidence was reliable.

State v. Montgomery, 968 So. 2d 543 (Ala. Crim. App. 2006)
Holding: "[T]he results of dog-tracking can provide probable cause to arrest. Issues of predicate and weight of the evidence are trial issues."

Facts:

- Police dogs tracked Defendant from shoes and socks found at the scene of a burglary. Police handcuffed Defendant, advised Defendant of his Miranda rights, questioned Defendant regarding the burglary, and took Defendant to the police station.

- At the police station, police again advised the Defendant of his Miranda rights. Defendant confessed to being involved in the burglary.
- Police arrested the Defendant.
- At the suppression hearing, the arresting officer testified that at the time the Defendant was handcuffed and taken to the jail, the only evidence the officer had indicating that the Defendant had been involved in the burglary was that, after approximately four or five hours of tracking, the dogs found the Defendant. Additionally, the officer confirmed that the only circumstance connecting the Defendant to the shoes and sock found at the scene of the burglary was the owner of the store that had been burglarized's statement that the suspects had run away from the store in the direction of the area in which the shoes and sock were found.

Reasoning: Probable cause exists if facts and circumstances known to the arresting officer are sufficient to warrant a person of reasonable caution to believe that the suspect has committed a crime. In the instant case the facts and circumstances within the arresting officer's knowledge were that two suspects had left the scene of the burglary on foot and had not returned to what appeared to be the getaway vehicle. Trained dogs had been put on the scent of these individuals from clothing apparently left at the crime scene. The dogs tracked the scent for several hours to the Defendant, who was traveling with a companion on the roadside at approximately 5:00 a.m. These circumstances were sufficient to warrant a prudent person, or one of reasonable caution, to believe that the Defendant had committed the burglary.

The court also noted that "an alert by a trained drug-sniffing dog provides probable cause to search without a warrant." Additionally, "in the context of arrest *pursuant to a warrant*, an affidavit asserting that a trained dog tracked a suspect or alerted to the presence of illegal drugs is sufficient probable cause to obtain a warrant."

Gavin v. State, 891 So. 2d 907, 971 (Ala. Crim. App. 2003)

Holding: For dog-tracking evidence to be admissible, the State must establish the following:

(1) the training and reliability of the dog,
(2) the qualifications of the person handling the dog, and
(3) the circumstances surrounding the tracking by the dog.

The foundational evidence need not be overwhelming or specific, but must be sufficient to indicate reliability of the evidence.

In this case, the State laid a sufficient foundation for admission of the dog-tracking evidence

Facts:

- Tracking dogs were used to track the Defendant.
- To lay the foundation for the admission of dog-tracking evidence at trial, the dog handler testified that he had been a dog handler for the Limestone Correctional Facility for 18 years. He said that his primary responsibility as a dog handler was to "train tracking dogs for the primary purpose of tracking escaped inmates, and also to assist any outside law enforcement agency when they have a felony suspect that they need in the woods or need help apprehending, or to assist for a lost child."

The handler testified that for tracking he uses beagles trained “to run the first human track they encounter.”

- The dog handler testified that when he first arrived at the scene on the night of March 6, 1998, he immediately began gathering information about the suspect and the circumstances of the suspect's flight. He ascertained that the suspect had fled into the woods after firing at Investigator Smith, and that Investigator Smith had chased him for "about 20 yards" but had stopped short of the woods. The handler stated that he then requested that Investigator Smith show him the exact spot he stopped chasing the suspect so that his dog would not track Investigator Smith's scent instead of the suspect's scent. Once he determined the location to begin the tracking, he got his dog out of his vehicle, carried the dog to the location, and placed the dog on the ground. According to the dog handler, in "less than five seconds, the dog picked the track up" and led him into the woods. The handler said that the dog was barking while tracking, which, he said, is an "indication telling me the dog was running the man." After approximately 10 minutes of tracking in the woods, the handler testified, he and the dog came upon a creek, at which point the dog picked his head up off the ground, which indicates that the dog "can smell the suspect" in the vicinity. The handler testified that he then waded into the creek, at which point he saw the Defendant standing in the creek hiding behind an overhanging bush.
- On cross-examination, the handler testified that he had been working with the beagle he had used to track the Defendant for five years.

Reasoning: Because the Defendant did not object to the dog-tracking evidence at trial, the court reviewed his objection to the admission of that evidence only for plain error. “The admissibility of dog-tracking evidence upon a proper predicate has been recognized in Alabama for over a century…The majority of states also recognize the admissibility of dog-tracking evidence as long as the proper foundation is laid.”

In this case, the State laid a sufficient foundation for admission of the dog-tracking evidence. The dog handler testified that he had 18 years' experience in training and handling dogs, that his dogs were trained to track human beings, and that he had been using the dog he used to track the Defendant for five years. Although the handler did not testify to the dog's previous record in tracking human beings, such as how many times the dog had been used and the success rate of the dog, the absence of testimony regarding the dog's "track record" goes to the weight of the evidence, not its admissibility. In addition, the handler testified to the circumstances regarding the tracking of the Defendant from the location that Investigator Smith had stopped his pursuit.

Moore v. State, 26 Ala. App. 607 (Ala. Ct. App. 1935).

Holding: The trial court did not commit reversible error by admitting evidence that dogs were used to track the Defendant before the State established the condition precedent to the admission of that evidence where the State subsequently established that condition precedent.

Facts:

- During the trial, a state witness gave testimony about two hounds used in trying to locate the perpetrator of the offense charged and the action of the men in handling the dogs without first showing that the dogs were trained to follow human tracks. The trial court overruled the defendant's objection to the testimony.

Reasoning: The proper showings as to the dogs in question were made later in the trial. As a result, the appellate court held that the error in admitting the evidence had been cured.

Jones v. State, 16 Ala. App. 7 (Ala. Ct. App. 1917)

Holding: There was no error in the trial court's sustaining of the objection to the Defendant's question of a dog handler on cross-examination where the court instructed the Defendant that he would allow him to ask witness anything he knew about the dogs, if he was there with them, etc.

Facts:

- Bloodhounds trailed the track of a man from the scene of the killing to the home of the defendant.
- At trial, the handler of the bloodhounds testified that he was in the bloodhound business, and that he kept trained dogs to hunt human beings; that he went with these dogs to where victim was; that the dogs, after having circled the hill from where the victim lay, took up a track 8 or 10 feet from the dead man, and followed it 3 1/2 miles through the mountains into the house where the defendant lived; that in following the trail with the dogs he saw the track of one man all the way in soft places; that he measured the track, and that afterwards he measured the shoe of the defendant, and the measurement was the same, etc.
- On cross-examination of this witness, the State's objection to the following question was sustained: "Did you ever trail a man down by these dogs in this town or this county, or any other?"

Reasoning: It is a well-settled principle of law that, when dog tracking evidence is admitted, a defendant should have the fullest opportunity, by cross-examination, to inquire into the breeding and training of the dogs, and into all circumstances and details of the hunt. The sustaining of the objection to the question on cross-examination might have been error had not the court instructed the defendant that he would allow him to ask witness anything he knew about the dogs, if he was there with them, etc. Under this permission from the court, the defendant was accorded all the rights contemplated by the principle of law above mentioned; therefore there was no error in the court's having sustained objection to the question. The question as propounded was faulty in itself, for the facts or circumstances so sought to be brought out must be such as would have a proximate tendency to shed light upon the conduct of the dogs on the occasion which is the subject of investigation.

Allen v. State, 8 Ala. App. 228 (Ala. Ct. App. 1913).

Holding: Where a Defendant fails to object at trial to questions eliciting or seeking to elicit evidence of dog trailing in that case, the Defendant cannot later complain that that

evidence should be excluded because an insufficient predicate was laid for the admission of dog trailing evidence.

Facts:

- One day after a burglary, the Defendant's tracks from the crime scene were trailed by dogs for a distance of several miles, to places where he went after the commission of the burglary.
- At trial, state witnesses introduced the trailing as evidence through their responses to questions. The Defendant did not object to the questions that introduced the trailing evidence.
- Subsequently, the trial court overruled the Defendant's motion to exclude the trailing evidence. The Defendant argued that the proper predicate (i.e., training and qualifications of the dogs to trail the tracks of human beings) was not laid to render the trailing of the dogs admissible.

Reasoning: It is well settled that when testimony responsive to questions calling for it is allowed to go in without objections to the questions, the trial court cannot be found to have erred for overruling a subsequent motion to exclude it. Evidence that the dogs were trained or qualified to trail the tracks of human beings should have been made as a predicate for the introduction of the evidence of the trailing done by the dogs in this case. However, the Defendant is not in a position to complain of its not being made for the reason that he failed to object to the questions eliciting or seeking to elicit the evidence of the trailing.

Hadnot v. State, 3 Ala. App. 102 (Ala. Ct. App. 1912).

Holding: It is proper for a court to sustain an objection to a question which on its face indicates that it may elicit an answer referring to details of the behavior of the dogs on an occasion so separated in time from the one in question, or under such dissimilar conditions and surroundings, as not fairly to illustrate their traits or capacity as trailers at the time they were used to furnish evidence against the defendant.

Facts:

- A State witness testified about the dogs that trailed the Defendant.
- On his cross-examination, the witness was asked two questions: (1) If he remembered that he had a man charged with resisting arrest, a negro boy; and (2) if these dogs were ever known to quit the trail and hunt rabbits.

Reasoning: When evidence of the trailing of the Defendant in a criminal case by dogs trained to track human beings has been admitted against him, he should have the fullest opportunity by cross examination to inquire into the breeding and testing of the dogs, and into any facts or circumstances tending to show that, by reason of their unreliability, or of their lack of proper training, the incriminating value of the evidence was impaired. However, the facts or circumstances so sought to be brought out must be such as would have a proximate tendency to shed light upon the conduct of the dogs on the occasion which is the subject of investigation.

The answers to the questions asked of the witness on cross-examination did not have a logical tendency to prove that at the time of the hunt the dogs had not been properly trained to trail human beings or were unreliable for that purpose. The purpose of the

questions may have been to elicit evidence of the behavior of the dogs when they were immature and before they had been trained or tested. The fact that on some occasion long before the date of the one in question, and before the dogs had had any training, they quit the trail of a man or boy and hunted rabbits, could not reasonably tend to rebut evidence tending to prove that at the time they trailed the defendants they had been properly trained and tested and could be relied upon persistently to trail a person upon whose track they had been put.

ALASKA

No new cases found via shepardizing.

Wilkie v. State, 715 P.2d 1199 (Alaska Ct. App. 1986).
Holding: If (1) the experience and qualifications of the dog's handler; (2) the dog's experience, skill, training, and reputation as a tracker; and (3) the circumstances pertaining to the trailing itself have been adequately established, tracking dog evidence should be admissible.

Facts:

- A German Shepard police dog tracked Defendant from the crime scene to the counter at an international terminal.
- At trial, the German Shepard's handler testified about the dog's training and experience. The handler testified that the dog had been trained in Germany for 2 ½ years for tracking, obedience, and handler protection. He testified to personally working with the dog for six weeks in Connecticut, and testified that a part of that training was in tracking. The handler described his training with the dog and the theories regarding how a dog tracks. He testified that the dog had been used for tracking in actual cases and had tracked suspects. Additionally, the handler testified about the dog's ability to detect drugs and narrated 3 video tapes which showed the dog demonstrating his tracking abilities. The handler then explained the circumstances surrounding the dog's tracking of the Defendant on the morning that the victim was assaulted.
- The trial court gave an instruction which indicated that the evidence regarding the use of a tracking dog should be viewed with caution.

Reasoning: The large majority of jurisdictions appear to admit dog tracking evidence if a proper foundation has been established. The fact that dogs can track people seems to be adequately established and is admissible in a large majority of jurisdictions. To the extent there are questions about this kind of evidence, the parties to a particular case can rely on expert witnesses to aid the jury in determining the weight to give such testimony. We have confidence in the jury's ability to critically evaluate this kind of evidence and to give it proper weight.
The handler's testimony established a sufficient foundation to admit the evidence suggesting that the dog tracked the Defendant. It appears that there was sufficient evidence that the handler had the experience and the qualifications necessary to testify as an expert dog handler. There was sufficient evidence that the dog had the training and ability to track people. There was also sufficient evidence that the conditions for tracking on the day of the sexual assault were good. This was a sufficient foundation to admit the evidence that the dog apparently tracked the Defendant, and any alleged weakness goes to the weight of the evidence, not its admissibility.

ARIZONA

THE *FRYE* TEST IS NOT APPLICABLE TO EVIDENCE OF DOGTRACKING OR SCENTING. DOG TRACKING OR IDENTIFICATION EVIDENCE IS ADMISSIBLE UPON A PROPER FOUNDATIONAL SHOWING THAT THE BREEDING, TRAINING, PERFORMANCE AND HANDLING OF THE PARTICULAR DOG WARRANTS AN INFERENCE THAT THE RESULTS OBTAINED FROM USE OF THAT DOG ARE RELIABLE.

State v. Roscoe – Dec. 28, 1984 [**145 Ariz. 212**].
Facts: Tracking dog was given the victim's scent, obtained from her clothing; when so scented the dog was taken to a line-up of five cars, one of which was the Defendant's, for the purpose of identifying the victim's scent in one of those cars, if possible. The dog's handler testified that the dog "alerted" to the victim's scent at the Defendant's car. According to the handler, the dog's reaction indicated that the victim's scent was present in several areas of Defendant's car.
The dog was scented on clothes belonging to Defendant and then taken to the general area where the victim's bicycle had been found; the dog was put on search of the area and alerted at the place where the bicycle had been found. According to the handler, the dog's reaction indicated that Defendant had been present in the area where the bike was found. Similarly, the dog alerted to the defendant's scent in the area where the body was found. After having been again scented on Defendant's clothes, the dog was taken to a room where five articles of clothing were laid out. After having been ordered to search, the dog alerted at the clothing which had been taken from the victim's body. According to the handler, this indicated that the Defendant's scent was present on that article of clothing. After having been put on Defendant's scent, the dog was taken to a "line-up" of five bicycles. The dog alerted at the bicycle which had belonged to the victim, thus indicating that the defendant's scent was present on that bicycle.
The Defendant objected to the admission of this evidence.
Held: The *Frye v. United States* (D.C.Cir.1923) 293 F. 1013 rule is not applicable to all expert evidence; in many instances expert testimony is admissible in the absence of proof or findings of general acceptance, provided that there is sufficient individualized foundation.

THE *ROSCOE* REQUIREMENTS DO NOT PROHIBIT A TRACKING DOG FROM BEING TAKEN OFF THE SCENT AND GIVEN A FRESH START.

State v. Bible – Aug. 12, 1993 [**175 Ariz. 549**].
Facts: Dog used to track Defendant. On appeal, Defendant sought to graft onto *Roscoe* an additional requirement that a tracking dog cannot be taken off the scent and given a fresh start.
Held: The *State v. Roscoe* (1984) 145 Ariz. 212, requirements do not prohibit a tracking dog from being taken off the scent and given a fresh start. The court declined to revise the clear *Roscoe* requirements.

State v. Coleman, 122 Ariz. 130 (Ariz. Ct. App. 1978).
Police used a tracking dog to follow footprints outside the victim's home. The footprints led them to the defendant. There was evidence of the dog's training, the handler's experience, the preservation of the tracks at the victim's home, the manner in which the dog was placed on the trail, and the actual course of tracking. The defendant complained that the record of the dog's past performance did not include past failures and contended that as a result, there was insufficient foundation for the reliability of the dog used to track him. The Court of Appeals of Arizona reiterated the majority view that evidence of dog tracking is admissible provided there is a sufficient foundation regarding the dog's reliability. It held that although a record of failures should be kept to substantiate the continued reliability of the dog, the defect alone does not make the foundation insufficient.

State v. Roscoe, 184 Ariz. 484 (Ariz. 1996).
The defendant was granted a new trial in state post-conviction proceedings after showing that the state had offered fabricated evidence at trial. The state had called a purported expert in canine scent identification who testified that, approximately six months after the victim's murder, his tracking dog had linked the defendant to the crime in a series of allegedly blind scent line-ups. The expert was in fact a "charlatan."

ARKANSAS

No new cases found via shepardizing.

Holub v. State, 116 Ark. 227 (Ark. 1915).
Blood hounds were used to trail the defendant from a gap where the hogs were taken out of the pasture to the defendant's house. A witness testified that he knew the dogs and knew they were capable and skilled in trailing people. The witness also knew of a previous instance where the dogs were used to trail a criminal. The defendant claimed that the dogs were not shown to be accurate and skilled in following the trail of persons and objected to the introduction of the testimony relating to their performance. The Arkansas Supreme Court emphasized that a witness, who telegraphed for the dogs, was informed about the dogs running criminals down, knew the reputation of the dogs for running criminals was good, had previously observed the dogs trail some criminals, and knew the dogs used in the case, and testified they were the same ones. The state supreme court held that there was a sufficient showing of the qualifications of the blood hounds to admit the testimony of their performance.

Padgett v. State, 125 Ark. 471 (Ark. 1916).
Bloodhounds were used to trail the defendant to his home. There was testimony that the dogs had been used for trailing human beings, their capacity for trailing people was good, and they had a reputation of being reliable for trailing people. There was also testimony relating to their performance during the hunt of the suspects. The defendant argued that the court erred in not instructing the jury to disregard the testimony concerning the trailing by the bloodhounds. The Arkansas Supreme Court stated that there was no objection to the testimony when offered and no prayer for the jury instruction and therefore, the defendant could not complain of the ruling of the court in permitting the testimony. Additionally, it held that the proper foundation was laid for the testimony.

Cranford v. State, 130 Ark. 101 (Ark. 1917).
Bloodhounds were used to trail the defendant. The dogs led the police to a shotgun, shotgun cartridges, and the suspect. Both dogs were experienced in trailing criminals and the testimony showed that the bloodhounds were accurate, certain and reliable. The defendant argued that the court committed reversible error in admitting the action and performance of bloodhounds in trailing him. The Arkansas Supreme Court reaffirmed that the evidence of the performance of bloodhounds in trailing offenders is admissible when the proper foundation for the introduction of such testimony is laid. It held that sufficient proof was given showing that the dogs possessed qualities, training and accuracy in trailing human beings and that the proper foundation was laid for the admission of the testimony.

McDonald v. State, 145 Ark. 581 (Ark. 1920).
Bloodhounds were used to trail the defendant. A witness provided details about the trailing of the defendant in his responses to prosecutor questions. On cross-examination, the witness admitted that he did not know who had the dogs in charge during the trailing, he was not experienced in handling bloodhounds, and he did not know whether the dogs correctly trailed the defendant. Defense counsel moved to exclude the testimony because it

was not shown that the dogs were properly trained, or properly handled on that occasion. The motion was overruled. The Arkansas Supreme Court concluded that there was no attempt to qualify the dogs as experts, there was an insufficient showing that they were properly handled, and the objection was made to the testimony during trial. It held that in the absence of a showing that the dogs were properly trained and handled, the testimony was incompetent. The state supreme court reversed the judgment and remanded the case for a new trial.

West v. State, 150 Ark. 555 (Ark. 1921).
A dog was used to trail the defendant from the crime scene to the location where he boarded a railroad car. The dog's owner testified that he trained the dog to follow the trail of human beings and that it had on other occasions followed human tracks. He also testified about the action the dog took in trailing the defendant. The defendant argued that the evidence was not sufficient to show that the dogs were properly trained or were properly handled. The Arkansas Supreme Court reiterated that there must be preliminary proof that the dog had been trained or that the dog possessed the capacity of following the trails of human beings. It held that the proof offered in the case was sufficient to justify the submission of this issue to the jury.

Fox v. State, 156 Ark. 428 (Ark. 1923).
A dog was used to trail the defendant from the burglary scene to the defendant's home. The dog's owner testified that the dog was about eleven months old, that he had trained him to follow the human trail, and that the dog had, under his supervision, trailed four criminals who had committed burglaries on other occasions. The owner was not sure about the dog's pedigree. The defendant contended that the court erred in admitting testimony concerning the activities of the hound that trailed the defendant. The state Supreme Court was of the opinion that there was enough testimony to justify the court in submitting the question of the dog's activities to the jury. It also stated that the testimony concerning the actions of the dog added little, if anything, to the State's case against appellant (there was a physical trail from the crime scene to the defendant's home).

Doyle v. State, 166 Ark. 505 (Ark. 1924).
A bloodhound tracked the defendant's footprints from the scene of an arson fire to the defendant's home. The trail followed by the dog was much longer than the distance from the defendant's home to the scene of the crime. The Arkansas Supreme Court stated that the dog which followed the trail was shown to have been properly trained and handled.

Rolen v. State, 191 Ark. 1120 (Ark. 1936).
Bloodhounds were used to trail the defendant from the scene of the assault to the back door of the defendant's house. The defendant was charged and convicted of assault with intent to kill. The victim witness, who had not worked with bloodhounds in nearly forty years, testified that he knew the dogs were bloodhounds when he saw them and that they had been trained when he saw them working, and that he could tell whether the hounds had been trained by seeing them at work. The witness also described some of the actions of the bloodhounds. The sheriff stated that he was asked to secure proved and trained bloodhounds, and he secured bloodhounds at the penitentiary that were kept there for the

purpose of trailing escaped prisoners. The Arkansas Supreme Court stated that the use of the bloodhounds by the penitentiary provided a reasonable presumption that the dogs were suitable for trailing human beings. The state supreme court stated that the proof of training and qualifications of the dog and handler were stronger in the present case than in *State v. Fox*. It held that it was not error to submit the trailing evidence under proper instructions to the jury.

CALIFORNIA

People v. Malgren, 139 Cal. App. 3d 234 (Cal. Ct. App. 1983) (disapproved on other grounds in *People v. Jones*, 53 Cal. 3d 1115 (Cal. 1991))

A TRIAL COURT HAS NO SUA SPONTE DUTY TO INSTRUCT THE JURY OF THE WEIGHT TO BE GIVEN TO EVIDENCE THAT A POLICE DOG IDENTIFIED COCAINE ON CASH.

People v. Mitchell – Nov. 30, 1994 [**30 Cal. App. 4th 783**].
Facts: Defendant deposited a great deal of cash with a bank. Police were called. A police dog alerted to the presence of cocaine on the cash. Police arrested the Defendant.
Held: The cases requiring an instruction on the weight that a jury is to give to dog evidence all relate to dog tracking evidence. However, this case involves not dog *tracking*, but the identification of cocaine on money.

People v. Craig, 86 Cal. App. 3d 905 (Cal. Ct. App. 1978).
The defendants in the case abandoned a stolen car in which they were riding and were later detained near an apartment complex. A police dog was used to trail the defendants from the interior of the stolen vehicle to the point where their detention occurred.
The defendants contended the evidence of dog trailing was improperly admitted at trial. It was a case of first impression in California. The court stated that the abilities and reliability of each dog desired to be used in court must be shown on an individual basis before evidence of that dog's efforts is admissible. Whether a well trained dog can trail a human may be proven by expert testimony. The testimony should come from a person sufficiently acquainted with the dog, his training, ability and past record of reliability. If the testimony comes from an expert in the area of training, trailing, and operational performance of such dogs, that expert is qualified to state an opinion as to the ability of that particular dog in question to trail a human. The court distinguished that case from *People v. Kelly* in that *Kelly* dealt with problems of general acceptance in the scientific community of inanimate scientific techniques, rather than specific recognition of one animal's ability to utilize a subjective, innate capability. The evidence of dog trailing is to be treated the same as any other evidence by allowing the weight given to the evidence to be left to the discretion of the finder of fact. The appellate court held that there was no error in giving the modified instruction.

People v. Malgren, 139 Cal. App. 3d 234 (Cal. Ct. App. 1983).
A tracking dog led police to defendant, who was hiding in bushes less than a mile from a burglarized home shortly after commission of the crime. The defendant was convicted of burglary. On appeal, he contended that the trial court erred by admitting evidence of the use of a dog in tracking him. The appellate court stated that a proper foundation for the admission of trailing evidence must also include evidence that the circumstances of the tracking itself make it probable that the person tracked was the guilty party. It concluded that the following must be shown before dog trailing evidence is admissible: (1) the dog's handler was qualified by training and experience to use the dog; (2) the dog was

adequately trained in tracking humans; (3) the dog has been found to be reliable in tracking humans; (4) the dog was placed on the track where circumstances indicated the guilty party to have been; and (5) the trail had not become stale or contaminated. The appellate court held that the requirements had been satisfied in the case. The appellate court also stated that the trial court is given considerable latitude in determining the qualifications of an expert and held that there was no abuse of discretion in admitting the dog trainer's testimony as an expert dog trainer.

People v. Gonzalez, 218 Cal. App. 3d 403 (Cal Ct. App. 1990).
Defendant was convicted of burglary after a police dog tracked him a short distance from the burglarized home. The defendant claimed that the trial court erred in providing jury instructions on dog-tracking evidence that did not include the requirement that it be corroborated with independent evidence that linked appellant to the crime. The appellate court stated that dog-tracking evidence alone is insufficient to support a conviction and that even if all the factors assuring trustworthiness of the dog's tracking ability were present, there must be some other evidence aside from what the dog did that demonstrates the accuracy of the dog's actions. The appellate court held that a conviction may be had where dog-tracking evidence is used and there is other corroborative evidence. It elaborated by stating that they do not find the other corroborative evidence must, as a matter of law, be evidence which, standing alone, independently links the accused to the crime; the corroborative evidence need only support the accuracy of the tracking itself.

People v. Mitchell, 110 Cal. App. 4th 772 (Cal. Ct. App. 2003).
Defendants were members of a street gang. A witness heard gunshots and saw two men, whom he later identified as defendants, leaving the area where the victim, a member of a rival gang, had been shot to death. The witness attended live lineups that included defendants and identified both of them, stating that he was absolutely sure of his identifications. The prosecution also introduced evidence that the scent of one defendant had been identified by a police dog in a scent identification lineup as being present on the expended shell casings found at the scene. A small vacuum cleaner-like device known as a scent transfer unit collected the scent. The trial court denied a defense motion under Cal. Evid. Code § 402 to exclude evidence of the scent identification lineup. The court concluded that the scent evidence should have been excluded, because the scent transfer unit was a novel device, requiring a Kelly analysis of reliability, and because the prosecution did not present evidence that the scent was uncontaminated or that each person's odor was unique. The error, however, was harmless, because the eyewitness identification of defendants was both credible and compelling.

People v. Willis, 115 Cal. App. 4th 379 (Cal. Ct. App. 2004).
Defendant was convicted of murdering his former girlfriend, a taxicab driver, who was found burned to death in her car. His pretrial motion to exclude all dog scent and scent transfer unit (STU) evidence was denied. On appeal, he challenged the admission of dog scent identifications at trial. The court agreed that such evidence was improperly admitted. The court held that the STU was a novel device used in the furtherance of a new technique and, therefore, was subject to Kelly analysis. The dog handler testified about the STU and the dog scent identification, but he was not a scientist or engineer and, therefore, was not

qualified to testify about the characteristics of the STU or its general acceptance in the scientific community. There was also a foundational weakness in the dog identification evidence, because there was no evidence on how long a scent remained on an object or at a location, whether every person's scent was unique, and the adequacy of the certification procedures for scent identification. However, the court held that there was no prejudice from the admission of such evidence in light of the overwhelming other evidence of defendant's guilt.

COLORADO

ANY ERROR IN ADMITTING EVIDENCE BY A DOG HANDLER THAT A SPECIALLY TRAINED DOG DETECTED DRUG ODOR ON MONEY WITHOUT SOME SHOWING OF THE DOG'S RELIABILITY IN DETECTING DRUGS WAS RENDERED HARMLESS BY THE DOG HANDLER'S SUBSEQUENT TESTIMONY THAT SHE AND THE DOG HAD WORKED TOGETHER FOR FIVE YEARS, THAT THE DOG HAD PERFORMED APPROXIMATELY ONE THOUSAND NARCOTICS SNIFFS (ONE HUNDRED ON MONEY), AND THAT THE DOG HAD NEVER ALERTED OFFICERS ABOUT MONEY THAT WAS DETERMINED TO BE CLEAN.

People v. Martinez – Aug. 30, 2001 [**51 P.3d 1029**] (affirmed in part and reversed in part on other grounds in *Martinez v. People*, 69 P.3d 1029 (Col. 2003)).
Facts: The trial court admitted evidence by a dog handler that a specially trained dog detected drug odor on money. On appeal, Defendant argued that such evidence should not have been admitted absent some showing of the dog's reliability in detecting drugs.
Held: Assuming, without deciding, that defendant were correct about the type of foundation necessary for receipt of this type of evidence, any error was rendered harmless by the dog handler's subsequent testimony that she and the dog had worked together for five years, that the dog had performed approximately one thousand narcotics sniffs (one hundred on money), and that the dog had never alerted officers about money that was determined to be clean.

Brooks v. People, 975 P.2d 1105 (Colo. 1999).
A bloodhound from a "K-9" scent-tracking unit led the police to the defendant, who had fled from police investigating a break-in and had hid under a truck. At trial, defendant was convicted of second-degree burglary, attempted theft, and possession of burglary tools. The lower court affirmed his convictions holding that the jury properly heard the scent tracking evidence introduced at trial because a sufficient foundation had been laid to admit the testimony of the dog's handler under Colo. R. Evid. 702. The Colorado Supreme Court concluded that experience-based, specialized knowledge like scent tracking was not subject to the "general acceptance" standard for scientific evidence and held that the dog handler's expert testimony provided a sufficient foundation to admit evidence that the dog had identified defendant as the perpetrator. The Colorado Supreme Court explicitly adopted the majority rule to determine evidentiary reliability of scent tracking. According to the court, the elements of a proper foundation include the following: 1) whether the dog is of a breed characterized by acute power of scent; 2) whether the dog has been trained to follow a track by scent; 3) whether the dog was found by experience to be reliable in pursuing human tracks; 4) whether the dog was placed on the trail where the person being tracked was known to have been; and 5) whether the tracking efforts took place within a reasonable time, given the abilities of the animal. It also adopted the position that scent tracking evidence should be corroborated by other independent evidence.

CONNECTICUT

TO QUALIFY AN INDIVIDUAL AS AN EXPERT TO TESTIFY ABOUT DOG TRACKING EVIDENCE, THE STATE NEED ONLY SATISFY THE FOUR REQUIREMENTS OF *STATE V. WILSON*, 180 CONN. 481.

State v. St. John – Oct. 19, 2006 [**282 Conn. 260**].
Facts: On appeal, the Defendant argued that the trial court violated his constitutional rights and abused its discretion when it admitted evidence about dog tracking, generally, and about tracking the Defendant, in particular, without first conducting a hearing pursuant to *State v. Porter*, supra, 241 Conn. 59, to determine the scientific validity of dog tracking evidence, the reliability of the specialized knowledge and techniques used by the dog tracking officer and the officer's qualifications to testify regarding this evidence.
Held: The court disagreed with the Defendant's argument. The second prong of *Wilson* ("the dog was trained and accurate in tracking humans") does not require the State to provide scientific or technical evidence demonstrating that dogs can be trained to track scents or can track suspects accurately. Additionally, the fourth prong of *Wilson* ("the trail had not become so stale or contaminated as to be beyond the dog's competency to follow it") does not require the State to provide a scientific explanation as to how a dog can continue to track a scent after a trail has been contaminated by automobile exhaust.

State v. Wilson, 180 Conn. 481 (Conn. 1980).
A bloodhound sniffed a footprint at the crime scene and then followed a route to reach the location of the defendant's arrest. The Defendant was convicted for assault in the first degree and conspiracy to commit burglary in the first degree. The defendant contended that the state failed to lay a sufficient foundation both as to the qualifications of bloodhound and his handler and claimed that the prejudicial tendency of the handler's testimony outweighed its probative value. The handler testified about the ability of bloodhounds to track human scents, the details of the tracking that occurred in the case. He also testified that the dogs under his supervision had an approximately 80 percent success rate and he had personally trained the bloodhound used in the case, whose rate of success was also about 80 percent. The Connecticut Supreme Court, after discussing the majority rule concerning the admissibility of tracking-dog evidence, held that the trial court did not abuse its discretion or misconceived the law in admitting the testimony of dog handler concerning the bloodhound's tracking activities and were not convinced that the prejudicial tendency of the dog handler's testimony outweighed its probative value. The state supreme court adopted a four-part test that must be met prior to admitting tracking-dog evidence — (1) the handler was qualified to use the dog; (2) the dog was trained and accurate in tracking humans; (3) the dog was placed on the trail where circumstances indicate the alleged party to have been; and (4) the trail had not become so stale or contaminated as to be beyond the dog's competency to follow it.

State v. Wallace, 181 Conn. 237 (Conn. 1980)
One of the perpetrators of the crime dropped a glove near the scene of the crime. A trained tracking dog, after being scented on the dropped glove, led his trainer to a white knit cap and a pair of socks. The dog circled the cap and socks before continuing on the track. An

FBI hair and fiber expert testified that fibers found on the cap and socks were identical to those of the defendant's coat in terms of diameter, color, shade and material. The dog handler testified that the dog continuing on the track after discovering the hat and socks meant that those items were of interest to the dog**,** but not of primary interest; that if two persons were together their scents would mix; that the items could have been discarded by someone other than the person who wore the dropped glove; and that these circumstances might indicate that two persons left the scene of the crime together, one of whom had worn the dropped glove, the other the hat and mittens. The defendant was convicted of robbery in the first degree and argued that the court erred in admitting the dog trailing evidence as having no probative value as to the defendant. The Connecticut Supreme Court did not agree with the defendant and concluded that the evidence was relevant and admissible.

State v. Hardwick, 1 Conn. App. 609 (Conn. Ct. App. 1984).
The defendant allegedly attacked the victim with a knife, inflicting wounds to the victim, and dropped her off in a different town to seek assistance. A police dog was used to trail the victim's scent from the probable location where she was dropped off by the defendant to the residence where the victim received assistance. The defendant was convicted of the crime of assault in the first degree. On appeal, the defendant argued that the trial court should not have admitted the tracking-dog evidence should. The appellate court cited the four-part test adopted in State v. Wilson and held that the trial court did not abuse its discretion in admitting the tracking-dog evidence. The appellate court set aside the judgment against the defendant on different grounds and remanded the case for a new trial.

State v. Esposito, 235 Conn. 802 (Conn. 1996).
A police dog was used to follow a trail leading away from the scene of the murder to the area where the defendant's vehicle was parked and where witnesses heard a vehicle departing immediately following the murder. The defendant was convicted for felony murder and of burglary in the first degree. The defendant argued that the state failed to lay a proper foundation for the admission of the dog-trailing evidence (i.e., did not show the third and fourth requirements of the four-part test). The Connecticut Supreme Court reiterated that the party offering the tracking-dog evidence to show that: (1) the handler was qualified to use the dog; (2) the dog was trained and accurate in tracking humans; (3) the dog was placed on the trail where circumstances indicate the alleged guilty party to have been; and, (4) the trail had not become so stale or contaminated as to be beyond the dog's competency to follow it. The state supreme court stated that it was within the trial court's discretion to admit expert testimony by a dog handler as to tracking evidence and held that the trial court properly admitted the tracking evidence.

DELAWARE

Cook v. State, 372 A.2d 264 (Del. 1977). Proper citation is 374 A.2d 264.

EVIDENCE OF THE DETECTION OF FIRE ACCELERANTS BY A DOG IS ADMISSIBLE SO LONG AS THE 3 *COOK V. STATE*, 374 A.2d 264, FOUNDATIONAL FACTORS FOR THE ADMISSION OF DOG EVIDENCE ARE ESTABLISHED.

Reisch v. State – Jun. 4, 1993 [**1993 Del. LEXIS 229**].
Facts: On appeal, Defendant argued that trial court abused its discretion in admitting allegedly prejudicial evidence obtained from the use of a fire accelerant detection dog (dog trained to detect agents which act as fire accelerants—e.g., gasoline).
Held: As in *Cook*, there is no requirement of scientific testing to support evidence obtained by a dog if the *Cook* foundational requirements—i.e., (1) the experience and qualifications of the dog's handler; (2) the dog's experience, skill, training, and reputation as a tracker; and (3) the circumstances pertaining to the trailing itself—are met.

Cook v. State, 372 A.2d 264 (Del. 1977).
A trained police dog trailed the defendants from a vehicle abandoned near some woods after a supermarket robbery and followed the path from where the defendants were detained to where they entered the woods. Defendants were convicted of robbery in the first degree, misdemeanor theft, and conspiracy in the second degree. The defendants challenged the admissibility of the dog-tracking evidence in this case and requested that the Delaware Supreme Court adopt the rule requiring exclusion of dog-tracking evidence *per se*. The state supreme court did not find the rationale underlying the *per se* minority rule persuasive. It determined that the factors prerequisite to laying a foundation for the admission of dog-tracking evidence are: (1) the experience and qualifications of the dog's handler; (2) the dog's experience, skill, training, and reputation as a tracker; and (3) the circumstances pertaining to the trailing itself. Based on recent court decisions at that time, establishment of the dog's pedigree was rejected as a factor. The court was satisfied that a proper foundation was established and that the dog-tracking evidence was admissible in the case. At that time, Illinois, Indiana, Iowa, Montana and Nebraska were the states that adhered to the minority position of *per se* exclusion of dog-tracking evidence.

DISTRICT OF COLUMBIA

No new cases found via shepardizing.

Starkes v. United States, 427 A.2d 437 (D.C. 1981).
A tracking dog trailed the defendant from the scene of the rape to an empty chair in a restaurant where the defendant had been sitting just minutes before. The defendant was convicted of rape and other related offenses. The dog's handler had testified that the dog had been trained to track suspects, search buildings where people might be hiding, and to locate lost children; received courses in agility, obedience, and scent training during his thirteen years with the Canine Corps and that the dog's tracking ability had been rated as excellent; and had been successful in locating criminal suspects in more than one hundred cases. The dog's handler and several other witnesses who observed the dog in the restaurant also testified as to the dog's actions. Defendant contended that a proper foundation was not laid to establish the tracking dog's past record of accuracy and reliability and the trial court committed reversible error by permitting the dog handler to testify about the tracking dog's performance. The District of Columbia Court of Appeals adopted the majority rule that prior to admitting testimony regarding tracking by trained dogs a foundation must first be laid to show: (1) that the handler was qualified to use the dog; (2) that the particular dog used was trained and tested in tracking human beings; (3) that the dog had been laid upon a trail which circumstances indicated was made by the accused; (4) that the trail had not become so stale or contaminated as to be beyond the dog's ability to follow it; and (5) that the dog had been found reliable in past cases. In addition, the dog's reliability must be proven by an individual having personal knowledge of the dog's training, abilities, and past tracking record. It held that proper foundation was laid and that the trial court did not err in permitting testimony about the dog's actions.

FLORIDA

Dedge v. State, 442 So.2d 429 (Fla. Dist. Ct. App. 1983) (affirmed in part and reversed in part on other grounds in *Dedge v. State*, 479 So. 2d 882 (Fla. Dist. Ct. App. 1985)).

1) EVIDENCE OF A DOG'S TRAINING, COUPLED WITH THE FACT THAT HE/SHE HAS SUCCESSFULLY TRACKED HUMANS, IS SUFFICIENT TO LAY A FOUNDATION FOR THE INTRODUCTION OF DOG-TRACKING EVIDENCE.

2) TO ESTABLISH THE RELIABILITY OF DOG TRACKING EVIDENCE, THE COURT CAN RELY NOT ONLY ON BREED, TRAINING, AND PAST PERFORMANCE OF THE DOG, BUT ALSO ON "OTHER INDICIA OF RELIABILITY."

McCray v. State – Nov. 30, 2005 [**915 So. 2d 239**].
Facts: The Defendant's sole claim on appeal related to the State's introduction of dog-tracking evidence, which he alleged was admitted without the State laying the requisite foundation establishing the reliability of the dog used to track the Defendant.
Held: The State introduced sufficient evidence to establish the reliability of the dog-tracking evidence. Reliability may be established by introducing evidence of the breed, training, and past performance of the dog. Thus, the court could rely on the dog's trainer's testimony that he had specifically trained and worked with the dog for the past four years, the trainer's testimony that the dog was a "Belgian police work dog," the trainer's testimony that the dog's training included weekly tracking practice and, in the past two years, the trainer had done twenty tracks with the dog, some of which have resulted in apprehensions. Furthermore, the trial court can rely on "other indicia of reliability." In the instant case, a perimeter was set up within minutes of the crime, covering a two-block radius surrounding the church and parking lot where the Defendant fled to. The tracking was initiated within *five minutes* of the crime and the flight of the Defendant. The track began in the very location of the church parking lot where the Defendant was last seen during his flight and attempt to elude law enforcement. The dog picked up the track immediately, the track was continuous, the dog located the Defendant hiding in a concrete structure within five minutes of his disappearance, and this concrete structure was located near where the officer lost sight of him (the structure was located along the south side of the church). Additionally, the search took place late at night (approximately 12:30 a.m.), the defendant was found *concealed under an air conditioning unit*, he fit Officer Alexander's description of [**7] the perpetrator, and he was positively identified by Officer Alexander, an identification not disputed at trial.

Green v. State, 641 So.2d 391 (Fla. 1994) (affirmed by *Green v. State*, 975 So. 2d 1090 (Fla. 2008).

Davis v. State, 46 Fla. 137 (Fla. 1903).

Two dogs followed the trail of the defendant from the scene of the crime. Defendant was convicted of breaking into a home with the intent to commit larceny. On appeal, the court reversed the conviction entered by the circuit court. The Florida Supreme Court did not determine the admissibility of the dog-tracking evidence as the case was reversed on different point. However, it went on to explain that in order that such testimony be admissible there must be preliminary proof of such character as to show that reliance may reasonably be placed upon the accuracy of the trailing attempted to be proved. The court stated that there should first be testimony from a person who has personal knowledge of the fact that the dog used has an acuteness of scent and power of discrimination which have been tested in the tracking of human beings, and that the intelligence, training, purity of breed, and behavior of the dog in following the track are all proper matters for consideration in determining the admissibility of dog-tracking evidence. The state supreme court concluded that in the record of the case there was no proof of the breed of the dogs or that they were trained in the tracking of human beings, and as a result, the sufficiency of the proof was questionable.

Tomlinson v. State, 129 Fla. 658 (Fla. 1937).
A dog continuously trailed the defendant from the scene of the breaking and entering to the place where he left his shoes in his home. The defendant was convicted of breaking and entering a dwelling house of another in the nighttime with intent to commit a misdemeanor. The defendant contended that the Court erred in denying his motion that the evidence of the bloodhound's actions in trailing a pair of shoes without a search warrant was illegally obtained. According to the court, the testimony of witnesses who had used the dog as a man-trailer for many months established the character and dependability of the dog used in the case. The court concluded that the evidence of the conduct of the dog in trailing the defendant was competent and admissible and a proper preliminary foundation had been laid.

Edwards v. State, 390 So.2d 1239 (Fla. Dist. Ct. App. 1980).
About two hours after the crime occurred, a bloodhound began trailing one of two tracks at an intersection near the scene of the crime. The dog followed the trail to a parked vehicle in which the defendant was sleeping. The defendant was convicted of one count of robbery with a firearm, one count of burglary of a dwelling, and two counts of sexual battery. The defendant challenged the trial courts denial of his motion for acquittal and argued that the evidence concerning the trailing of the dog should not have been introduced because of the dog's young age. The dog's former owner, as well as his present trainer, testified to the training methods used with the dog and his prior record of tracking humans and that the dog had previously been used successfully on four or five different occasions to track escapees from jail, was a purebred registered bloodhound, and was put down on a trail which the officers had visually followed from the house to the point where he started. The court held that considering the circumstantial evidence of the dog's tracking in conjunction with other evidence that corroborated witness testimony about what the defendant was wearing and had in his possession, there was no error in the trial court's denying the motion for acquittal.

Dedge v. State, 442 So.2d 429 (Fla. Dist. Ct. App. 1983).

The primary identification of the defendant came through the activities of a purebred German shepherd, which conducted a scent lineup in the case. The scent lineup consisted of placing the victim's sheets and four dirty sheets from the jail that the defendant did not use or touch in a line. The dog sniffed inside a paper bag containing paper towels used by the defendant. The dog was walked down the lineup. On the second walk down the lineup, the dog went to the victim's sheet. The dog was taken to the victim's home and identified other locations where the defendant had been. The appellate court stated that there were two errors a trial regarding the scent lineup. The first was that the defendant's expert witness was disqualified prior to the court hearing his testimony and the second was the improper admission of hearsay about the reliability of the dog. The court reversed and remanded the case for a new trial.

Toler v. State, 457 So.2d 1115 (Fla. Dist. Ct. App. 1984).
A tracking dog traced a scent from stolen property found in a ditch to the area where the tire tracks and footprints of the defendant were found. The defendant was convicted of burglary of a dwelling. The defendant challenged the admission of the tracking-dog evidence and contended the evidence was inadmissible because there was no evidence the dog was a purebred bloodhound. The appellate court stated that Florida courts had never held that a proper foundation requires evidence that the dog is purebred and that the dog's pedigree was only one of many factors to be taken into consideration. It pointed to the testimony that the dog had successfully tracked humans on seven prior occasions and been trained to track humans in concluding that the testimony provided sufficient foundation and that the trial court did not err in allowing the challenged testimony.

Ramos v. State, 496 So.2d 121 (Fla. 1986).
The defendant was convicted of first-degree murder. The defendant argued that the trial court erred in denying his motion to suppress evidence regarding two dog scent-discrimination lineups. One lineup involved placing five shirts in a line up. Four of the shirts had been worn by a nonparty male and one shirt had been worn by the victim when she was killed. The other involved placing five knives in the lineup. Four of the knives were not related to the case. The fifth knife had been found in the victim's body. In each lineup, the dog was given cigarettes that the defendant handled during his interrogation and was walked down the lineups. The dog identified the victim's shirt and the knife that was recovered from the victim. Both items were the only objects in the lineup with blood on them. The appellant contended that the trial court erred in denying his motion to suppress the testimony on the two scent-discrimination lineups, alleging that the state failed to establish the proper predicate with regard to the reliability and accuracy of this type of lineup and that the lineup itself was conducted unfairly. The court agreed, vacated the defendant's conviction, and remanded for a new trial. The use of a dog in a scent-discrimination lineup was an issue of first impression in this Court. The court found that there must be a proper predicate to establish the reliability of dog scent-discrimination lineups before that type of evidence may be admitted at trial. The court did not rule out the use of dog scent-discrimination lineup evidence as a method of proof. However, it did find that before it may be admitted it must be established that (1) this type of lineup evidence is reliable; (2) the specific lineup is conducted in a fair, objective manner; and (3) the dog used has been properly trained and found by experience to be reliable in this type of identification. The court found that the reliability of the type of lineup used was not

established and the test was not conducted in a fair manner. As a result, the court held that the admission of lineup evidence was prejudicial error.

Green v. State, 641 So.2d 391 (Fla. 1994).
The defendant kidnapped the victim and his girlfriend from an area with dunes and drove them to an orange grove. The defendant murdered the victim in the orange grove. A police dog was used to track footprints from the dune area to the defendant's sister's home. However, the footprints were never identified as the defendants. The trial judge admitted the scent-tracking evidence over defense objection. The defendant was convicted of first-degree felony murder, two counts of robbery with a firearm, and two counts of kidnapping. The defendant argued that the trial court should not have admitted evidence of a police dog's scent tracking. The trial judge found that the character and dependability of the dog were established, the officer who handled the dog was trained, the evidence was relevant, and there were indicia of reliability (the tracking occurred within hours of the crime, the area had been secured shortly after the crime occurred, and there was continuous tracking). The trial judges also found that there was evidence that corroborated the dog-tracking evidence (admissions by Green, Green's presence at the crime scene near the time of the crime, and Green's presence at his sister's house earlier that day). The Florida Supreme Court found that there was proper predicate for the admission of the scent-tracking evidence.

GEORGIA

DEFENDANT IS NOT GUILTY OF BURGLARY WHERE THE ONLY SIGNIFICANT EVIDENCE OF HIS GUILT IS THAT A DOG TRACKED THE BURGLAR TO A HOUSE THAT DEFENDANT SHARED WITH ANOTHER MAN WHO JUST AS LIKELY COULD HAVE COMMITTED THE BURGLARY.

Aiken v. State – Mar. 16, 1916 [**17 Ga. App. 721**].
Facts: Other than a statement that may have been incriminatory and a witness' testimony that the burglar was of the same size, color, and general appearance as Defendant, the only evidence against Defendant was that a tracking dog followed a trail to the house occupied by the Defendant. The dog was not permitted to enter the house and did not follow the trail to the bed then occupied by the Defendant. There was another man in the house, who may have been the person actually trailed by the dog.
Held: It can not be said that in this case the proved facts excluded every reasonable hypothesis save that of the guilt of the defendant; and since his conviction was not authorized under the plain terms of the statute, it must be set aside and a new trial ordered; upon which trial the proof offered may come up to the requirements of the law, and legally establish the guilt of the accused, or may completely exonerate him from all connection with the crime.

A DOG HANDLER'S KNOWLEDGE OF THE PEDIGREE OF HIS TRACKING DOG CAN BE BASED ON HEARSAY SO LONG AS OTHER EVIDENCE CORROBORATES THE PEDIGREE OF THAT DOG.

Troup v. State – Apr. 13, 1921 [**26 Ga. App. 623**].
Facts: Defendant claimed that certain testimony by a bloodhound dog handler was illegally admitted at his trial for assault with intent to murder. After the shooting occurred, the handler took his bloodhound to the location where the handler stated the shooter was standing. He testified that his bloodhound trailed the human scent to Defendant's yard. Defendant claimed that the handler's knowledge regarding the pedigree of the dog was all hearsay, obtained from his brother.
Held: No error was caused by the admission of the dog tracking evidence when considered with the other evidence regarding the bloodhound.

DEFENDANT CANNOT OBJECT TO THE INSUFFICIENCY OF THE FOUNDATION FOR DOG TRACKING EVIDENCE WHERE THE DEFENDANT HIMSELF FIRST ADMITTED EVIDENCE OF THAT DOG TRACKING.

Caldwell v. State – Oct. 14, 1950 [**82 Ga. App. 480**].
Facts: Defendant objected to any evidence of a sheriff with reference to what certain bloodhounds did when they were carried to the scene of the crime for the reason that no

proper foundation had been laid. However, Defendant himself first asked the sheriff about the conduct of the dogs.
Held: Defendant having first introduced the matter of the conduct of the dogs on cross-examination of the State's witnesses as well as on the direct examination of two of his own witnesses, it was not reversible error for the court, under the circumstances, to allow the State to examine its witness further merely to explain and neutralize the evidence which the defendant had brought out on cross-examination with regard to the same subject.

1) TOGETHER, THE TESTIMONY OF THE DOG HANDLER AND BACKUP OFFICER ESTABLISHED MORE THAN SUFFICIENT FOUNDATION FOR THE ADMISSION OF DOG TRACKING EVIDENCE.

2) A COURT NEED NOT PERMIT A DEFENDANT TO VOIR DIRE A DOG HANDLER OUTSIDE THE PRESENCE OF THE JURY WHERE THE DEFENDANT FAILS TO INDICATE WHY VOIR DIRE IS NECESSARY AND DOES NOT OBJECT TO THE HANDLER'S TESTIMONY.

Thomas v. State – May 13, 1997 [**226 Ga. App. 441**].
Facts: A dog tracked the Defendant. At trial, a backup officer testified without objection about the circumstances leading to the Defendant's capture, including the tracking dog's actions. In addition, a handler testified about his own qualifications and the dog's tracking, training, experience, and pedigree. On appeal, Defendant argued that the dog tracking evidence lacked foundation and objected to the court's refusal to permit Defendant to voir dire the handler outside the presence of the jury.
Held: The handler's testimony substantially satisfied the requirements of *Bogan v. State* (1983) 165 Ga. App. 851, 853. Defendant did not specify how that testimony was deficient or how it harmed him. In any event, even if the foundation for the handler's testimony was inadequate, the backup's testimony rendered its admission harmless.

THE COURT DID NOT ABUSE ITS DISCRETION BY PERMITTING A PATROL OFFICER TO TESTIFY ABOUT HIS OBSERVATIONS OF THE ACTIVITIES OF A TRACKING DOG PRIOR TO THE STATE'S LAYING THE FOUNDATION FOR DOG TRACKING EVIDENCE UNDER *BOGAN V. STATE*, 165 Ga. App. 851 (Ga. Ct. App. 1983).

Johnson v. State – Jul. 24, 2008 [**293 Ga. App. 32**].
Facts: A dog tracked the Defendant. At trial, a patrol officer described the actions of the dog when it arrived on the scene. Defendant objected on the ground that the patrol officer was not the dog's handler and that no foundation had been laid as to the dog's tracking abilities. In overruling this objection, the trial court stated that the patrol officer could testify as to his observations. Thereafter, the patrol officer testified that the dog circled the pickup truck and then went down a small hill approximately 50 yards away to where Defendant was found sleeping. Subsequently, the tracking dog's handler testified that the patrol officer and provided a lengthy description of the dog's training and experience in

tracking, as well as a description of his own training and experience as the dog's handler. After this foundation was laid without objection, the handler testified as to the dog's tracking of Defendant and Defendant's subsequent arrest. On appeal, Defendant argues that the trial court erred in allowing the patrol officer to describe the dog's tracking without a foundation first being laid.
Held: An officer's testimony regarding his own observations is admissible. Furthermore, "[w]here a proper foundation for evidence is afterward laid during the trial, there is no harm in allowing a party to use that evidence earlier in the trial."

Aiken v. State, 16 Ga. App. 848 (Ga. Ct. App. 1913).
A burglar was seen leaving from a specific window of a home. A bloodhound was brought to the scene and put upon tracks on the ground near the window. After non-continuous tracking, the dog led the police to the home where the defendant was located. The trial court admitted the evidence. The defendant objected to the admissibility and probative value of this testimony at his trial. The appellate court determined that before dog-tracking testimony is used, it should appear that the person testifying is reliable, that the dog whose actions are to be described was able to scent a track under the given circumstances, and that the dog did follow such scent or track to the location of the defendant. The court is to make this preliminary investigation as to its admissibility. If it is admissible, it should be provided to the jury as one of the circumstances which may tend to connect the defendant with the crime. The appellate court found no error in the admission of the testimony and the instructions of the trial judge substantially conformed to its requirements.

Fite v. State, 16 Ga. App. 22 (Ga. Ct. App. 1915).
The case involved the use of a tracking dog. The defendant sought a review of a judgment by the trial court, which denied defendant's motion for a new trial in a misdemeanor case. The appellate court restated the factors that must be established in order for tracking-dog evidence to be admitting. It must be established that one or more of the dogs in question were 1) of a stock characterized by acuteness of scent and power of discrimination, 2) had been trained or tested in the exercise of these qualities in the tracking of human beings, 3) were in the charge of one accustomed to use them. It also has to be shown that the dogs were laid on a trail, whether visible or not, concerning which testimony has been admitted, and upon a track which the circumstances indicate to have been made by the defendant. The appellate court held that it was not error to exclude evidence to the effect that counsel for the defendant, in order to establish the unreliability of the dogs, offered to pay one of the witnesses to make or repeat a test of the dogs. The court reversed on other grounds.

Harris v. State, 17 Ga. App. 723 (Ga. Ct. App. 1916).
Dogs followed a trial from the scene of the arson to the defendant's house. The defendant was convicted of arson and appealed the trial court’s denial of his new trial motion and conviction for arson. The appellate court concluded that there was no merit in the sixth ground of the motion, which was related to tracking-dog evidence, for a new trial, in the light of the entire record and the testimony as to the manner in which the dogs were placed on the trail and the experiences of the party in charge of the dogs.

Schell v. State, 72 Ga. App. 804 (Ga. Ct. App. 1945).

Two well-trained bloodhounds were brought by the county convict warden to a burglary scene within about an hour and struck a trail from the window where the defendant entered to the door on the porch of the defendant. The warden testified that he had the bloodhounds in constant use for five years, they practiced trailing men daily, and the dogs were good and could follow a cold trail accurately. He also testified that the dogs readily followed the hot trail in the case, the dogs never failed to follow the right trail, and they followed a direct hot trail to the home of the defendant. The defendant appealed his conviction for burglary and the denial of his motion for a new trial. He contended that the acts of the bloodhounds should not have been considered. The appellate court concluded that there was no merit to the defendant's contention and the evidence was sufficient to sustain the verdict of guilty.

Mitchell v. State, 202 Ga. 247 (Ga. 1947).
Dogs were used to trail the defendant. They started where the hold-up occurred at the back door of a house occupied by the defendant. The dogs also followed a track from the scene of the robbery to the location where the victim's wallet was abandoned. The route that the dogs followed was corroborated by a witness participant. A witness that had fifteen years experience managing dogs on chain gang work testified regarding his personal observation over a period of three years as to the training and experience of certain dogs in trailing human footsteps, and vouched for the breeding, accuracy, and reliability of the dogs used in the case. The defendant was convicted of robbery by force. The defendant argued that the trial court erred when it overruled his motion for a new trial. The defendant objected to the admission of the witness testimony regarding the breed of the dogs used in the case and the exclusion of evidence by a defense witness. The Georgia Supreme Court held that the defense witness testimony was properly excluded as hearsay and the witness testimony relied upon to qualify the dogs in the case was later connected to the dogs used in the case and could not be excepted to on the grounds that it was not admissible in the first place.

Smith v. State, 122 Ga. App. 470 (Ga. Ct. App. 1970).
Bloodhounds were used to trail the defendant from the area where the stolen vehicle was found, across a river, and to a house and a trailer. Residents of the house and trailer testified that the defendant stopped by the locations during his flight from the police. In addition, the defendant was seen and identified during the trailing by the dogs. Defendant was convicted of larceny of an automobile. On appeal, the defendant argued that there was insufficiency of the evidence to support the verdict. The appellate court stated that while the evidence connecting the defendant with the theft of the automobile was circumstantial, it was ample to authorize and support the verdict of the jury.

O'Quinn v. State, 153 Ga. App. 467 (Ga. Ct. App. 1980).
Dogs were taken in their boxes to the scene of apprehension, and one of the dogs was taken directly to the car where he sniffed one of the two defendants in the car after the car door was opened. The defendant's were convicted of burglary. Two of the three original defendants appealed their conviction and argued that the trial court erred in allowing, over defense objection, the testimony of a sheriff regarding his observations of the conduct and actions of a bloodhound. The sheriff had not trained the dogs and was not their handler; the dog the sheriff testified about was not put on the tracks at the scene of the crime; and

the dog did not follow the tracks to the defendants. The appellate court concluded that the tracking-dog testimony did not meet the test for admissibility set forth in *Aiken v. State* and it was error to admit such testimony over objection by defense counsel.

Bogan v. State, 165 Ga. App. 851 (Ga. Ct. App. 1983).
A tracking dog trailed the defendant from the place the victim had last seen the person who robbed her at gunpoint to the defendant's home. The defendant was convicted of attempted armed robbery and robbery by sudden snatching. The defendant claimed that the trial court erred when it denied his motion to suppress and when it failed to conduct a hearing concerning evidence of the use of a tracking dog. At the motion to suppress hearing, the dog's handler testified that the dog was a bloodhound that had been trained to follow a trail and that he had used the dog over 100 times to track individuals. The attending police officer stated that the dog was placed on the railroad tracks where the robber had last been seen, and the dog handler testified that the dog picked up a track there and followed it to the house where appellant was found. The Appellate court found that the testimony constituted a sufficient foundation for the admission of tracking-dog evidence.

Johnson v. State, 165 Ga. App. 146 (Ga. Ct. App. 1983).
Defendant was convicted of theft by taking. On appeal, the defendant claimed the trial court erred in its denial of his motion for a directed verdict of acquittal. The defendant contended that testimony regarding the use of a tracking dog was admitted without a proper foundation having been laid. The police detective who handled the dog used in the case testified that both he and the dog had received formal training, that the dog had successfully picked up and followed a human track numerous times in the past, and that the dog was a German shepherd, a breed known for its ability to pick up a human scent. The detective also testified that after learning that the defendant was seen running a short distance from the seen, he immediately transported the dog to the new area where the dog picked up a trail and led the detective to a spot where he observed and arrested the defendant. The appellate court found that the evidence constituted a sufficient foundation for the admission of testimony concerning the conduct of the tracking dog.

Riley v. State, 175 Ga. App. 710 (Ga. Ct. App. 1985).
Defendant was chased by witnesses after snatching a purse from a woman. During the pursuit, the defendant stole a vehicle, crashed it into a ditch, and continued to flee. Police officers were summoned to the scene and a police tracking dog followed a trail to the defendant's home. The defendant was convicted of robbery by sudden snatching and motor vehicle theft. On appeal, one of the defendant's enumerated errors of the trial court was that the police officer that handled the dog was not qualified to testify about the tracking of the defendant. Given that the handler of the dog testified that he was the senior canine officer of the Macon Police Department, he and the dog which tracked appellant had participated in more than 50 training sessions in which actual tracking was done, and he had also used this dog in actual police tracking work, the appellate court agreed with the trial court's ruling that the handler was qualified to testify on this issue. The defendant's seventh enumeration of error was that the trial court refused to give a requested charge on circumstantial evidence as it pertained to evidence involving the use of a tracking dog. The appellate court found that the trial court instructed the jury that such evidence was

circumstantial only and must be corroborated by other evidence. As a result, the appellate court found no error in the charge that was given.

Murray v. State, 180 Ga. App. 493 (Ga. Ct. App. 1986).
The defendants robbed a service station and abandoned the get-away vehicle the next day. A tracking bloodhound was brought to the scene, and the dog led the police to a trailer where one of the defendants was found. Defendants were convicted of armed robbery and possession of a firearm. On appeal, the defendants contended that the trial court erred in failing to honor the jury's request for a re-charge on the tracking-dog evidence. The appellate court held that: (1) when a jury requested a trial court to re-charge it on any point, it was the trial court's duty to do so; (2) the trial court erred in failing to re-charge the jury on track-dog evidence, but because the evidence against both defendants, exclusive of the track-dog evidence, overwhelmingly identified them as the perpetrators of the robbery, the error was harmless; (3) it was highly probable that the failure to give the requested re-charge did not affect the verdict; and (4) the admission into evidence of a mug shot of a defendant did not in and of itself impermissibly place his character in issue. The defendant also contended that the testimony concerning the use of the tracking dog should not have been admitted because the evidence failed to establish that the dog was upon a track which the circumstances indicate to have been made by the accused. The appellate court, pointing to the fact that the tracking dog led the officers directly to the trailer from the automobile that the defendants were seen driving, concluded that the circumstances supported the inference that the track followed by the dog had been made by the defendant.

Ingram v. State, 211 Ga. App. 821 (Ga. Ct. App. 1994).
After committing the burglary, the defendant fled into some nearby woods. Police officers flushed defendant out of the woods using trained dogs. Defendant was convicted of armed robbery, burglary, and possession of a knife during the commission of a felony. In one of the defendant's enumerated errors, he contended that the trial court erred in admitting testimony regarding the use of tracking dogs without proof that the dogs were qualified to trace the scent of humans. The appellate court stated that a foundation is necessary only when the evidence of the conduct of the dogs is admitted as a circumstance in determining the guilt or innocence of the defendant. Given that the dogs were used to flush out the defendant and it was only a matter of how the police apprehended the defendant, the appellate court concluded that it was unnecessary to substantiate the specific tracking abilities of the dogs.

Al-Amin v. State, 278 Ga. 74 (Ga. 2004).
After committing the shootings, the defendant fled into some woods. A team of tracking dogs was brought in to assist in the search for the defendant. The defendant was convicted for malice murder and various other offenses stemming from the shooting of two sheriffs that resulted in the death of one of the sheriffs and injury to the other. The defendant asserted that the trial court erred in admitting evidence that he was tracked by dogs when he was arrested in Alabama because there was no scientific evidence shown of the reliability of the evidence. The Georgia Supreme Court found that the dogs were used to flush the defendant out of a wooded area and a showing of the qualifications of the dogs as tracking dogs was not necessary.

HAWAII

THE USE OF A NARCOTICS-SNIFFING DOG DOES NOT CONSTITUTE A SEARCH WITHIN THE MEANING OF THE FOURTH AMENDMENT.

State v. Groves – Jul. 14, 1982 [**65 Haw. 104**].
Facts: Police dog alerted to the presence of drugs in Defendant's luggage. Subsequently, police officers obtained a search warrant to search Defendant's luggage. During that search, officers discovered marijuana and LSD. The trial court ruled that the use of the dog constituted an illegal warrantless search because the Defendant possessed an expectation of privacy in his luggage which encompassed the smells emanating from the interiors.
Held: A person's expectation of privacy in luggage is limited to the contents and not the smells emanating from luggage. "While we today hold that the use of narcotics-sniffing dogs does not, in and of itself, constitute an illegal search, this decision is not to be read as a carte blanche sanctioning of all uses of these dogs. There may be situations in which the use of these dogs will be deemed unreasonable. "Accordingly, the legality of the use of narcotics-sniffing dogs will depend on the circumstances of the particular case. This court will not condone the use of these dogs in general exploratory searches or for indiscriminate dragnet-type searches." "Furthermore, as a constitutional minimum, we will require that the dog and its handlers be fully qualified." "By qualified, we refer to officers and dogs who have participated in established drug enforcement programs. In these programs, the officers are instructed in handling these dogs who are specifically trained in the detection of different narcotics." "When these requirements are met, the results of a "dog-sniff" can be brought to a neutral magistrate in an application for a search warrant. We wish to make clear that a positive alert by a narcotics-sniffing dog does not obviate the need for a search warrant."

1) TRAINED NARCOTICS DETECTION DOG'S SNIFF OF PACKAGES IN A CARGO HOLDING ROOM OF A PRIVATE MAIL CARRIER FOR DRUGS WAS NOT A SEARCH WITHIN THE PURVIEW OF THE FOURTH AMENDMENT OR ARTICLE I, SECTION 7 OF THE HAWAII CONSTITUTION.

2) ABSENT EXIGENT CIRCUMSTANCES, CONSENT, OR SOME OTHER WELL ESTABLISHED WARRANT EXCEPTION, A VALID SEARCH WARRANT IS STILL REQUIRED TO OPEN PRIVATE CONTAINERS IDENTIFIED BY A DRUG DETECTION DOG.

State v. Snitkin – May 17, 1984 [**67 Haw. 168**].
Facts: With the permission of Federal Express, an officer let his narcotics detection dog run loose in the package holding area at the Honolulu International Airport. The officer had no suspicion that any one particular package contained contraband but let his dog run loose as part of a routine search of Federal Express' package holding area. The dog stopped at a package addressed to Defendant and scratched it, signaling the possible

presence of drugs. None of the humans present smelled contraband. Based solely on the dog's actions, the police obtained a search warrant, opened the package, and found cocaine. They then resealed the package, allowed Defendant to pick it up, and arrested him as he drove away. The trial court granted Defendant's motion to suppress the cocaine reasoning that *State v. Groves*, 65 Haw. 104 (1982) prohibited routine dog sniffs.
Held: A prior suspicion of the Defendant's package was not an absolute prerequisite to the State's use of the narcotics detection dog to ascertain whether it smelled of contraband. The reasonableness of the dog's use in the particular circumstances should be determined by balancing the State's interest in using the dog against the individual's interest in freedom from unreasonable government intrusions. In this case, the police action was reasonable because the important government interest in detecting and preventing drug traffic via a known, high volume carrier outweighs the minimal individual interest in freedom from a narcotics dog's sniff of the packages. However, absent exigent circumstances, consent, or some other well established warrant exception, a valid search warrant is still required to open private containers identified by a drug detection dog.

A THIRTY MINUTE SEIZURE OF DEFENDANT'S CARDBOARD BOX SUSPECTED OF CONTAINING MARIJUANA SO THAT A DRUG DOG COULD BE BROUGHT TO SNIFF THAT BOX WAS NOT UNREASONABLE WHERE THERE WAS NO INDICATION THAT THE THIRTY MINUTE DELAY IN BRINGING THE DOG WAS EITHER AVOIDABLE OR UNREASONABLE.

State v. Jerome – May 5, 1987 [**69 Haw. 132**].
Facts: Confidential informant informed police officer that Defendant had arrived from Hilo and possessed a brown suitcase and a cardboard box sealed with gray tape. The informant told the officer that the cardboard box contained marijuana by the individual's own admission. The officer detained the Defendant's cardboard box for 30 minutes so that a drug sniffing dog could sniff that box. After the dog alerted to the presence of marijuana, the officer promptly obtained a warrant to search the box. Defendant contended that the seizure of the box for 30 minutes constituted an unconstitutional seizure.
Held: A total of only 10 minutes elapsed from the informant tip to the seizure and there is no indication in the record that the 30-minute delay in bringing the dog to the box or vice versa was either avoidable or unreasonable.

MERE SCENT OF DRUGS ON AND SUSPICIOUS PACKAGING OF MONEY NOT SUFFICIENT TO ESTABLISH PROBABLE CAUSE TO SEIZE THAT MONEY UNDER HRS CHAPTER 712A.

Kaneshiro v. $19,050.00 in United States Currency – Jun. 3, 1992 [**73 Haw. 229**].
Facts: An agricultural inspector opened a box he suspected of containing contraband. The inspector found $19,050 in cash and peppercorns. The inspector turned the box and its contents over to Hawaiian police. A police dog trained to detect narcotics sniffed separately the box and its contents. The dog "alerted" to the presence of illegal

substance(s) amongst the contents of the package, however, no illegal drugs were found. The $ 19,050 in cash was seized by the police on the basis that the money was being used in connection with illegal drug trafficking. Later, the State filed a verified petition for forfeiture of the $ 19,050 in cash on the ground that the money was used in illegal drug activities, and therefore, the $ 19,050 was subject to judicial in rem forfeiture under HRS Chapter 712A. After a hearing, the trial court found that the State had demonstrated probable cause to support the seizure of the $ 19,050 in cash. The trial court then granted the State's verified petition for forfeiture of the $ 19,050 in cash. Defendant argues that there was no probable cause to support the seizure of the $ 19,050 in cash, and therefore, the dismissal and default judgment against him cannot stand.
Held: Here, while the manner in which the money was packaged and shipped may have been suspicious, even combined with the results of the dog sniff test, the State did not present sufficient evidence to support a finding that a covered offense had been committed or even attempted, nor to support a finding of probable cause for the seizure.

DRUG DOG'S ENTERING TRUCK DURING STOP DID NOT VIOLATE STATE OR FEDERAL CONSTITUTIONAL RIGHTS OF PASSENGER.

State v. Taua – Jun. 28, 2002 [**98 Haw. 426**].
Facts: Officers stopped a truck in which Defendant was a passenger. The officers ordered all of the occupants out of the truck and conducted a canine screen of the truck. During this screen, the drug detection dog leapt into the truck and alerted to the presence of drugs. At trial, Defendant moved to suppress the evidence obtained during the canine screen.
Held: Assuming arguendo that, because the dog leapt into the truck, the canine screening constituted a "search" within the meaning of either the U.S. fourth amendment or article I, section 7, of the Hawaiian Constitution, the Defendant did not have a reasonable expectation of privacy in the truck (or, more specifically, in the airspace within the cab of the truck) because the Defendant as a "passenger qua passenger" did not have a legitimate expectation of privacy in the vehicle in which he was merely a passenger. Thus, neither the dog's nor its officer handler's conduct violated the Defendant's state or federal constitutional rights.

WHERE POLICE SEIZE BOTH DRUGS AND MONEY, EVIDENCE OF THE DETECTION OF DRUGS ON THAT MONEY BY A DRUG DOG IS INADMISSIBLE UNLESS THE STATE SHOWS THAT IT IS IMPROBABLE THAT THE POLICE WERE RESPONSIBLE FOR CONTAMINATING THE MONEY WITH THE ODOR OF DRUGS.

State v. Keaweehu – Feb. 3, 2006 [**110 Haw. 129**].
Facts: Pursuant to a warrant, police seized drugs, drug paraphernalia, and money from Defendant's hotel room. At the police station, a police officer tested the drugs and drug paraphernalia for the presence of drugs. Subsequently, the police had a drug detection dog sniff the seized money for the presence of drugs. The dog alerted to the presence of drugs on this money.

Held: The State failed to lay an adequate foundation that the procedures used were sufficiently reliable to support the admission of the dog-sniff evidence under HRE Rule 702. Without some evidence showing that the money was not contaminated by the police, the State failed to lay a sufficient foundation for the admission of the dog-sniff evidence under HRE Rule 702. As a matter of foundation, the State was required to show that it was improbable that the police officers were responsible for contaminating the money with the odor of drugs by adducing evidence that steps were taken to avoid such contamination or that circumstances existed making such contamination unlikely. Had this threshold showing been made, claims of possible police contamination would have gone only to the weight of the dog-sniff evidence, not its admissibility.

IDAHO

A DRUG DETECTION DOG'S ALERTING TO THE PRESENCE OF CONTRABAND IN A VEHICLE CAN PROVIDE THE PROBABLE CAUSE TO SEARCH THAT VEHICLE PURSUANT TO THE AUTOMOBILE EXCEPTION TO THE 4TH AMENDMENT'S WARRANT REQUIREMENT.

State v. Braendle – Feb. 8, 2000 [**134 Idaho 173**].
Facts: Police arrested Defendant for driving without privileges. After Defendant was taken to the police station, a detective arrived on the scene with a narcotics detection dog. The dog "alerted" at the passenger door of the truck. The detective then opened the unlocked door and allowed the dog into the cab. Once inside, the dog led officers to a number of plastic baggies of marijuana and miscellaneous drug-related items. The detective also removed a brief case from the truck and opened it after the dog alerted on it. Additional marijuana was found in the briefcase. At trial, the detective who handled the dog testified to his own training in handling the dog, the dog's training, and prior experience with the dog's performance. According to the detective, the dog had been professionally trained, had already been used as a narcotics dog for 3 to 4 years before the detective began working with him, and the detective and the dog had an additional 180 hours of training together. The detective testified that in previous controlled testing and training, the dog alerted only on containers that held illegal drugs. The Defendant challenged the dog's reliability with testimony that, on an occasion when the dog was used to inspect students' lockers at a high school, he alerted on several lockers that, upon being searched, were found to contain no controlled substances. In rebuttal, however, the handling detective testified that, in his opinion, when the dog alerted on a location where no drugs were found, that location had the residual odor of a drug that had previously been there and, with respect to the school lockers, clothing or other items in the lockers might have had a lingering odor of drugs. The detective based this conclusion upon the fact that the dog did not give false positive responses when tested in controlled settings. At trial, Defendant moved to exclude all evidence found as a result of the search of his truck. On appeal, Defendant asserts that the State did not present sufficient evidence of the drug dog's reliability to satisfy foundational requirements for admission of evidence of the dog's behavior in alerting on the Defendant's truck.
Held: Although there was conflicting evidence, in light of the testimony given by the detective, the district court did not abuse its discretion in determining that a sufficient foundation had been established to permit the admission of the dog detection evidence. Furthermore, the district court erred by not holding that the automobile exception applied to validate the search because the police possessed probable cause to believe there was contraband in the vehicle. The reaction of the drug detection dog provided the probable cause to justify the search.

A MAGISTRATE CAN CONSIDER THE ALERTING OF A DRUG DETECTION DOG IN THE TOTALITY OF THE CIRCUMSTANCES IN DETERMINING PROBABLE CAUSE TO ISSUE A WARRANT EVEN

WHERE THE WARRANT AFFIDAVIT FAILS TO ESTABLISH THE DOG'S RELIABILITY FOR USE AT TRIAL.

State v. Howard – May 7, 2001 [**135 Idaho 727**].
Facts: A drug detection dog sniffed the exterior of Defendant's pickup and alerted to the driver's side door and the front of the truck bed. Police submitted an application for a warrant to search the Defendant's pickup based on this alert and other evidence, which was granted. Defendant moved to suppress the evidence seized in the subsequent search of the pickup on the basis that the search and arrest violated the United States Constitution, the Idaho Constitution, the Idaho Criminal Rules, and Idaho Code §§ 19-602 and 19-603. Defendant alleged that the affidavit filed with the application for the search warrant was insufficient to allow the magistrate to make an independent determination that there was a fair probability that the truck contained contraband.
Held: The Ninth Circuit has held that "a canine sniff alone can supply the probable cause necessary for issuing a search warrant if the application for the warrant establishes the dog's reliability." *United States v. Lingenfelter,* 997 F.2d 632, 639 (9th Cir. 1993). In this case the affidavit did not establish the dog's reliability in the manner contemplated in *Lingenfelter,* and the dog's reaction did not provide probable cause by itself. However, the fact that the affidavit in this case did not establish a sufficient foundation for introduction of the dog's reaction at trial does not preclude some consideration of the information by the magistrate in issuing a search warrant. While the foundation concerning the dog's training is lacking, there are sufficient facts in the affidavit to allow consideration of the reaction of the dog as "a factor in the totality of circumstances in determining probable cause."

NO EXCEPTION TO THE 4TH AMENDMENT'S WARRANT REQUIREMENT JUSTIFIED THE SEARCH OF THE DEFENDANT'S PERSON WHERE THE ONLY FACTS KNOWN TO THE POLICE WERE THAT A DRUG DETECTION DOG HAD ALERTED TO THE PRESENCE OF DRUGS IN THE VEHICLE IN WHICH DEFENDANT WAS A PASSENGER AND THE SEARCH OF THAT VEHICLE DID NOT UNCOVER ANY DRUGS.

State v. Gibson – Feb. 18, 2005 [**141 Idaho 277**].
Facts: Police walked a drug detection dog around the vehicle in which Defendant was riding in the front passenger seat. The dog alerted at the front passenger side door. A subsequent search of the vehicle did not uncover any drugs. The officers then searched Defendant's wallet and discovered a small baggie containing methamphetamine. At Defendant's trial for possession of a controlled substance, Defendant moved to suppress the methamphetamine arguing that, by searching his wallet, the police impermissibly expanded the automobile search to a search of his person.
Held: When a reliable drug-detection dog indicates that a lawfully stopped automobile contains the odor of controlled substances, the officer has probable cause to believe that there are drugs in the automobile and may search it without a warrant pursuant to the automobile exception to the 4th Amendment's warrant requirement. However, the automobile exception did not justify the warrantless search of Defendant's person

following the dog's alert and the fruitless search of the vehicle. The search incident to arrest exception to the warrant requirement also does not justify the search of the Defendant's person. Although a drug's odor detected by a dog alerting on a vehicle provides probable cause to believe that the drug is present and authorizes the search of the vehicle, the mere existence of the drug in an automobile does not of itself authorize the police either to search any other place or provide probable cause to arrest any person in the vicinity. Probable cause to believe that drugs are located in an automobile may not automatically constitute probable cause to arrest all persons located in the vehicle; some additional factors would generally have to be present, indicating to the officer that those persons possessed the contraband. Furthermore, the alert of a drug dog on a car seat where an occupant had previously been seated does not, standing alone, give police probable cause to believe that the occupant had drugs on his or her person.

1) A CANINE SNIFF OF AN AUTOMOBILE IS NOT ITSELF A SEARCH THAT IMPLICATES A PRIVACY INTEREST, AND THUS IT NEED NOT BE JUSTIFIED BY SUSPICION OF DRUG ACTIVITY.

2) AN ALERT BY AN OTHERWISE RELIABLE, CERTIFIED DRUG DETECTION DOG IS SUFFICIENT TO DEMONSTRATE PROBABLE CAUSE TO BELIEVE CONTRABAND IS PRESENT EVEN IF THERE EXISTS A POSSIBILITY THAT THE DOG HAS ALERTED TO RESIDUAL ODORS.

State v. Yeoumans – Feb. 18, 2007 [**144 Idaho 871**].
Facts: Police walked a drug detection dog around Defendant's pickup truck. The dog alerted on the passenger door and gave a strong alert on the driver's side door. Based on the dog's alerts, the officers searched the vehicle and found methamphetamine and drug paraphernalia. At a hearing to suppress the evidence found in the search of the Defendant's truck, the dog's handler testified that the dog had been through a certification process where she was required to find hidden drugs with an acceptable passing rate. He testified that the dog had been certified for almost 6 years, and that she conducted approximately 150 searches per year, which included in-the-field searches and training searches. On cross-examination, the dog's handler admitted that the presence of drug residue could make the dog falsely alert to the presence of drugs. On appeal, Defendant argued that police lacked probable cause to search his vehicle because the drug detection dog was unable to distinguish between odors emanating from drugs that were actually present and residual odors from drugs that were no longer in the vehicle. Thus, the dog was too unreliable for her alert to provide probable cause.
Held: A canine sniff of an automobile is not itself a search that implicates a privacy interest, and thus it need not be justified by suspicion of drug activity. When a reliable drug-detection dog indicates that a lawfully stopped automobile contains the odor of controlled substances, the officer has probable cause to believe that there are drugs in the automobile and may search it without a warrant. An alert by an otherwise reliable, certified drug detection dog is sufficient to demonstrate probable cause to believe

contraband is present even if there exists a possibility that the dog has alerted to residual odors.

A STOP IS NOT RENDERED A *DE FACTO* ARREST BY THE FIFTEEN MINUTE PERIOD BETWEEN WHEN OFFICERS FIRST MET A PASSENGER OUTSIDE DEFENDANT'S VEHICLE AND WHEN A DRUG DETECTION ARRIVED ON SCENE TO PERFORM CANINE SNIFF.

State v. Keene – Aug. 16, 2007 [**144 Idaho 915**].
Facts: While investing a tip relating to the sale of drugs, police encountered Defendant and a passenger outside Defendant's vehicle. Defendant ran from police. Police handcuffed Defendant. The officers then called for a drug detection dog. The dog arrived about 10 minutes after the Defendant was handcuffed by the narcotics officers. The dog indicated on the car and a search revealed drugs. On appeal, Defendant contends that her detention became a *de facto* arrest when she was handcuffed, and was not supported by probable cause or reasonable suspicion that she was involved in criminal activity.
Held: The fifteen minutes between the consensual encounter with a passenger of the Defendant's vehicle and the drug dog sniff did not exceed the time necessary to effectuate the purpose of the stop.

State v. Streeper, 113 Idaho 662 (Idaho 1987).
Two bloodhounds were used to assist in the investigation of a commercial burglary. One bloodhound trailed the defendant's scent from a vehicle abandoned a short distance from the crime scene to the actual crime scene. At the crime scene, the dog was scented with defendant's jacket, which was obtained from the vehicle, and dog followed the defendant's scent from the crime scene to his home. The second dog was scented with the same jacket and followed the defendant's scent from the crime scene to his home. The defendant was convicted of burglary. On appeal, he challenged the use of the evidence obtained by the bloodhounds. The Supreme Court of Idaho concluded that in situations where dogs have tracked humans, the following foundation must be shown prior to the admitting dog-tracking evidence: (1) the dog possesses an acute power of scent determination; (2) the dog was trained to track humans and could do so with a high degree of accuracy; (3) the dog's handler is qualified and experienced; (4) the trail had not become stale or contaminated beyond the dog's competency to follow; (5) the dog was placed on trail at a location where the alleged participant in crime was known to have been. It also concluded that the dog-tracking evidence alone will not be sufficient to support a conviction. After discussing the facts of the case, the court held that a proper foundation had been laid and the testimony of the dog handlers was admissible corroborating evidence.

ILLINOIS

TESTIMONY AS TO THE TRAILING OF EITHER A MAN OR AN ANIMAL BY A BLOODHOUND SHOULD NEVER BE ADMITTED IN EVIDENCE IN ANY CASE. . . . HIS GUILT OR INNOCENCE OF A GIVEN CRIME, HOWEVER, SHOULD BE ESTABLISHED BY OTHER EVIDENCE.

People v. Griffin – Apr. 13, 1964 [**48 Ill. App. 2d 148**].
Facts: Officers used tracking dogs to locate Defendants. Trial court excluded dog tracking evidence.
Held: The trial court acted properly.

EVIDENCE OF A TRAINED DOG'S ALERTING TO THE PRESENCE OF ACCELERANTS AT A FIRE SCENE DOES NOT SATISFY THE GENERAL ACCEPTANCE REQUIREMENT OF *FRYE V. UNITED STATES* (D.C. Cir. 1923), 54 App. D.C. 46.

People v. Acri – Jan. 31, 1996 [**277 Ill. App. 3d 1030**].
Facts: State charged Defendant with arson. Trial court barred the State from introducing evidence that a dog trained to detect the presence of accelerants at a fire scene had alerted at various places in the remains of the home.
Held: The disagreement as to the reliability of uncorroborated dog alerts establishes that there is no "general acceptance" of the reliability of those alerts.

1) EVIDENCE OF A TRAINED DOG'S ALERTING TO THE PRESENCE OF DRUGS IN DEFENDANT'S AUTOMOBILE IS ADMISSIBLE AT TRIAL TO CORROBORATE OTHER TESTIMONY OF THE PRESENCE OF DRUGS IN THAT AUTOMOBILE.

2) A POLICE OFFICER'S TESTIMONY ABOUT THE ACTIONS OF A POLICE DOG IS NOT HEARSAY.

People v. Moore – Jan. 13, 1998 [**294 Ill. App. 3d 410**].
Facts: At Defendant's trial for possession with intent to deliver cocaine, a narcotic dog's handler testified that the dog alerted to the presence of drugs in Defendant's vehicle. Although no drugs were found in the car, the handler testified that the dog may have detected residual odors from narcotics.
Held: In *People v. Cruz* (1994) 162 Ill. 2d 314, the Illinois supreme court concluded that evidence of which direction a bloodhound attempted to track a scent could not be used to establish a factual proposition. In the present case, however, the police used a certified dog to detect the presence of narcotics. "The use of trained dogs as a follow-up investigative technique to partially corroborate information received is, in our judgement, a useful, entirely reasonable and permissible procedure." *People v. Campbell* (1977) 67 Ill. 2d 308,

317. The trial court did not err in finding that police officers acted reasonably in using the canine sniff test. This evidence was corroborated: other officers testified that Defendant used his car to transport cocaine, and officers observed Defendant handing another individual a paper bag inside the automobile.

EVIDENCE OF THE DETECTION OF NARCOTICS IN VICTIM'S HOME BY TRAINED DOGS IS ADMISSIBLE FOR THE PURPOSE OF ESTABLISHING PROBABLE CAUSE AND CORROBORATING TESTIMONY.

People v. Reeves – Jun. 14, 2000 [**314 Ill. App. 3d 482**].
Facts: During Defendant's trial for murder and arson, the court admitted evidence relating to the alert by two narcotics dogs to the presence of narcotics in the rear bedroom and the workbench in the basement of the victims' home. On appeal, Defendant argued that the trial court erred in admitting this evidence.
Held: The detection of narcotics by a trained dog is a permissible method of establishing probable cause. Moreover, *People v. Acri* (1996) 277 Ill. App. 3d 1030, 1034 does not apply here. Here, the evidence that dogs alerted to the presence of narcotics in the victims' house was introduced, not to support an element of the offense, but to corroborate Williams' testimony that defendant and the victims engaged in drug transactions. The evidence also corroborates the testimony of Detective Cegielski, who testified that the envelopes found in the basement were commonly used to package narcotics. The admission of this evidence did not deny Defendant a fair trial.

A POLICE CANINE ALERT OF A CAR'S EXTERIOR INDICATING THE PRESENCE OF A CONTROLLED SUBSTANCE WITHIN THE CAR DOES NOT, WITHOUT MORE, PROVIDE THE POLICE WITH PROBABLE CAUSE TO SEARCH THE PERSONS OF THE CAR'S OCCUPANTS.

People v. Fondia – Dec. 21, 2000 [**317 Ill. App. 3d 966**].
Facts: Police stopped vehicle in which Defendant was passenger in rear passenger-side seat. Police walked drug-sniffing canine around vehicle. Canine alerted to odor of illegal substances when it reached the rear seam of driver's door. Subsequently, police searched the Defendant and found a crack pipe. Defendant moved to suppress this evidence.
Held: Under certain circumstances, an alert by a police canine trained to detect contraband can constitute probable cause for a search of the car. However, a police canine alert of a car's exterior indicating the presence of a controlled substance within the car does not, without more, provide the police with probable cause to search the persons of the car's occupants. A canine alert on the exterior of the vehicle supports the general proposition that drugs may well be located within the vehicle, but not the more specific proposition that the drugs are concealed on a particular occupant thereof. If a dog sniff of Defendant had occurred in this case and the dog alerted, then probable cause would have existed to search Defendant's person. If, on the other hand, the dog did not alert after sniffing Defendant but did alert as to one of the car's other occupants or as to the now-unoccupied

car interior, then no basis would have existed to search Defendant's person. By not conducting additional dog sniffs of Defendant or the car's other occupants (which the officers had it entirely in their power to do), the officers willfully denied themselves this additional, critical information that would have sharpened their focus on whom to search, leaving themselves in a position of "willful ignorance." This posture of "willful ignorance" dissipates the reasonableness of the police conduct in this case, given the nature of that conduct, which was a search of defendant's person, not merely a container within the car.

THE DETECTION OF NARCOTICS BY A TRAINED DOG IS A PERMISSIBLE METHOD OF ESTABLISHING PROBABLE CAUSE TO SEARCH.

People v. Staley – Oct. 9, 2002 [**334 Ill. App. 3d 358**].
Facts: During a traffic stop, a narcotics-sniffing dog alerted to the presence of narcotics in the vehicle in which Defendant was a passenger. Subsequently, police searched the Defendant's person. On appeal, Defendant contends that the search of his person following the canine alert was unconstitutional because it was not supported by probable cause.
Held: The detection of narcotics by a trained dog is a permissible method of establishing probable cause to search. The instant case is distinguishable from *People v. Fondia* (2000) 317 Ill. App. 3d 966 because here the officers had particularized suspicion to search the Defendant and a canine search of the Defendant's person would have exposed him to danger (the narcotics-sniffing dog was an "aggressive alert dog," meaning that he scratches and occasionally bites the area of detection).

People v. Pfanschmidt, 262 Ill. 411 (Ill. 1914).
Two bloodhounds were used to follow a horse buggy trail that was more than 30 hours old. One of the bloodhounds followed the horse's trail from the murder scene to the defendant's buggy and then, his tent. According to the record, there were many times that the dog hesitated and was undecided which way to go. The Supreme Court of Illinois considered the reliability of the owner; pedigree, training, and experience of the dog; and whether the dog was placed upon the trail of the defendant's horse. It concluded that testimony as to the trailing of either a man or an animal by a blood-hound should never be admitted in evidence in any case. However, the court stated a blood-hound may be used to track down a known fugitive from justice, as there can be no mistake as to whether or not he is the party sought.

People v. Wolf, 334 Ill. 218 (Ill. 1929).
Defendant burned his neighbor's barn and was convicted of arson. Defendant contended that the indictment was defective, the court erred in overruling various objections during trial, and the judgment should be reversed because references to bloodhounds appeared in the testimony of a witness. The witness testified that he followed a trail from the burned barn to the defendant's house and that the defendant asked him about the pedigree of the dogs he had with him and complimented him on his dogs. The Supreme Court of Illinois

evaluated the testimony and held that the rule against admitting dog-tracking evidence was not violated as there was no evidence or offer of evidence that the dogs followed any trail.

People v. Stewart, 229 Ill. App. 3d 886 (Ill. App. Ct. 1992).
A bloodhound was used to trail defendant from car keys located near the murder scene. The dog had been scented from a gauze pad that had been rubbed on the passenger seat of the victim's vehicle. The dog followed the scent from the keys to the adjacent residences of the victim and defendant. Defendant argued that the admission of the dog-tracking evidence was reversible error. The State argued that bloodhound evidence had been presented to the jury in several recent murder cases and that since the admissibility of such evidence had not been challenged on appeal, *Pfanschmidt* was no longer mandatory authority. The trial court ruled that, as a matter of law, evidence of bloodhound tracking could not be presented to the jury. The appellate court held that the *Pfanschmidt* decision was binding authority and it was the duty of the Illinois courts to follow the decision in similar cases.

People v. Cruz, 162 Ill. 2d 314 (Ill. 1994).
Two bloodhounds were used to investigate the scene of a residential burglary and child abduction. The dogs trailed two different paths when directed to scent from the victim's bed sheets, the footprint on the front door, and the shoe impression in the tire mark located in the grass. Defendant was convicted of murder, aggravated kidnapping, deviate sexual assault, aggravated indecent liberties, and residential burglary. On appeal, the defendant contended that the bloodhound evidence was either inadmissible *per se* or inadmissible in the case and was also prejudicially distorted by the State in closing argument. The Supreme Court of Illinois decided to continue to adhere to the principle that bloodhound evidence is inadmissible to establish any factual proposition in a criminal proceeding in Illinois. It pointed to the fallibility of bloodhound evidence and its potential to prejudice as the reasons for its decision and states its belief that such evidence is generally lacking in probative value when balanced against the dangers of unfair prejudice.

People v. Lefler, 294 Ill. App. 3d 305 (Ill. App. Ct. 1998).
A German Shepard police dog was used to trail a path from the front door of the victim's home to a point a few blocks away where defendant was arrested. Defendant was found guilty of residential burglary. On appeal, defendant argued that the admission into evidence of the dog-tracking evidence constituted plain error and singularly compelled reversal. The State argued that "bloodhound evidence" was limited to bloodhounds and the evidentiary ban is not intended to apply to German Shepard dogs. The appellate court determined that whether the trailing or tracking is performed by an academy-trained German Shepard or the less sophisticated bloodhound, the evidence's underlying fallibility remains the same. Even though the appellate court agreed that it was error to admit the dog-tracking evidence, it did not reverse because there was not substantial, as there was evidence from two unimpeached witnesses that corroborated the dog-tracking evidence.

People v. McDonald, 322 Ill. App. 3d 244 (Ill. App. Ct. 2001).
A police dog was used to follow the scent of a victim that fled the where defendant shot and killed one of the victims and wounded the others. The dog's handler testified about

the dog's path as it trailed the fleeing victim. Defendant objected and moved for mistrial. The trial courts refused to declare a mistrial but instructed the jury to ignore the handler's testimony. Defendant was convicted of first degree murder, two counts of aggravated battery with a firearm, aggravated discharge of a firearm, and unlawful use of a weapon by a felon. On appeal, defendant claimed that the trial court abused its discretion when it denied a motion for a mistrial after prosecution testimony about bloodhound evidence. The appellate court found that the trial court's instruction to the jury to disregard the dog-tracking evidence was sufficient to cure the error.

INDIANA

JURY VERDICT COULD STAND BECAUSE EVIDENCE ADDITIONAL TO IMPROPERLY ADMITTED TRACKING DOG EVIDENCE WAS SUFFICIENT TO SUPPORT JURY VERDICT.

Hill v. State – Jan. 5, 1989 [**531 N.E.2d 1382**].
Facts: Trial court admitted evidence of police dog tracking Defendant from burglary scene.
Held: Although evidence of the result of the use of a tracking dog is not admissible, the evidence in this case is sufficient to support the jury's verdict without the improper evidence. We do not perceive that the jury would have been misled.

Ruse v. State, 186 Ind. 237 (Ind. 1917).
A bloodhound was brought to the scene of an unspecified crime. During his opening statement at trial, the prosecutor commented on the bloodhound evidence that it planned to introduce. Defendant objected to the evidence during trial and court sustained his objection. The prosecution did not attempt to show the conduct of the bloodhound. However, during other testimony, it was shown that the dog accompanied its owner as he followed a trial of visible footprints leading in the direction of the defendant's house and the defendant threatened to shoot the dog when it was brought onto his property. The defendant requested instructions that specifically addressed the prosecution's blood-hound related comments during the opening statement. The court rejected the instruction and offered a more general instruction. The defendant was convicted of the crime. The defendant challenged the court's refusal to offer his instruction to the jury. The Supreme Court of Indiana concluded that bloodhounds are generally too unreliable to be accepted as evidence in either civil or criminal cases and held that it was very probable that the jury attached undue weight to the bloodhound-related evidence and that the defendant was harmed through the refusal of his requested instruction. It also suggested that the use of bloodhounds to track fugitives would be permissible.

Brafford v. State, 516 N.E.2d 45 (Ind. 1987).
Defendant was convicted of burglary and attempted theft and was also determined to be a habitual offender. Defendant asserted the trial court erred by preventing him from questioning police as to whether defendant was handcuffed when the victim identified him and from questioning police concerning their use of a dog. Defendant wanted to know whether or not a dog had been used to follow a scent from the victim's house and whether the shirt recovered from the defendant's home was offered to the dog. The Indiana Supreme Court reiterated its holding in *Ruse* that tracking dog or "bloodhound evidence" is not sufficiently reliable to be admitted into evidence and concluded that the trial court was correct in limiting the line of questioning concerning the use of the dog.

IOWA

State v. Grba, 196 Iowa 241 (Iowa 1923) (overruled by *State v. Buller*, 517 N.W.2d 711 (Iowa 1994))

State v. Grba, 196 Iowa 241 (Iowa 1923).
Victim was killed in an explosion from dynamite that was denoted outside of his garage. Wires extended 60 feet from the scene of the explosion. Two bloodhounds were taken to the end of the wires. They followed a trail which eventually led to the clay pits where the defendant worked and then, the steam shovel where the defendant had left some clothes. At the police station, the dogs were let loose in a room that contained several individuals, including the defendant, and they identified the defendant. The defendant was convicted of murder. On appeal, defendant contended that the trial court committed error in the admission of the dog-tracking evidence. The Supreme Court of Iowa addressed the admissibility of the dog-tracking evidence and decided to adopt the minority position in rejecting such evidence. It stated that dog-tracking evidence is in the nature of expert testimony and there was no opportunity to cross-examine the expert or to find out from any source any reason for the conduct of the dogs, or why they should choose one direction, or one trail, rather than another. The court reversed the conviction because the trial court erred in admitting evidence of bloodhounds following defendant's scent near the scene of the crime.

State v. Buller, 517 N.W.2d 711 (Iowa 1994).
The defendant was convicted of arson. On appeal, the defendant contended that the trial court erred in admitting descriptions of a dog's actions that indicated it detected the scent of a fire accelerant. The defendant asserted that the evidence lacked a proper foundation. The Supreme Court of Iowa overruled *Grba* and found that 1) evidence of the reaction at a fire scene of a dog trained in accelerant detection is a type of specialized information that will assist a trier of fact and 2) the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. It also stated that a foundation is required for admissibility of such evidence. In the case, the court found that the following had been established as a proper foundation: (1) the dog handler's expertise; (2) the dog's training; and (3) the general accuracy of the dog's reaction during investigations.

KANSAS

State v. Adams, 85 Kan. 435 (Kan. 1911) is incorrectly listed as *People v. Adams*.

THE TRIAL COURT DID NOT ERR IN ADMITTING BLOODHOUND EVIDENCE BECAUSE *STATE V. ADAMS* (1911) 85 Kan. 435 WAS SUBSTANTIALLY FOLLOWED.

State v. Mooney – Nov. 14, 1914 [**93 Kan. 353**].
Facts: Defendant argued that the trial court improperly admitted certain bloodhound evidence. The Defendant argued that this might have been considered as a circumstance to assist in determining whether or not the Defendant was guilty.
Held: The rule laid down in *The State v. Adams* (1911) 85 Kan. 435, appears to have been substantially followed.

IDENTITY OF MAKER OF FOOTPRINTS USED BY TRACKING DOGS CAN BE ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE.

State v. Schalansky – Oct. 7, 1922 [**112 Kan. 87**].
Facts: Dogs tracked the Defendant from two fires that had burned down two barns. At Defendant's arson trial, the trial court charged the jury that, "unless you find the tracks, if any, followed by the dogs to the home of the defendant were in fact made by him, you should disregard all evidence of the actions of the dogs in arriving at your verdict." In several other instructions the court told the jury that if the dogs used for trailing had been shown to be certain, accurate and reliable, the following of human tracks to and upon the premises of the defendant would be competent as tending to show that the person making the tracks had been at the scene of the fire, "still this would not alone be sufficient to justify you in finding that the tracks, if any, followed by the dogs were the tracks of the defendant, without some sufficient evidence of identification or other evidence sufficient to show that he had made them." In another instruction the court referred to the fact that evidence had been introduced tending to prove that bloodhounds were put on the trail believed to have been made by the guilty person and that the dogs followed the trail a considerable distance to the home of the defendant, but in the same instruction the jury was told that "this alone would not be sufficient evidence upon which you could find the defendant guilty . . . but is to be considered by you as a circumstance, together with all the other evidence, and circumstances in this case, in determining whether the defendant is or is [not guilty] of the offense imputed to him." In defining the function of circumstantial evidence the court gave the usual instruction with reference to the necessity of proving every single chain, and charged that "each essential fact in the chain of circumstances must be found to be true by the jury beyond a reasonable doubt, to warrant a conviction"; and that one of the essential facts here was that the tracks leading from the burned stacks "and which it is claimed the dogs followed were made by the defendant," and the jury were admonished further that unless they found "that such tracks have been identified as tracks

made by the defendant, and that such identification has been proven beyond a reasonable doubt, there would be a failure to establish one of the necessary essential facts."
Held: It is not the law, that in order to identify the tracks as made by the Defendant it would be necessary to produce positive or affirmative evidence, such as evidence of some one who saw the tracks made, or affirmative evidence of measurements showing conclusively that they were made by the Defendant. Any or all of the essential facts in such a case may, of course, be shown by circumstantial evidence, and if sufficient to convince the jury beyond a reasonable doubt, the law is satisfied. The contention, therefore, that the verdict and judgment is contrary to the law of the case cannot be sustained.

1) A DRUG DOG'S SNIFF OF THE EXTERIOR OF A VEHICLE IS NOT A SEARCH FOR THE PURPOSES OF THE FOURTH AMENDMENT.

2) DRUG DOG'S SNIFF OF THE EXTERIOR OF DEFENDANT'S VEHICLE DID NOT UNCONSTITUTIONALLY EXTEND THE DEFENDANT'S LAWFUL DETENTION INTO AN UNCONSTITUTIONAL SEIZURE.

3) THE *FRYE* TEST (*FRYE V. UNITED STATES* (D.C. CIR. 1923) 293 F. 1013) DOES NOT APPLY TO THE USE OF A NARCOTICS DOG.

4) IN ORDER TO ESTABLISH PROBABLE CAUSE FOR THE SEARCH OF DEFENDANT'S VEHICLE, SOME FOUNDATION TESTIMONY IS NECESSARY TO ESTABLISH THAT THE "ALERT" OF THE DOG PROVIDED PROBABLE CAUSE FOR THE SEARCH OF THE VEHICLE.

State v. Barker – Apr. 16, 1993 [**252 Kan. 949**].
Facts: Highway patrol established a checklane. When Defendant's vehicle entered the checklane, officers contacted the Defendant and detected the odor of alcohol. Defendant voluntarily submitted to a preliminary alcohol screening test. Subsequently, officers walked a narcotics-detecting dog around the Defendant's vehicle. The dog "alerted." A subsequent search of the Defendant's vehicle and person resulted in the discovery of marijuana and cocaine. Defendant moved to suppress this evidence.
Held: A drug dog's sniff of the exterior of a vehicle is not a search for the purposes of the Fourth Amendment. Additionally, the dog's sniff of the exterior of the Defendant's car in this case did not unconstitutionally extend the Defendant's lawful detention into an unconstitutional seizure. Also, the *Frye* test (*Frye v. United States* (D.C. Cir. 1923) 293 F. 1013) does not apply to the use of a narcotics dog.
However, in order to establish probable cause for the search of Defendant's vehicle, some foundation testimony is necessary to establish that the "alert" of the dog provided probable cause for the search of the vehicle. On a proper showing, a narcotics dog's reaction to a vehicle may supply the probable cause necessary to justify a search of the vehicle, but there must be some evidence that the dog's behavior reliably indicated the likely presence of a controlled substance. The evidence in this case must be suppressed because the State

failed to admit evidence "as to the training, background, characteristics, capabilities, and behavior of the dog that would justify the officer's intrusion into the defendant's vehicle."

1) THE NARCOTICS DOG SNIFF OF DEFENDANT'S VEHICLE DID NOT CONSTITUTE A SEARCH OR SEIZURE.

2) POLICE NEED NOT DETAIN A DEFENDANT BEFORE CONDUCTING A LEGITIMATE DOG SNIFF.

State v. McMillin – Nov. 22, 1996 [**23 Kan. App. 2d 100**].
Facts: Officers walked a trained narcotics dog around the exterior of Defendant's vehicle when that vehicle was parked at a Motel 6. The dog "alerted" behind the driver's side rear door. Subsequent consent searches of Defendant's vehicle and motel room uncovered drugs and drug paraphernalia. Defendant moved to suppress this evidence.
Held: The use of a narcotics dog does not constitute a search within the meaning of the Fourth Amendment. Additionally, the dog sniff of the Defendant's car did not amount to a seizure under the US or Kansas Constitutions. Police need not detain a defendant before conducting a legitimate dog sniff.

THE PRESENCE OF A DRUG-SNIFFING DOG AT A SOBRIETY CHECKLANE DID NOT CONSTITUTE AN ILLEGAL SEARCH.

State v. Jackson – Jun. 20, 1997 [**24 Kan. App. 2d 38**].
Facts: The Defendant was arrested after officers spotted marijuana in Defendant's vehicle at a checklane at which a drug-sniffing dog was present.
Held: The presence of a drug-sniffing dog at a sobriety checklane did not constitute an illegal search.

SUFFICIENT FOUNDATION EXISTS FOR THE ADMISSION OF THE SEARCH DOGS' HANDLER'S TRAINING AND QUALIFICATIONS, THE DOGS' TRAINING, AND THE HANDLER'S INTERPRETATION OF THE DOGS' ACTIONS.

State v. Brown – Jan. 22, 1999 [**266 Kan. 563**].
Facts: During a murder investigation, police brought search dogs trained to detect the scent of human remains to a junkyard. The dogs alerted on the location identified by an informant. At trial, the dogs' handler testified that she had been part of the Missouri Search and Rescue Canine organization since 1984. She had received extensive training including several search and rescue schools. She had worked with Andrew Redmon, a recognized expert in the field of locating human remains using canines. The handler testified that she was nationally certified as search ready. Her dogs were trained to ignore all scents other than human beings. The dogs and handler had been on approximately 20 searches of this type and had previously been successful in finding human remains. With

this background, the handler was allowed to give her opinion that based upon the dogs' behavior, a conclusion could be drawn that the remains of a human body were in the area on which the dogs alerted.
On appeal, the Defendant argued that the handler was not qualified to render an opinion because she did not have sufficient medical training. Additionally, the Defendant contended that he should have been allowed to voir dire the handler before an opinion was given.
Held: A sufficient foundation was laid to show both the training and reliability of the dog and the handler to allow the admission of the bloodhound evidence. The trial court did not err in refusing to permit the Defendant to voir dire the handler before she gave her opinion. The Defendant had the opportunity to cross-examine the handler.

PLACING A DOG INSIDE THE TRUNK OR PASSENGER COMPARTMENT OF A VEHICLE IS AN INVASIVE SEARCH REQUIRING PROBABLE CAUSE.

State v. Freel – Oct. 5, 2001 [**29 Kan. App. 2d 852**].
Facts: A confidential informant told police that Defendant was in possession of one or two "eight balls" of methamphetamine. After police stopped the Defendant for failing to come to a complete stop, Defendant acted extremely nervous. A dog sniff of the exterior of the Defendant's vehicle yielded no alerts. However, police encouraged the dog to go through an open window into the Defendant's automobile where the dog alerted to the presence of narcotics on the floor board. Although police discovered no drugs in a search of the vehicle's floor board, they subsequently discovered drugs and drug paraphernalia in a case above the driver's side sun visor. Defendant filed a motion to suppress this evidence.
Held: The use of a narcotics dog does not constitute a search within the meaning of the Fourth Amendment. However, placing a dog inside the trunk or passenger compartment of a vehicle is an invasive search requiring probable cause. Just as an officer could not enter the passenger compartment or trunk of a vehicle to conduct a search without probable cause, neither can a dog be placed inside a vehicle on less than this standard. In the instant case, the dog's entry into the Defendant's car was a violation of the Defendant's Fourth Amendment rights.

ALTHOUGH A DRUG DOG'S ALERT IS SUFFICIENT TO CONSTITUTE PROBABLE CAUSE TO SEARCH A VEHICLE, SUCH AN ALERT FOLLOWED BY AN UNSUCCESSFUL SEARCH OF THE VEHICLE DOES NOT GIVE LAW ENFORCEMENT LICENSE TO SEARCH OR ARREST THE VEHICLE'S DRIVER.

State v. Anderson – Jun. 9, 2006 [**281 Kan. 896**] (superseded on other grounds by *State v. Henning*, **289 Kan. 136** (Kan. 2009)).
Facts: A Wichita police officer, conducting nighttime surveillance from an unmarked car, observed Defendant driving a rental truck to a convenience store/gas station known as a hub of illegal drug activity. Defendant and his passengers were known gang members.

After Defendant committed two traffic violations, police stopped the Defendant's truck. The police recognized Defendant from an earlier stop in which police found $4,000 in cash on Defendant. Although a subsequent police patdown uncovered contraband on Defendant's passenger, a similar patdown of the Defendant uncovered no contraband. A dog subsequently alerted to the presence of contraband in Defendant's truck. However, the search of that truck uncovered no contraband. Later, police discovered contraband on Defendant's person.

Defendant moved to suppress the drug evidence.

Held: The police had ample information to support a reasonable suspicion that Defendant was engaged in illegal drug activity. Thus, they were permitted to extend Defendant's detention beyond the conclusion of the traffic stop to allow time for the drug dog sniff of the truck. However, after the officers failed to discover drugs in the Defendant's truck, the Defendant's continued detention became unlawful.

THE USE OF A NARCOTICS DOG TO SNIFF THE EXTERIOR OF A VEHICLE DOES NOT CONSTITUTE A SEARCH FOR FOURTH AMENDMENT PURPOSES.

State v. Kelley – Jul. 27, 2007 [**38 Kan. App. 2d 224**].

Facts: Police stopped Defendant's vehicle. As an officer ran a computer check of Defendant's driver's license, another officer conducted a narcotics dog sniff of the exterior of the Defendant's vehicle. The dog alerted police to the front passenger's side door of Defendant's vehicle. A subsequent search of the interior of Defendant's vehicle uncovered contraband.

The district court denied Defendant's motion to suppress the evidence obtained from his arrest.

Held: The duration of the traffic stop was not extended by the dog sniff because that sniff took place while police ran a computer check of Defendant's driver's license.

REASONABLE SUSPICION SUPPORTED EXTENDING DEFENDANT'S DETENTION UNTIL THE ARRIVAL OF A DRUG DOG.

State v. Golston – Mar. 13, 2009 [**41 Kan. App. 2d 444**].

Facts: Companion case to *State v. Anderson* (2006) 281 Kan. 896. Defendant was the passenger in Anderson's vehicle. Police detained Anderson and Defendant while police waited for a drug dog to arrive.

On appeal, Defendant argues that his rights under the Fourth Amendment were violated because the officers lacked reasonable suspicion specific to Defendant to justify the length of his detention.

Held: Under the totality of the circumstances, there was reasonable suspicion specific to Defendant to justify the length of his detention. At the time the duration of the car stop was extended, police knew the following information about the Defendant: (1) He had just come from an Amoco known for drug activity and where several arrests for drug-related crimes had occurred over the past 2 years, (2) he was in the SPIDER database as a

documented gang member, (3) he was with Anderson who was on supervised release from prison and had been involved in a prior stop involving drugs within the last 2 weeks, and (4) Anderson had just driven Cobos from the Amoco to a suspected drug deal and it now appeared that Anderson was driving Defendant from the Amoco to another possible drug deal.

People v. Adams, 85 Kan. 435 (Kan. 1911).
Defendant was convicted of murder. Bloodhounds were used to track the defendant. The defendant contended that the evidence of the tracking of the defendant by bloodhounds was improperly received and improperly instructed upon. The Supreme Court of Kansas stated that before dog-tracking testimony can be used, it should appear that 1) the person testifying is reliable; 2) the dogs whose actions are to be described were able to scent a track under the given circumstances, and 3) they did follow such scent or track to or towards the location of the defendant. It also stated that the evidence alone could not be proof of guilt. The competency of the evidence is for the judge to determine and the weight of the evidence is to be determined by the jury. In this case, the owner of the dogs testified was keeping and training bloodhounds for the purpose of running down criminals, the dogs used were three month old English bloodhounds, they were trained to track human scent and were successful in tracking humans during their training. The court concluded that while the evidence offered was not necessarily satisfactory, it could not say that the trial court erred in holding it a sufficient foundation for showing how the dogs acted. There was also corroborating evidence and the effect of the bloodhound evidence on the jury was cumulative and not controlling

State v. Sweet, 101 Kan. 746, 747 (Kan. 1917)
Bloodhounds took up defendant's trail from the murder scene and followed it a location where the defendant had slept. The dogs took his trail up again and followed it to a spot where the defendant was taken into custody. The defendant objected to the use of bloodhound evidence at his trial. Defendant was convicted of murder. The court concluded that the bloodhound evidence introduced conformed to the prerequisites and limitations in the use of such evidence as laid down in *Adams*.

State v. Evans, 115 Kan. 538 (Kan. 1924)
Bloodhounds followed trails from the window of a store that had been burglarized to a haystack and another spot where stolen property was found to defendants' house. The defendant's were convicted of burglary. On appeal, defendants argued that the trial court erred in, among other things, permitting the man who handled the bloodhounds to give his opinion about the dogs' qualifications to follow a trail. The owner testified that he had been training, handling and using bloodhounds for fifteen years; that he knew the qualifications of the two dogs used in this case with reference to following human trails; that the conditions existing were such as to offer just a medium trail for the dogs. He also stated that the dog's qualification was accurate. The Kansas Supreme Court concluded there was substantial compliance with the rule under which evidence of the conduct of bloodhounds is admissible.

State v. Fixley, 118 Kan. 1 (Kan. 1925).
Bloodhounds were brought to the scene where the murder victim apparently struggled with her assailant. The dogs started on several trials. One trail led to the location where the victim's body was found and from there went, in an irregular course, to the house where the defendant was staying and then, to the garage where the defendant had been working the evening before. The door to the vehicle in the garage, which the defendant had been in, was opened and one of the dogs entered and sat down where the defendant had been seated. The defendant was convicted of murder and the conviction was based primarily on the evidence of the dog's actions. The defendant contended that the bloodhound evidence was not admissible, lacked probative value, and even if it were admissible, the evidence was unsupported by other evidence connecting the defendant to the murder. The Supreme Court of Kansas found the bloodhound evidence admissible but held the evidence was insufficient to support the verdict of guilty.

State v. Netherton, 133 Kan. 685 (Kan. 1931).
Bloodhounds were brought to a murder scene, a home, to assist in the investigation. The dogs were taken to the upstairs of the home and given a scent from one of the dresser drawers that were partly open. From there the dogs went into various rooms upstairs, into the hall, around other locations of the house, out of the front door onto the porch and stopped by the defendant. The dogs were then taken into the basement and followed a scent up the basement stairs to the landing, out through the basement door, and eventually stopped at the defendant. Defendant was convicted of murdering his wife. On appeal, the defendant contended that the court erred in denying his motion to strike the testimony concerning the action of the bloodhounds and in failing to withdraw it from the consideration of the jury. The defendant's primary argument was that there was no evidence that justified the starting point for the dogs to trail the assailant. The Supreme Court of Kansas concluded the qualification of he dogs was not at issue and found that the bloodhound evidence was properly admitted as there was evidence establishing that the assailant was present at the location were the bloodhounds were started on the trail.

State v. Wainwright, 18 Kan. App. 2d 449 (Kan. Ct. App. 1993).
A bloodhound was sent to a location where a large amount of freshly cut marijuana was found. The dog picked up a scent where the marijuana was located and followed a trail to where the defendant had been napping, down to the police cars, and to the defendant. Defendant was convicted for possession of marijuana and possession of marijuana without a tax stamp. On appeal, the defendant claimed the trial court abused its discretion in admitting the dog-tracking evidence. The appellate court stated that dog-tracking evidence falls within the sound discretion of the trial court and that the dog handler's qualifications were impressive and that the dog's training was extensive. The handler also testified about the dog's actions, but the evidence was not allowed to be used as direct or sole proof of guilt. The appellate court concluded that there was sufficient foundation laid to show both the training and reliability of the dog and the trainer to allow the admission of the bloodhound evidence.

KENTUCKY

1) *DAUBERT V. MERRELL DOW PHARMACEUTICALS* (1993) 509 U.S. 579 DOES NOT APPLY TO THE ADMISSION OF DRUG DETECTION DOG EVIDENCE WHERE A DOG IS USED ONLY TO DETERMINE WHETHER THERE WAS EVIDENCE OF CRIMINAL ACTIVITY AT A PARTICULAR LOCATION.

2) THE ADMISSION OF DRUG DETECTION DOG EVIDENCE IS NOT PREDICATED ON SATISFYING A BALANCING TEST.

3) PROBABLE CAUSE SUPPORTED THE WARRANT IN THIS CASE.

Commonwealth v. Baldwin – Feb. 24, 2006 [**199 S.W.3d 765**].
Facts: A confidential informant told police that Defendant was cooking meth in storage units. Police visited the storage units and saw a truck parked in front of unit 826. Police saw two men spot the police and quickly depart in the truck. While waiting for a drug detection dog to arrive, police saw individuals, including Defendant, exit unit 825. Defendant admitted to ownership of 825, 826, and 828. Subsequently, the drug detection dog alerted to the presence of drugs in three out of the seven or eight units police led him by. Unit 825 was one of the units at which the dog alerted.
Police obtained a warrant to search units 825, 826, and 828. In their affidavit in support of their request for that warrant, police stated that the drug detection dog had alerted only at unit 825.
At the hearing on his motion to suppress evidence uncovered during the search of unit 825 (the search of the other units yielded no contraband) pursuant to the above warrant, Defendant's expert witness testified about training detection dogs and concluded, based on a paper review of the drug detection dog in this case's training records, that that dog was unreliable. The circuit court granted the motion to suppress, recommending a balancing test for analyzing future cases.
Held: A review of the totality of the circumstances shows that there was more than a substantial basis to establish that drug evidence would be found in the place named by the police. An alleged confidential informant provided information regarding possible drug activity, an independent investigation was conducted by law enforcement officers, and the drug detection dog alerted on the storage unit where the drugs were found. While any one of those three elements might have been inadequate, in and of itself, to provide probable cause for the issuance of the search warrant, when viewed as a whole those elements provided more than enough evidence to show that "a substantial basis" existed for the search.

1) TESTIMONY CONCERNING CANINE SCENT TRACKING IS NOT SUBJECT TO THE RELIABILITY ANALYSIS OF *DAUBERT V. MERRELL DOW PHARMACEUTICALS, INC.* (1993) 509 U.S. 579.

2) ANY POSSIBILITY THAT THE POLICE DOGS' ABILITY TO TRACK HAD BEEN COMPROMISED GOES TOWARDS THE WEIGHT OF THE TESTIMONY, NOT ITS ADMISSIBILITY.

Debruler v. Commonwealth – Aug. 23, 2007 [**231 S.W.3d 752**].
Facts: A man abducted minor in the backyard of a vacant house. Minor ran away. Seven hours later police laid articles of the Defendant's clothing in the front yard of the vacant house. Police told their dogs to track the scent. The dogs tracked the scent to the alley behind the house, where the scent died.
At trial, police testified that the dogs were purebred German Shepherds, and produced certificates of their bloodline. They testified that the dogs had been trained at an Indiana dog-training facility. One of the dogs had been certified in tracking by the Owensboro Police Department and is recertified every year following thirty-two hours of additional training. Furthermore, that dog completes practice runs every week. The other dog has been certified by the United States Police Canine Association and competes twice a year to maintain this certification. The handlers testified that they complete practice runs on a weekly basis.
Defendant challenges the canine scent tracking evidence on two grounds relevant here: (1) that the trial court improperly denied Defendant a *Daubert* hearing and (2) that the Commonwealth failed to lay an adequate foundation for the admission of the evidence.
Held: The trial court did not abuse its discretion in denying Defendant's request for a *Daubert* hearing prior to the admission of the canine scent tracking testimony. However, certain foundational requirements had to be met in order to ensure reliability. Here, the Commonwealth provided sufficient foundation for admission of the testimony concerning canine scent tracking. The passage of time and the presence of other officers at the scene do not render this testimony inadmissible. The fact that a dog's ability to track *might* be adversely affected by the passage of time or the presence of multiple scents does not render this testimony unreliable. Rather, it goes to weight and is a point to be made during cross-examination, which is precisely what occurred in this case.

ACCELERANT DETECTION DOG EVIDENCE SATISFIED FOUNDATIONAL REQUIREMENTS OF *DEBRULER V. COMMONWEALTH* (KY. 2007) 231 S.W.3D 752.

Yell v. Commonwealth – Dec. 20, 2007 [**242 S.W.3d 331**].
Facts: Arson Defendant argues that the trial court erred in allowing the Commonwealth to introduce evidence that an accelerant detection dog had alerted to the presence of ignitable liquids at the trailer fire scene. The following facts were elicited at a pretrial hearing:
The dog's handler was nationally certified by the Federal Bureau of Alcohol, Tobacco and Firearms (ATF) in 2002. The dog's handler had 23 years of experience as a policeman and firefighter. At the time the handler received the dog in this case, the dog had already been trained and imprinted in accelerant detection. Early in 2002, the handler and dog successfully completed a 5-week course in canine accelerant-detection training with the ATF. Both the dog and the handler have completed annual 40-hour re-certification programs for 2003, 2004, and 2005 and are subject to annual testing by the ATF. Since

2002, the dog and handler have worked approximately 200 fire scenes together. The dog is trained by the handler twice a day and reports of her training are submitted monthly to the ATF. The handler trains the dog with an array of flammable liquids at varying levels. During her training sessions, the dog may be exposed to as little as one micro liter (roughly one-half of an eye dropper) to as much as 15 micro liters of a given accelerant. Samples that the dog has alerted to will sometimes test negative in a laboratory for the presence of accelerants because the sample may contain a level of accelerant too small for a laboratory to detect. The accelerant may be consumed in the fire or may evaporate before collection and testing. The dog's false alerts may be as high as 5%. If it is a true alert, the dog will get very excited and he will not be able to pull her off of the site of the alert. Before going into a fire scene, the dog is calibrated by detecting a drop of accelerant that the handler places away from the fire scene. When the dog properly alerts to the accelerant, she is rewarded and then taken into the fire scene. At the fire scene, controls are used. Samples are collected from the areas where the dog alerts and the samples are placed in individual containers. A control sample containing no accelerant is also placed in a container. All the containers are then taken away from the fire scene, and the dog is taken past them. In the instant case, the dog alerted to all the samples taken from the scene and did not alert on the control sample. However, all six samples tested negative in the laboratory for the presence of ignitable liquids.
Held: The Commonwealth satisfied the foundational requirements required in *Debruler v. Commonwealth* (Ky. 2007) 231 S.W.3d 752. The dog's handler testified to his qualifications for being a dog handler and to his ATF certification, testing, and training record in accelerant detection with the dog. There was a sufficient showing of reliability to allow the dog evidence despite the negative laboratory results. The jury heard the evidence of the negative lab results of the samples and was free to weigh this evidence against the evidence of the dog's alerts to accelerants in the trailer.

Pedigo v. Commonwealth, 103 Ky. 41 (Ky. 1898).
Victim's barn was burned to the ground. The victim used his bloodhound to follow a track leading from a corner of the barn. The dog followed to the track to a house where defendant had been and then followed a trail from the house back to the barn. There was a witness that identified the defendant and her description of the path that the defendant took in fleeing from the barn matched a large portion of the path that the dog tracked. Defendant was convicted of arson. Defendant contended that evidence of tracking human beings by dogs was inadmissible. The appellate court determined that testimony about trailing by a bloodhound is competent when it is shown that 1) the dog is of pure blood and of a stock characterized by acuteness of scent and power of discrimination, 2) the dog in question is possessed of these qualities, 3) has been trained or tested in their exercise in the tracking of human beings, and 4) that these facts must appear from the testimony of some person who has personal knowledge thereof. It must also appear that the dog so trained and tested was laid on the trail whether visible or not, concerning which, testimony has been admitted at a point where the circumstances tend clearly to show that the guilty party had been, or upon a track which such circumstances indicate to have been made by him. Trailing by a bloodhound may be permitted to go to the jury as one of the circumstances which may tend to connect the defendant with the crime of which he is accused. The court

reversed and remanded for new trial as there was no testimony showing that the dog had been trained or tested in trailing human beings.

Denham v. Commonwealth, 119 Ky. 508 (Ky. 1905).
A pair of bloodhounds was taken to the scene of an assault with a deadly weapon. The dogs followed a trail from the scene of the assault to the co-assailant's house and then, to the defendant and the co-assailant who were present in the house. Defendant was convicted of willfully and maliciously striking and wounding a victim with a deadly weapon with intent to kill. Defendant argued that the trial court erred in, among other things, not excluding the evidence introduced to show the use of bloodhounds in the attempt to discover the assailants of the victim. The defendant's family and friends prevent individuals from entering the crime scene. The owner of the dogs testified that one of the dogs was two years, the other sixteen months, old; both are bloodhounds of good breeding, both dogs had been carefully trained in tracking men, and that the older dog had tracked and aided in the capture of sixty-three criminals, in several of which the younger dog had assisted. The appellate court concluded that the owner's testimony as a whole showed that the dogs substantially possessed the breeding, qualities and training required by the rule announced *Pedigo*. The court determined that the testimony as to the trailing by the bloodhounds was properly allowed to go to the jury as one of the circumstances tending to connect the appellant with the crime for which he was convicted. The trial court's judgment was affirmed.

Sprouse v. Commonwealth, 132 Ky. 269 (Ky. 1909).
Two children were died in a fire at their home. Two bloodhounds were brought to the scene of the fire by their owner to assist in ascertaining whether the burning of the house was the work of an incendiary, and of trailing and apprehending, if possible, the incendiary. The dogs picked up a trail at some distance from the scene of the crime and eventually led to the defendant's house. However, their heads were not kept up until they were put on the trail and the scene of the crime was not protected from the presence of other individuals. Defendant was convicted of murder. On appeal, the defendant alleged that the trial court erred in, among other things, evidence as to trailing done by the bloodhounds. The appellate court concluded that the evidence in the case showed that the dogs were of fairly good pedigree, but it was indefinite as to their previous training and insufficient to demonstrate that they were possessed of such known acuteness of scent and power of discrimination, or so trained and tested in their exercise in the tracking of human beings as proved them accurate and reliable. The court also pointed to the fact that no precautions were taken by the owner to prevent them from getting the scent or upon the track of persons who had walked about the premises or up and down the road taken by them to reach the home of appellant, they had no opportunity to obtain a scent of any article of wearing apparel or other personal belonging to appellant to guide them in their work, they were not taken to or started at any object or place where it was known or indicated the supposed incendiary had been, or at which the fire originated, and the excited crowd around the dogs during the trailing served to confuse them. The court found the evidence of the trailing done by the dogs incompetent and stated that if there were other proof of fact or circumstance appearing in the record which tended to establish appellant's guilt, they would have been inclined to say that the testimony would not have been so

prejudicial as to have justified a reversal. The court held that the trial court should have excluded it, and that its failure to do so was prejudicial error.

Blair v. Commonwealth, 171 Ky. 319 (Ky. 1916).
A pair of bloodhounds was used to pick up a trail from the discarded sledgehammer, which had been stolen from a blacksmith shop, at the scene of an attempted break in. The dogs followed the trail to the house in which the defendants were located. There were footprints in the mud that led from the attempted break in scene to the house in which the defendants were arrested. Defendants were convicted of breaking into the blacksmith shop and stealing property. One of the defendants appealed and contended, among other things, that the evidence admitted at his trial of the trailing done by the bloodhounds was incompetent and should have been excluded. The owner of the dog testified that one of the was about eight years old and the other about three or four; that they were bloodhounds; that he had owned them about two years; that one of them had been used all his life in trailing people and that the dog was trained by another individual. The appellate court pointed out that there was no definitive information about the pedigree of the dogs and whether they were of a strain or breeding that was characterized by acuteness of scent and power of discrimination, and the owner's testimony did not show that he had personally known of their training in the trailing of humans or that their trainer was an expert in the training of bloodhounds for such purposes. The court concluded that the owner's testimony was insufficient to demonstrate the reliability of the dogs and held that the admission of evidence of the trailing by the dogs was erroneous.
The judgment was reversed and the case was remanded for a new trial.

Blair v. Commonwealth, 181 Ky. 218 (Ky. 1918).
The defendant was convicted again of the same charges. During the second trial, the owner testified that he had twelve or fourteen years' experience in working with bloodhounds; the trainer of one of the dogs had a lifetime experience in the business; one of the dogs was a thoroughbred bloodhound, though not registered; that other was a bloodhound entitled to registry; and that both had been trained and tested many times with successful results. The defendant contended, among other things, that the trial court erred in admitting the –tracking-dog evidence. The appellate court, reiterating the rule in Kentucky, stated that the testimony about the trailing by bloodhounds may be permitted to go to the jury as one of the circumstances which may tend to connect the defendant with the crime only after it has been shown by some one having personal knowledge of the facts (a) that the dog in question is of pure blood and of a stock characterized by acuteness of scent and power of discrimination; (b) is itself possessed of these qualities and has been trained or tested in the tracking of human beings; and, (c) that the dog so trained and tested was laid on the trail, whether visible or not, concerning which testimony has been admitted, at the point where the circumstances tend clearly to show that the guilty party had been, or upon a track which such circumstances indicated had been made by him. The appellate court concluded that the augmented testimony came well within the rule. It also observed that the Commonwealth did not rely upon the owner's testimony alone to convict the defendant, but used it only as corroborative of the testimony of a witness.

Meyers v. Commonwealth, 194 Ky. 523 (Ky. 1922).
Two bloodhounds were brought to the scene of an arson attack and picked up a trail to the point where the fire was first discovered. They followed the trail to the home of the father of the defendant and went to the defendant when he came downstairs. The dogs then followed a trail from the house to the house of the defendant's brother and then, from there followed a trail back to the barn that was burned down. It was also shown that the bloodhounds used on the occasion were highly bred and thoroughly trained for the purpose of trailing human beings, and that one of them had seven and one-half years experience and the other as much as three years, and that during that time their performance and work had been accurate and satisfactory. Defendant was convicted of arson. On appeal, he contended, among other things, that the evidence was insufficient to support the conviction. The appellate court pointed out that the only circumstantial evidence in addition to the dog-tracking evidence were remarks by defendant to the father of the victims that did not amount to even a general threat. The court concluded that there was no convicting testimony or proven fact for the trailing of the bloodhounds to corroborate, and there was not any convincing circumstances proven in the case which would authorize a conviction with the aid and help of the trailing of the bloodhounds as an additional circumstance. As a result, the appellate court reversed the judgment and remanded for new trial.

Springs v. Commonwealth, 198 Ky. 258 (Ky. 1923).
A ten year old bloodhound was taken to where a barn burned to the ground. The dog sniffed around the barn and followed a trail to a plowed field where tracks became obvious. The dog eventually led its handler to the house where the defendant was a tenant. The defendant did not object to the evidence or take an exception taken to its admission. Defendant was convicted of arson. On appeal, defendant contended that, among other things, all evidence as to the trailing done by the dog was incompetent and the trial court erred in not excluding it. The appellate court concluded that the evidence against the defendant was purely circumstantial and was provided from the trailing by the bloodhound. Since, the defendant did not object to the competency of the trailing evidence or take exception to its admission, the court could not declare its admission as error. Nevertheless, the appellate court determined that there were too many missing links in the evidence for a conviction to be based on the circumstantial evidence alone. The judgment was reversed and the case remanded for a new trial.

Hays v. Commonwealth, 211 Ky. 716 (Ky. 1925).
A sheriff brought bloodhounds to the scene of a burning barn. He laid the dogs on the trail of the persons who crossed the fence just as the barn was discovered on fire. He testified that the dogs trailed the person crossing the fence down through an orchard to the road near the home of defendant, and stopped at automobile tracks. When asked about the pedigree and qualifications of the dogs, the sheriff stated that one of the dogs was a bloodhound that he had owned for nearly two years, the dog is able to hold a trail once he has it, and that he found the dog reliable. The defendants were convicted of burning their own barn. Defendants argued that the judgment should be reversed because, among other things, the trial court admitted evidence concerning the trailing of defendants by bloodhounds. The

appellate court stated that there was no attempt to prove the pedigree of the dogs or that either of them had been trained to track human beings. It concluded that the evidence concerning pedigree and training of the hounds was not as strong as that in *Blair* and as a result, was insufficient to warrant the introduction of evidence concerning the trailing done by the dogs. The judgment was reversed and the cases remanded for a new trial.

Stidham v. Commonwealth, 221 Ky. 49 (Ky. 1927).
Some bloodhounds were brought to the house where defendant's wife was beaten to death. They were placed at the point where the defendant stated he was tied up by the robbers that killed his wife. The dogs trailed from that location to a well, from the well to the back door, and then to the room where the defendant was. The defendant's watch, which he told people had been stolen by the robbers, was found in the well. Defendant was convicted of voluntary manslaughter in the death of his wife. On appeal, the defendant contended, among other things, that the evidence as to the bloodhounds was improperly introduced. The owner of the bloodhounds testified that he had been a policeman for 12 years, the dogs were pure pedigree hounds, he had used one for 3 1/2 years and other for just about a year, and that he had found them accurate in the tracking of human beings. The appellate court concluded that the evidence was properly admitted based on that showing. The court did not find reversible error and the judgment was affirmed.

Keaton v. Commonwealth, 223 Ky. 645 (Ky. 1928).
Bloodhounds were brought to the scene of an assassination. The bloodhounds were taken to a stump where they believe the assassin fired his shots at the victim. The dogs followed a track to the defendant's house where they made a commotion upon reaching the tenant of the defendant. The dogs did not make a similar commotion when the passed the defendant, who was in his barn when the dogs arrived at his property. There was also evidence that the defendant was in another town at the time of the shooting. Defendant was convicted of murder. According to the appellate court, there was no evidence that the defendant conspired to kill the victim. The appellate court determined that there was a total lack of evidence tending to establish the guilt of the defendant, and the trial court erred in not directing the jury to acquit the defendant at the conclusion of the testimony.

Alsept v. Commonwealth, 240 Ky. 395 (Ky. 1931).
Bloodhounds were taken to the location of dwelling that burned to the ground. The dogs were taken into the yard, where they took the trail and followed it one of the defendants home. At one point along the way, one of the dogs attempted to diverge on another track. The dogs were taken back to this point, where they followed to trail to the other defendant's home. Defendants were convicted of arson. The defendant argued that the verdict was not supported by sufficient evidence. The appellate court determined that the testimony of the dogs owner as to the blood strain, experience, and training of the dogs was admissible and that taken together with the other circumstantial evidence in the case supported the verdict of the jury. The trial court's judgment was affirmed.

Bullock v. Commonwealth, 241 Ky. 799 (Ky. 1932).
A bloodhound followed a trail from the cabin, from where the defendant shot the victim, to his home some two miles away. There was other circumstantial evidence that appeared to

tie the defendant to the crime. Defendant was convicted of murder. On appeal, the defendant argued, among other things, that the qualifications of the dog did not meet the test required for the evidence to be competent. The appellate court agreed with the defendant's argument and also noted that there was no evidence that the cabin in which the tracks were found and which gave the dog his scent had been saved from intrusion by any one after the killing. The appellate court revered the judgment and remanded the case for a new trial.

Bullock v. Commonwealth, 249 Ky. 1 (Ky. 1933).
The defendant was convicted again after the new trial. On appeal, he contended that his conviction rested upon the same incompetent evidence which was presented on the first appeal. The owner testified about his knowledge of the pedigree of the dog used by him, also the method he used in training it, the length of time it had been trained, and its aptness, accuracy, experience, qualifications, and dependability. Regarding the pedigree of the dog, the owner confirmed that the mother of the dog was a bloodhound and stated he believed the father was a bloodhound based on the representations of its previous owner. The appellate court stated that there was no difference between a written and oral certification of the dog's pedigree except in form. Given the additional information concerning the pedigree of the dog and the qualifications of the dog and owner provided in the second trial, the appellate court determined that no error was committed in the admission of the evidence in the second trial. Even though the evidence showing the defendant's guilt was entirely circumstantial, the court held that the evidence was sufficient to authorize the submission of the case to the jury.

Crabtree v. Commonwealth, 260 Ky. 575 (Ky. 1935).
A bloodhound was brought to a barn that had burned to the ground. The dog was started around the barn even though the fire was started in a particular corner of the hay loft. The dog followed the trail to one house, double backed, and followed the trail to the defendant's home. The defendant did not object to evidence being incompetent and inadmissible. The only other evidence offered was a statement by defendant three months after the fire that the victim would have to suffer for revealing the defendant's still operations. The defendant was convicted. On appeal, defendant argued that the evidence about the trailing by the bloodhound was incompetent, because it was admitted without proof of the dog's pedigree, training, and experience. The court stated that it was not authorized to declare the admission of the evidence a reversible error because there had not been a timely raised objection to its introduction when offered in the trial court and an exception taken to its admission. The court then pointed out that the only other evidence even remotely tending to connect the appellant with the commission of the crime was his alleged threats against the victim, and the *corpus delicti* of the charged offense was never itself established by any conclusive evidence. The court concluded that the evidence was entirely circumstantial, and a conviction can be based upon circumstantial evidence alone but it must be of such character as to exclude every reasonable hypothesis of the

defendant's innocence. It held that the testimony fell short of establishing defendant's guilt of the crime charged.

Brummett v. Commonwealth, 263 Ky. 460 (Ky. 1936).
A bloodhound was used to trail the defendant from the scene of a commercial break-in to his father's home. Defendant was convicted for housebreaking. The defendant contended that the trial court erred in denying his motion for a continuance and in admitting evidence of the trailing by a bloodhound, specifically that the qualifications of the dog were not properly shown. The owner testified that the dog was a pure bloodhound but only responded "Yes, sir" to the question "Is he a skilled dog in that line?" Based on the lack of facts concerning the experience, training, and testing of the dog, the appellate court determined that the evidence should not have been admitted by the trial court. The judgment was reversed on that and other grounds and the case remanded for a new trial.

Eve v. Commonwealth, 278 Ky. 123 (Ky. 1939).
Two bloodhounds were taken to the point on the hillside from which the shot that wounded the victim was fired, and where fresh tracks of a man appeared on the ground leaving the scene. The dogs followed the tracks to the defendant who was standing in a crowd at the scene of the shooting. The dogs were taken back to the same point on the hillside and placed on the back trail of the person who made the tracks. The dogs followed the trail directly to the defendant's house. The owner testified about the pedigree and training of the bloodhounds and their experience and success in trailing human beings. It was not claimed that this preliminary proof was not sufficient to meet the requirements of the rules of admissibility of that type of testimony. The defendant argued that the trial court committed several errors. The appellate court did not find any errors prejudicial to the defendant's substantial rights and affirmed the judgment.

Short v. Commonwealth, 291 Ky. 604 (Ky. 1942).
Dogs were brought to the location where a barn burned to the ground. The dogs circled the barn and followed a trail to an abandoned vehicle a short distance away. During the trailing, dogs passed the defendants, which had been occupants of the vehicle, without signaling them as the origin of the trail. The defendant was convicted. On appeal, the defendant argued that, among other things, the trial court erred in admitting the testimony of the trailing by the dogs when there was no proof heard as to their pedigree, or any qualifications concerning their fitness to trail human beings. The appellate court agreed with the defendant. The appellate court reversed on several grounds and remanded for a new trial.

Daugherty v. Commonwealth, 293 Ky. 147 (Ky. 1943).
Bloodhounds were used to follow a trail starting with footprints near the burned barn and ending at the defendant's home. The defendant was convicted of arson. On appeal, defendant argued that the judgment should be reversed because the trial court permitted the introduction of incompetent testimony, namely the trailing of the defendant with bloodhounds. The dog had not been registered had not been registered but their parents had been registered. The appellate court concluded that the testimony of the dog's owner

was sufficient to establish that the dogs were trained, skilled, and tested in the trailing of human beings and therefore the testimony of the actions of the dogs was properly admitted. However, the court found that the other evidence in the case, which was also circumstantial, was only conducive of suspicion and coupled with the bloodhound evidence, was insufficient to support a conviction as articulated in *Meyers*.

Smith v. Commonwealth, 563 S.W.2d 494 (Ky. Ct. App. 1978).
According to the detective in the case, a German shepherd was used to trail the defendant from the store where an armed robbery occurred, around the side of the store, along a ditch and to the rear of the defendant's yard. The dog obtained the scent from the money lying on the floor of the store. The dog's handler testified that he could not recall being at the scene of the crime with his dog; that he had no records of such a run; and that he does not regularly patrol that district. In addition, the handler stated that the dog is registered with the American Kennel Club and was initially trained by another officer, the dog undergoes occasional refresher training and is adept at crushed vegetation tracking, but he has his limitations and will follow a more recent track which crosses the desired track. In addition, handler stated that the police department had returned to the exclusive use of bloodhounds in tracking suspects. According to the same detective, the defendant was positively identified by the store cashier. Defendant was convicted of armed robbery. On appeal the defendant contended, among other things, that the dog-tracking evidence was incompetent and the failure of the court to exclude it constituted prejudicial and reversible error. The appellate court concluded that the jury verdict in this case was based upon too many unknowns, including the dog-tracking evidence and the loss of memory of the dog handler. The judgment was reversed and the case remanded for a new trial.

LOUISIANA

No new cases found via shepardizing.

State v. King, 144 La. 430 (La. 1919).
A bloodhound was used to track the defendant from the scene of a murder to his home. The dog's owner testified that the dog had an acuteness of scent and the power of discrimination; the dog was trained, tested, and reliable in the tracking of human beings; that he was laid on the trail where the circumstances tended to show that the guilty party had been; and that he followed such scent or track to the defendant. The dog's owner also testified about his own qualifications as a trainer of bloodhounds. The trail court admitted the dog owner's testimony. The defendant contended that the testimony of the dog's owner should not have been admitted. The Louisiana Supreme Court adopted the majority rule for tracking-dog evidence and held that the testimony was competent and properly received. The adopted rule was that evidence of a tracking dog's conduct in tracing a defendant may be permitted to go to the jury as one of the circumstances which may tend to connect the defendant with the crime, when it is shown by some one having personal knowledge of the fact that the dog in question is of pure blood and of a stock characterized by acuteness of scent and power of discrimination, is itself possessed of these qualities, and has been trained or tested in their exercise in the tracking of human beings, and that the dog trained and tested was laid on the trail, whether visible or not, concerning which testimony has been admitted, at the point where the circumstances tend clearly to show that the guilty party had been, or upon a track which such circumstances indicate to have been made by him. The rule also states that such evidence may be deemed a circumstance to be considered, in connection with other proof, in determining the guilt or the innocence of the accused, but alone and unsupported it is insufficient to sustain a conviction; there must be other and human testimony to convict. To discredit the evidence furnished by bloodhounds in trailing a criminal from the scene of the crime, evidence is not admissible of the conduct of other dogs trained by the same trainer, which failed to keep a trail.

State v. Harrison, 149 La. 83 (La. 1921).
Two bloodhounds were used to trail the defendant from the window through which the burglar had entered a house. The dogs led police to the defendant's home. The defendant argued that the trail court improperly overruled his objection to the pedigree certificates that were admitted in evidence. His contention was they were ex parte and hearsay declarations of a person not present for cross-examination or under oath. In concluding that the documents were illegally admitted, the state Supreme Court pointed out that the pedigree of the dog was material and relevant, the pedigree documents were not shown to be either official records or certified copies of official records, and the documents might have had some influence in producing the verdict against the defendant. The court also found that the documents along with others should not have been provided to the jury to take with them to their room. As a result, the verdict was set aside and the case was remanded for a new trial.

State v. Martin, 151 La. 780 (La. 1922).

After the trial, the defendant claimed that a witness had new information and filed a motion for a new trial. The motion was denied. The defendant challenged the denial of the motion. The new testimony was that the bloodhounds followed a trail from the scene of a shooting to the location where a horse was hitched and the dogs could not pick up a scent from around the horse.

State v. Davis, 154 La. 295 (La. 1923).
Two Red English hounds were brought to the murder scene and started at the location where smoke from the shot was seen. The dogs trailed the defendant to his house, to a bed in one room, then into a dining room, through the kitchen, and out into the back yard. Defendant was convicted of murder. The trial court overruled defendant's motion for a new trial. On appeal, one of the defendant's exceptions concerned the admissibility of the "bloodhound testimony." Defendant argued that the testimony was incompetent, irrelevant, and purely hearsay, and deprived him of his constitutional right of being confronted by witnesses face to face, with the right to cross-examine them. The Supreme Court of Louisiana stated that it is the human testimony which makes the trailing done by the dog competent, and the defendant was confronted by the witnesses, who were subject to full cross-examination by him. The Supreme Court of Louisiana did not agree that the proper foundation for the dog-tracking evidence was not laid. The court pointed to the testimony which established that the owner had been engaged in the business of breeding, training, and handling bloodhounds for last 21 years; the dogs were 16 or 17 years old when used in the case; had been trained in trailing human beings under the personal supervision of the owner since they were about 3 months old; were laid on the trail at a location where the assailant was known to have been; and no individuals were permitted to disturb the location where the dogs were started.

State v. Green, 210 La. 157 (La. 1946).
Detailed of the trailing by the dog(s) was not provided. Defendant was convicted of simple burglary. The defendant contended that, among other things, the admission of "bloodhound testimony" was improper. The principal objection was that the dog was not registered. The court pointed out that the "bloodhound" testimony was merely one of the circumstances upon which the verdict was based and that the defendant was not denied the privilege of cross-examination or of offering additional testimony that the dog though unregistered, was unreliable or unskilled or that he acted on the trail so as to deprive the evidence of incriminating value.

State v. Harris, 540 So. 2d 1226 (La. Ct. App. 1989).
A police dog was taken to the scene of a rape and trailed the defendant to the house where he was located. The defendant was convicted of aggravated rape. On appeal, he argued, among other things, that his attorneys' failure to object to the court's ruling with respect to the qualifications of the tracking dog and its handler constituted ineffective representation. The appellate court pointed out that the handler, clearly and thoroughly testified, as to his expertise, the extensive training given the police dog, and the dog's abilities in tracking human beings. The court also stated that it is well-settled that trial judges are vested with broad discretion in determining the competence of an expert witness and that the court did

not believe that the trial judge abused his discretion. The judgment was affirmed on that and other grounds.

MAINE

No new cases found via shepardizing.

State v. Foy, 662 A.2d 238 (Me. 1995).
A dog trained to detect hydrocarbons was used to assist in the investigation of an arson crime. At the police department, the defendant was sniffed by the dog for hydrocarbons. The dog twice indicated there were hydrocarbons on both of Foy's sneakers and his left pant leg. A hydrocarbon analysis of the sneakers was positive for the presence of kerosene. The testimony stated that the dog was trained to sit when she first detects the presence of hydrocarbons and that she is trained every day with blind testing at least once a year. The dog had never failed a blind test. Defendant was convicted of arson. Defendant contended that the trial court erred in finding there was probable cause for the police to arrest him for setting fire to the building and in denying his motion to suppress the evidence obtained as a result of the police department's use of the arson dog. The court concluded that there was probable cause to arrest the defendant and as a result, found no error in the denial of his motion to suppress the evidence obtained as a result of the search of defendant at the police station and the seizure of his sneakers. The judgment was affirmed.

State v. Cole, 1997 ME 112 (Me. 1997).
A trained police dog was used to track human scent from the victim's house (rape scene) to the defendant's driveway. A second track was immediately performed and it led to a vehicle in the defendant's driveway in which he had recently been sitting. Defendant was convicted of gross sexual assault, burglary, and aggravated assault. Defendant challenged the trial court's decision to admit the evidence of human scent tracking performed by the police dog. The dog's handler testified that he had worked with the dog since April 1992 and had received training together, including tracking training, at a sixteen-week Maine State Police K-9 school; they received two days of in-service training per month and underwent a recertification every six months, which included a performance test that evaluated the team's tracking ability; and prior to the tracking performed at the scene of the rape, he and the dog had successfully tracked people both in actual cases and in training exercises. The Supreme Court of Maine, citing the majority rule regarding the admissibility of dog-tracking evidence, found that a proper foundation had been laid and it was sufficient to permit the evidence of the tracking performed by the dog.

MARYLAND

DOG SCENT LINEUP EVIDENCE IS ADMISSIBLE SO LONG AS THE PROPONENT LAYS THE FOUNDATION REQUIRED FOR DOG EVIDENCE IN GENERAL.

Roberts v. State - Dec. 7, 1982 [**53 Md. App. 257**]
Facts: A police dog sniffed an article of clothing found at a crime scene. 3 hours later, police arranged the Defendant and several police officers in a horizontal line at the scene of the crime. The police dog was brought out and again smelled the article of clothing. The dog was led by the "lineup" of the Defendant and police officers and given the command to track. The dog stopped at the Defendant and sat at the Defendant's feet. At trial, the dog's handler testified that this meant that the dog had matched the scent from a scent article to an individual in that group of persons.
To establish a proper foundation for this dog scent lineup evidence, the State produced an expert on dog tracking. This expert testified that he was familiar with the background of the dog used in this case's handler, who had trained that dog from the time he was a puppy. The expert had seen the dog used in a demonstration and gave his opinion that the dog had been properly trained.
The dog's handler testified he had been a member of the National Police Bloodhound Association for two years. He stated that he had taken custody of the dog used in this case at the age of 3 weeks and that at the time of the lineup the dog was 1 ½ old. The dog was a purebred, registered with the AKC and the National Police Bloodhound Association. The dog's training began when he was 6 weeks old and continued for the entire year and a half prior to the incident in this case. The handler contended that the dog's success rate in practice trails was 99%. He had been used in 20 actual cases and had on 3 or 4 cases trailed a scenting object to a suspect or a lost person. The handler further testified that the dog had successfully run an 8 hour old scent trail.
Holding: Before any evidence pertaining to the results of the dog's tracking may be admitted, a proper foundation must first be laid and the handler must testify as to his own qualifications and experience as well as that of the dog and its ability to track. Factors such as the dog's experience, reliability, reputation, skill and training should be considered. Furthermore, the circumstances pertaining to the actual trailing must be shown, *e.g.*, whether the trail is fresh, *i.e.*, how much time elapsed before the dog was placed on the trail, and whether there was any interference with the dogs during the tracking. Once the proper foundation has been laid the evidence may be used to identify the accused as the perpetrator or for some other reason, as long as the evidence is corroborated.
The trial judge did not err in finding that the dog's handler was adequately trained. Additionally, the lineup was not inherently unreliable merely because the dog was familiar with persons (i.e., the police officers) in the lineup. Furthermore, the dog evidence was not inherently unreliable merely because 3 hours lapsed between the initial contact of the dog with the scent object and the subsequent lineup identification. The handler testified that the dog had previously successfully run a trail 8 hours old.

***TERRELL V. STATE* (1968) 3 MD. APP. 340'S FOUNDATIONAL REQUIREMENTS FOR ADMISSION OF DOG TRACKING EVIDENCE AT TRIAL ARE NOT NECESSARY PREREQUISITES TO THE USE OF THAT EVIDENCE IN ASSESSING PROBABLE CAUSE FOR THE ISSUANCE OF A WARRANT.**

Emory v. State - Sep. 29, 1994 [**101 Md. App. 585**]
Facts: Police included several significant observations made by the police with the aid of "a trained certified drug dog" in their applications for search warrants. Defendants claim that this evidence, and some other peripheral olfactory reactions made by the dog, should not have been considered by the warrant-issuing magistrate in assessing probable cause. Defendants assert that an adequate predicate of reliability was not established as is arguably required by *Terrell*.
Holding: *Terrell*'s foundational requirements for admission of dog tracking evidence at trial are not necessary prerequisites to the use of that evidence in assessing probable cause.

1) A CERTIFIED DRUG DETECTING DOG'S ALERT TO THE PRESENCE OF NARCOTICS IN AN APARTMENT IS IPSO FACTO ENOUGH TO ESTABLISH PROBABLE CAUSE TO ISSUE THE WARRANT TO SEARCH THAT APARTMENT.

2) THE ASSERTION THAT A DOG "IS A CERTIFIED DRUG DETECTING DOG AND SCANS HAVE RESULTED IN NUMEROUS ARRESTS" IN AN AFFIDAVIT IN SUPPORT OF A WARRANT APPLICATION IS SUFFICIENT FOUNDATION FOR THE USE OF DRUG DETECTION DOG EVIDENCE TO ESTABLISH PROBABLE CAUSE NECESSARY FOR THE ISSUANCE OF THAT WARRANT.

3) DRUG DETECTION DOG EVIDENCE NEED NOT SATISFY THE REQUIREMENT OF GENERAL ACCEPTANCE IN THE SCIENTIFIC COMMUNITY STATED IN *FRYE V. UNITED STATES* (D.C. CIR. 1923) 54 U.S. APP. D.C. 46 AND *REED V. STATE* (1978) 283 MD. 374 TO SERVE AS THE BASIS FOR THE ISSUANCE OF A WARRANT.

4) A SNIFF BY A TRAINED DOG, STANDING WHERE IT HAS A RIGHT TO BE, OF ODORS EMANATING FROM ANY PROTECTED PLACE, RESIDENCE OR OTHERWISE, IS NOT A "SEARCH" WITHIN THE CONTEMPLATION OF THE FOURTH AMENDMENT.

Fitzgerald v. State - Dec. 9, 2003 [**153 Md. App. 601**]
Facts: The court granted police a search warrant. The affidavit in support of the warrant application described the alert of a certified drug detecting dog to the presence of narcotics at the door of Defendant's apartment.
Holding: The dog's alert to the presence of narcotics in Defendant's apartment was ipso facto enough to establish probable cause to issue the warrant to search that apartment.

When a canine has been certified in contraband detection, it is not within the magistrate's responsibility or training to re-analyze the statistical record for each canine whose sniff is presented as support for the issuance of a search and seizure warrant, how the canine signals to its handler or how long is appropriate for a response to be made. A magistrate must be able to defer generally to the skill of a trained handler and the certifying agency unless there is a clear example of abuse. The assertion in the warrant application that the dog "is a certified drug detecting dog and scans have resulted in numerous arrests" was facially valid and supported the finding of probable cause.
Furthermore, *Frye-Reed* law has no remote applicability to what a warrant-issuing magistrate may consider on the purely ex parte decision of whether there is a "substantial basis" to issue a warrant.
Finally, the smelling or sniffing of the exterior surface of an otherwise protected repository (automobile, suitcase, locker, etc.) is not a "search" within the contemplation of the 4th Amendment. It, therefore, needs no justification. A dog sniff does not become a search even if the sniff is of the exterior of a residence. Furthermore, nothing in *United States v. Karo* (1984) 468 U.S. 705 or *Kyllo v. United States* (2001) 533 U.S. 27 affects the conclusion that a dog sniff is not a "search" within the contemplation of the 4th Amendment.

1) A CANINE SCAN IS NOT A SEARCH.

2) THE FACT THAT A TRAINED CANINE MAY ALERT TO THE RESIDUAL ODOR OF DRUGS EVEN WHERE NO DRUGS ARE PRESENT DOES NOT AFFECT THE PROPOSITION THAT A CANINE ALERT CAN CREATE THE PROBABLE CAUSE FOR A VEHICLE SEARCH.

State v. Cabral - Oct. 6, 2004 [**159 Md. App. 354**]
Facts: Trained canine alerted to the presence of drugs in the car that Defendant was driving. A subsequent warrantless search of that vehicle uncovered contraband. The circuit court suppressed the evidence discovered during that search holding that the canine's alert did not provide probable cause to search the Defendant's car. The circuit court reasoned that the canine might have alerted to the presence of an illegal drug that was in the car as much as 72 hours before the alert.
Holding: The circuit court erred in finding that there was no probable cause.

1) A CANINE SNIFF OF AN APARTMENT DOOR FROM A COMMON AREA IS A PERMISSIBLE NON-SEARCH UNDER THE 4TH AMENDMENT.

2) EVEN IF THE MARYLAND DECLARATION OF RIGHTS DEEMS A DOG SNIFF A SEARCH, IT WOULD REQUIRE ONLY REASONABLE SUSPICION.

Fitzgerald v. State - Dec. 10, 2004 [**384 Md. 484**]
Facts: The court granted police a search warrant. The affidavit in support of the warrant application described the alert of a certified drug detecting dog to the presence of narcotics at the door of Defendant's apartment.
Holding: The status of a dog sniff does not depend on the object sniffed. Thus, a dog sniff of the exterior of a residence is not a search under the 4th Amendment. Nevertheless, the dog and police must lawfully be present at the site of the sniff.
Reasonable suspicion supported the dog sniff of the door of Defendant's apartment in this case.

POLICE DO NOT NEED ARTICULABLE SUSPICION IN ORDER TO CONDUCT A K-9 "SNIFF" BECAUSE IT IS NOT A SEARCH WITHIN THE SCOPE OF THE 4TH AMENDMENT.

Byndloss v. State - Mar. 8, 2006 [**391 Md. 462**]
Facts: Police dog alerted to the presence of narcotics in Defendant's vehicle.

AN EXTERIOR SNIFF OF A VEHICLE IS NOT TRANSFORMED INTO AN ILLEGAL INTERIOR SEARCH BY A POLICE DOG'S POKING ITS HEAD THROUGH THE VEHICLE'S OPEN WINDOW WHERE THAT ENTRY WAS MADE WITHOUT ANY PROMPTING FROM POLICE.

Cruz v. State - Apr. 4, 2006 [**168 Md. App. 149**]
Facts: A police dog sniffed the exterior of Defendant's vehicle. During this sniff, on his own initiative and without any prompting from police, the dog poked his head through an open window of the vehicle and then immediately alerted. After the dog alerted, the police searched the vehicle and recovered almost 12 pounds of cocaine. Claiming the canine scan was unlawful, Defendant moved to suppress the drugs. The motion court denied Defendant's motion.
Holding: The dog's brief and instinctive intrusion into the open window of the Defendant's vehicle did not transform the scan into an illegal interior search. Police "lawfully were present at the site of the sniff," the officer and the dog had a right to stand outside the vehicle, which had been lawfully stopped for a traffic offense. And, of significance here, it is undisputed that the window of the vehicle was already open when the dog jumped onto the sill, and police never instructed the dog to jump. Rather, the dog "on his own … put his paws up on … the window sill." Moreover, the dog briefly "stood" on his back legs, with his paws upon the door, and then immediately went into a full-alert "sit." In essence, while in a public place, the dog responded to the smell he detected, which was emanating from the open car window. Defendant had no "reasonable privacy interest" in the odor of cocaine emanating from the car, which the dog detected from "the public airspace."

1) A POLICE DOG'S ALERT DURING A SCAN OF A VEHICLE ESTABLISHES PROBABLE CAUSE TO BOTH SEARCH THAT VEHICLE AND ARREST THE DRIVER OF THAT VEHICLE.

2) A TRAFFIC STOP DOES NOT BECOME UNCONSTITUTIONAL MERELY BECAUSE TIME PASSES BETWEEN THE DETENTION AND A POLICE DOG'S ARRIVAL TO PERFORM A SEARCH OF THE VEHICLE UNLESS POLICE CONTINUE TO DETAIN THE STOPEE ONCE THE TRAFFIC STOP IS NO LONGER GENUINELY IN PROGRESS TO WAIT FOR THE ARRIVAL OF THE DOG WITHOUT AN INDEPENDENT JUSTIFICATION FOR THE CONTINUED DETENTION.

3) A *TERRY*-STOP FOR DRUGS CAN BE PROLONGED UNTIL THE ARRIVAL OF A DRUG-DETECTING DOG.

State v. Ofori - Sept. 8, 2006 [**170 Md. App. 211**]
Facts: At 12:23 PM, police stopped Defendant's vehicle. While police performed a check of Defendant's driver's license, police requested that a K-9 unit be sent to the scene. The K-9 unit received that request at 12:30. The K-9 unit arrived at the scene at 12:42. The unit's dog scanned the Defendant's vehicle. The dog alerted at the vehicle's driver's door at 12:47. A subsequent search uncovered contraband in Defendant's vehicle. Police arrested the Defendant. At the time of Defendant's arrest, police did not yet have a "good name" for the Defendant. The lower court granted Defendant's motion to suppress the evidence from his arrest.
Holding: The dog's alert gave the police unquestionable probable cause for a warrantless Carroll-Doctrine search of the Defendant's vehicle. Furthermore, that alert gave police probable cause to arrest, at the very least, the driver of the Defendant's vehicle—in this case, the Defendant. The fact that the Defendant was not the "sole occupant" of the vehicle, but only one of two, does not alter the result.
Once the traffic-related purpose of a traffic stop has been served, any detention based solely on the traffic stop should terminate and the stopee should be permitted to leave the scene immediately. Once a traffic stop is over, there is no waiting for the arrival, even the imminent arrival, of the K-9 unit. A traffic stop must not be prolonged to facilitate the arrival of a K-9 unit. Because Defendant prevailed below, the court inferred that the traffic stop was prolonged to facilitate the arrival of the K-9 unit in this case. However, the continued detention to wait for the arrival of the K-9 unit was constitutional because police had *Terry* reasonable suspicion of drug activity.

POLICE CANNOT EXTEND A DEFENDANT'S TRAFFIC STOP MERELY TO WAIT FOR THE ARRIVAL OF A POLICE DOG WITHOUT AN INDEPENDENT JUSTIFICATION FOR THE CONTINUED DETENTION.

State v. Mason - Mar. 27, 2007 [**173 Md. App. 414**]
Facts: Police suspected that Defendant was involved in illegal narcotics activities. Subsequently, police stopped Defendant's vehicle. Although police ostensibly stopped

Defendant to give him a warning for a traffic violation, the stop continued until the arrival of a K-9 unit. This took approximately 25 minutes. The K-9 unit's dog alerted to the presence of contraband in Defendant's vehicle. The lower court granted Defendant's motion to suppress the evidence from his arrest.
Holding: The prolongation of the detention for 25 minutes was unreasonable under the Fourth Amendment. This was a narcotics investigation, under the guise of a traffic stop. The State failed to timely present any other justification for the continued detention.

ARTICLE 26 OF THE MARYLAND DECLARATION OF RIGHTS DOES NOT REQUIRE REASONABLE, ARTICULABLE SUSPICION TO UPHOLD A DRUG DOG'S SCAN OF A MOTOR VEHICLE.

Padilla v. State - May 30, 2008 [**180 Md. App. 210**]
Facts: A police dog alerted to the presence of contraband in Defendant's vehicle. A subsequent search uncovered narcotics. The trial court denied Defendant's motion to suppress the evidence from his arrest.
Holding: Article 26 of the Maryland Declaration of Rights does not provide any greater protection from state interference than the U.S. Constitution's 4th Amendment. Even if the dog scan in the instant case violated Article 26, Defendant's claim would fail. This is because no exclusionary rule exists for a violation of Article 26.

POLICE PERFORMING A *TERRY* INVESTIGATIVE STOP CAN DETAIN SUSPECTS UNTIL THE ARRIVAL OF A K-9 UNIT.

Henderson v. State - Nov. 26, 2008 [**183 Md. App. 86**]
Facts: The Defendant was a passenger in a vehicle with two other people. Police stopped the vehicle at 9:28 PM. A K-9 unit was dispatched to the scene at 9:32 minutes after police affected the stop. During this time, police discovered that a passenger in the vehicle with the Defendant had an outstanding warrant. Pursuant to police protocol, the police at the scene called for backup to assist in the arrest of that passenger at 9:39. Backup arrived at 9:40 and police immediately arrested the passenger with an outstanding warrant. A search of his person incident to arrest recovered $ 741 "in one of his pockets." The police dog arrived at 9:52. Subsequently, the dog alerted. A subsequent search of the vehicle in which Defendant was riding uncovered contraband.
Holding: The detention was not supported merely by the traffic stop. Instead, once the warrant for the passenger was discovered and the search of that passenger's person revealed over $ 700 in cash, the situation evolved from a traffic stop into a *Terry* investigative stop. Therefore, it was constitutionally permissible for the officers to seize the Defendant and the driver of the vehicle until the K-9 unit arrived.

1) WHEN A CERTIFIED K-9 ALERTS TO THE PRESENCE OF NARCOTICS IN A VEHICLE IN WHICH THERE IS MORE THAN ONE OCCUPANT, THERE IS AT LEAST REASONABLE, ARTICULABLE

SUSPICION TO BELIEVE THAT THE OCCUPANTS OF THE VEHICLE ARE ENGAGED IN A JOINT ENTERPRISE AND TOGETHER ARE IN POSSESSION OF NARCOTICS.

2) AN ALERT TO THE PRESENCE OF NARCOTICS IN A VEHICLE BY A CERTIFIED K-9 JUSTIFIES A PAT-DOWN SEARCH OF THE OCCUPANTS OF THAT VEHICLE.

Stokeling v. State - Dec. 30, 2009 [**189 Md. App. 653**]
Facts: Defendant was riding in the front passenger seat of a vehicle that police stopped. A police dog scanned the vehicle and alerted at the rear driver's side and front passenger's side doors. Police removed the vehicle's occupants from the car. Police conducted a *Terry* frisk of the Defendant. Although police felt no weapons, police felt a large bag in Defendant's crotch. A search of the vehicle uncovered nothing but marijuana residue. Police arrested the Defendant and took him to the police station for a strip search. Defendant subsequently revealed that the bag in his crotch contained marijuana. The lower court denied Defendant's motion to suppress this evidence.
Holding: When the police handcuffed the Defendant and transported him to the station house, and before he turned over the baggie of marijuana that was in his crotch area, there was probable cause to arrest him for possession of marijuana and to search him incident to the arrest. An alert to a vehicle by a qualified drug-sniffing dog furnishes probable cause to perform a warrantless search of the vehicle. Police can detain the occupants of such a vehicle while that search is performed and can remove them from the vehicle during the search.

1) A SNIFF BY A TRAINED DRUG-SNIFFING DOG OF THE EXTERIOR OF A VEHICLE IS NOT ITSELF A SEARCH WITHIN THE CONTEMPLATION OF THE FOURTH AMENDMENT AND REQUIRES, THEREFORE, NO JUSTIFICATION OF ANY SORT.

2) AN ALERT BY A TRAINED DRUG-SNIFFING DOG TO THE PRESENCE OF CONTRABAND WITHIN A VEHICLE PROVIDES PROBABLE CAUSE TO SEARCH THAT VEHICLE.

3) POLICE CAN DETAIN A DEFENDANT DURING A *TERRY* STOP FOR A REASONABLE AMOUNT OF TIME TO PERMIT A TRAINED DOG TO ARRIVE AT THE SCENE.

Jackson v. State - Feb. 4, 2010 [**190 Md. App. 497**]
Facts: Police stopped the out-of-state rental vehicle that Defendant was driving on a major drug-trafficking corridor at 12:56 PM. Upon approaching the vehicle, police noticed that Defendant acted nervously, had air fresheners in his vehicle, and had multiple cellular telephones in his vehicle. Furthermore, police did not believe Defendant's story as to where Defendant had been. A trained drug-sniffing dog arrived at the scene at 1 PM. At 1:04 PM, the dog alerted to the presence of drugs in Defendant's vehicle. Police had not

yet heard back from their dispatcher about warrant checks on the Defendant or a stolen car report on Defendant's vehicle at the time that the dog sniffed Defendant's vehicle.
Holding: The traffic stop did not become an unconstitutional detention during the 8 minutes between the initial stop and the dog's alert. Furthermore, the 8 minute detention was not unreasonable because the dog search was made pursuant to a valid *Terry* Stop.

Terrell v. State, 3 Md. App. 340 (Md. Ct. Spec. App. 1968).
A German shepherd police dog was brought to the scene of a robbery. The dog was started on a track at the end of a protected trail of coins leading from the motel to a nearby alley. The dog led his handler to an automobile that had three individuals hiding in it, including the defendant. The motel clerk identified the three individuals as the robbers. Defendant was convicted of robbery. One of the defendant's complaints was that evidence concerning tracking of him by a German shepherd dog was admitted into evidence over his objection. An expert in the training of dog for law enforcement agencies testified that he trained the dog and its handler daily for a period of fifteen weeks and once a week for many weeks thereafter and that the dog was reliable in the tracking of human beings and had been given an excellent rating in his fifteen week training course. The dog's handler also testified that the dog had been trained in tracking and had shown ability to follow a trail. In adopting the majority rule, the court of special appeals stated that once the proper foundation has been laid, dog-tracking evidence may be used to identify the accused as the perpetrator or for some other reason, as long as this evidence is corroborated. In the case, the court pointed to that fact that the qualifications and experience of the dog were shown, the scene was protected until the dog arrived, the dog was placed on the trail where it seemed apparent that the perpetrators of the crime had been, there was no interruption in the tracking, and the identification of the defendant as one of the robbers was corroborated by the identification of the motel clerk. The court held that the lower court did not err in admitting evidence of tracking.

Briscoe v. State, 40 Md. App. 120, 122 (Md. Ct. Spec. App. 1978).
A police bloodhound was brought to the scene of rape about an hour after the crime occurred. The dog was given a scent and followed trail through a muddy area winding up at a parking lot at a small shopping area about three-tenths of a mile from the scene of the crime. The dog lost the trail at the sport where defendant's car had previously been parked. The victim testified that her assailant had muddy shoes. Defendant was convicted of rape, false imprisonment, and petit larceny during his first trial. On appeal the judgment was reversed and the case was remanded for new trial. Defendant was convicted of rape and false imprisonment during his second trial. The defendant argued, among other things, that the use of the bloodhound to detect the trail of a perpetrator of a crime is equivalent to the use of an informer, and that the use of the affidavit is totally defective for the reason that it fails to lay a foundation that the dog was reliable. The appellate court pointed out that the Supreme Court had rejecting the contention that information received from a police canine must meet the same rigid standards as information from an unidentified police informant. It concluded that the trial court judge in reviewing the affidavit could have realistically assumed that the bloodhound procured from the Sheriff's Department was trained and experienced in tracking. The defendant also claimed that the dog handler was not a reliable trainer or handler, that the bloodhound he used was not shown to be properly

trained or reliable, and that the evidence of the trailing was speculative. The appellate court concluded that the guidelines set in *Terrell* had been met and therefore, the trial court did not err in admitting the evidence of the tracking. According to the trial testimony, the dog's handler had over seven years of experience in handling bloodhounds, had attended seven different training sessions sponsored by the National Police Bloodhound Association, had used dogs fifty times in trying to locate people and had "good success." Regarding the dog, it had "three or four successful finds," had been trained over the previous two and a half to three years, and was retrained in tracking persons on a monthly basis. In addition, the dog was set on the trail at a location where the perpetrator was known to have been.

Roberts v. State, 298 Md. 261 (Md. 1983).

A police bloodhound was brought to the scene of rape. An investigator used a broom handle held at arm's length to pick up a cap, which was worn and discarded by the perpetrator, and placed it on the ground outside of the mudroom door. The hat was used to scent the dog. The dog trailed to a point in the garden at which the knife used by the perpetrator was lying and continued to a public highway where tire tracks were observed in soft sandy soil. Witnesses provided a description of the car that was there. The defendant was convicted of first degree rape, unlawfully wearing and carrying a dangerous weapon, daytime housebreaking and attempting to steal goods valued at less than $ 300. A police officer had observed the car parked outside of the defendant’s mother’s house. The clothing of the defendant matched the description of the perpetrators clothing that was provided by the victim. A "dog line-up" was held on the lawn outside of the victim's home, which consisted of placing defendant in the middle of a line of four officers and the dog, scented from the hat, identifying him. The order of the line-up was altered and the defendant was identified again. In identifying the defendant, the dog would circle him and sit at his feet. The defendant contended that the trial court erred in, among other things, allowing the prejudicial use of a dog line-up into evidence at trial. Defendant argued that all of the individuals in the "line-up" were known to the dog and that its familiarity with them may have led the dog to the defendant. The circuit judge initially concluded that the dog had demonstrated reliability in tracking and that its handler was qualified to interpret the dog's actions. The defendant did not challenge the circuit judge’s threshold determination. The court upheld the majority rule that evidence of the tracking by a dog of the scent of a suspected criminal is not per se inadmissible as to identification. Regarding dog line-ups, the appellate court found no indication that a trained and reliable tracking dog will signal a find because the person found is the only one unfamiliar to the dog from among a group of persons. The appellate court also concluded that whenever a court admits bloodhound evidence of a dog's having tracked over an area traversed by one or more human beings other than the subject, the court is essentially dealing with a line-up case. It agreed with the trial court’s finding beyond a reasonable doubt that the dog was sufficiently reliable in trailing, its handler was competent to interpret the dog's actions, and that the line-up test was conducted in a reasonable and reliable manner. It also held that the trial court did not err in failing to rule that the composition of the line-up was prejudicial because the only person in it with whom the dog did not have some familiarity was the defendant.

Clark v. State, 140 Md. App. 540 (Md. Ct. Spec. App. 2001).
In response to a map found in the defendant's truck, a cadaver dog was taken to a cemetery in Massachusetts to search for two missing persons, one of which was the victim. The dog was trained to recognize the scents of blood, tissue, and decomposition of humans. The dog was released in the cemetery and indicated an alert in the area of a soil disturbance, which was near a headstone marked with the defendant's last name. A small amount of dirt was removed, and the dog identified the soil that was removed and not the hole where it came from. A second cadaver dog was taken to the cemetery two and a half years later. The second dog alerted in the same place where the first dog alerted. The second dog was released in the cemetery again and provided a less intense alert in the same area. The defendant pled guilty to second-degree murder in the disappearance of the individual that was not the victim in the case. One of the State's theories in this case was that defendant went to the cemetery, dug up the corpse of Michelle Dorr and took it elsewhere. Defendant was convicted of second-degree murder. The defendant contended that the lower court committed reversible error in, among other things, improperly admitting evidence against him, specifically that there was insufficient factual basis to support the expert testimony of the dog handlers. The appellate court pointed to the testimony that the first dog had been certified as a qualified cadaver dog once a year since 1991 by the New England State Police Association (NESPA), had also been certified as a cadaver dog once every two years since 1991 by the North American Police Work Dog Association, and during certification, the dog never failed to find what was hidden, and never, in training, alerted on "false holes," which are dug in attempts to deceive the dogs. The appellate court concluded that the State did establish the first dog's expertise (the expertise of the second dog was not challenged) and the use of cadaver dogs in trying to determine the existence, or the one-time existence of a decomposing body, is generally accepted by the scientific community.

MASSACHUSETTS

EVIDENCE OF A TRAINED POLICE DOG'S ALERT TO ACCELERANTS IN A VEHICLE IS ADMISSIBLE ALTHOUGH A SUBSEQUENT LABORATORY TEST FAILS TO CONFIRM THE PRESENCE OF ACCELERANTS IN THAT VEHICLE.

Commonwealth v. Crouse - Oct. 23, 2006 [**447 Mass. 558**]
Facts: Defendant was tried for arson and murder. At Defendant's trial, the court admitted evidence of a trained police dog's alert to accelerants in the back of Defendant's vehicle. However, subsequent laboratory test results of a carpet swatch cut from the area of the vehicle at which the dog alerted were negative for the presence of gasoline.
Holding: It was not error to admit the evidence of the dog's alert.

Commonwealth v. Le Page, 352 Mass. 403 (Mass. 1967).
A police dog was used to trail one of the defendants from the scene of a shooting to his home. The trailing was performed twice and each time the dog led police to the defendant's home. Defendant was convicted of first-degree murder and of armed assault with intent to rob. On appeal, defendant contended that the trial court erred in admitting evidence that the defendants were trailed by trained dogs. The Supreme Judicial Court of Massachusetts held that there was no error in admitting the evidence of the trailing of the intruders by trained dogs. It stated that although such evidence should be limited to matters as to which it is likely to be reliable, it may be admitted in the exercise of a sound judicial discretion.

Commonwealth v. Moore, 379 Mass. 106 (Mass. 1979).
A trained dog was used to track a trail through the location where a murder took place. The dog was scented with the defendant's shirt. Defendant was convicted of first-degree murder. On appeal, the defendant asserted that the trial court erred in, among other things, admitting the testimony of the dog's actions in trailing him. The Supreme Judicial Court of Massachusetts, citing *LePage*, held that court did not error, as after an extensive *voir dire*, the trial judge found the evidence to be reliable. The court affirmed the conviction.

Commonwealth v. Taylor, 426 Mass. 189 (Mass. 1997).
The dog alerted the police to the presence of an accelerant in several different portions of the home and on each of the defendant's sneakers. The trial judge denied the defendant's motion to exclude the result of the dog's "alerts." The motion asserted that the Commonwealth had not provided a sufficient foundation for the evidence and the evidence was unreliable. Defendant was convicted of first-degree murder and of burning a residential home. On appeal, the defendant contended the trial court erred in, among other things, denying his motion regarding the identification of accelerants by the dog. The Supreme Judicial Court of Massachusetts concluded that the defendant's argument overlooked the testimony of State troopers, other than the handler who had died, who were present during the dog's search for, and detection of, accelerants, the foundation laid by these and other witnesses to support the "canine tracking" evidence, and the cross-examination by the defendant's trial counsel to test the foundation and reliability of the

evidence. The court determined that defendant's argument lacked merit. The trial court's judgment was affirmed.

Commonwealth v. Hill, 52 Mass. App. Ct. 147 (Mass. App. Ct. 2001).
A tracking-dog was brought by police to the scene of a rape. The dog picked up a scent at the rear door to the victim's house and followed the scent to the defendant's house. The dog went to the defendant's front door. A separate search of the scent track by a second canine team was called but the scent track was not found. The police never found any physical evidence connecting the defendant with the crime, but the victim did identify the defendant in a voice line-up. The defendant was on probation for rape, assault with intent to commit rape, and assault with a dangerous weapon. Defendant's probation was revoked. He contended that the revocation order must be set aside because it was based at least in part on hearsay and other incompetent evidence in violation of Hill's due process right to confront the witnesses against him. The defendant referred specifically to the judge's admission of the victim's grand jury testimony and also to the dog-tracking evidence. The dog's handler testified that he was qualified both by training and experience to use the tracking dog; that the dog was adequately trained and able to track humans, including leaving and picking up a scent; that he had instructed the officers arriving at the victim's house immediately after the incident occurred to restrict access to the rear door of the house to preclude contamination of the intruder's track; and that he had placed his dog on the track in accordance with standard procedures shortly after he had arrived at the house. The dog's handler also testified that, a week after the incident in question, he verified his dog's performance by creating a separate scent-tracking exercise and observing that the dog was able to perform the exercise satisfactorily. The appellate court found that there was no due process violation in the trial judge's admission of the dog-tracking evidence. It pointed out that it is well established in Massachusetts, citing *LePage* and *Taylor*, and elsewhere that dog-tracking evidence is admissible, provided a proper foundation has been laid, due to its widely recognized reliability. The order revoking probation was affirmed on that and other grounds.

MICHIGAN

People v. McMillen, 126 Mich. App. 211 (Mich. Ct. App. 1983) (questioned on other grounds by *People v. Trevino*, 155 Mich. App. 10 (Mich. Ct. App. 1986))

THE PROPONENT OF DOG TRACKING EVIDENCE NEED NOT SHOW THAT A TRAIL WAS FRESH AND UNCONTAMINATED WHEN A DOG STARTED TRACKING, BUT RATHER THAT "THE TRAIL HAD NOT BECOME SO STALE OR CONTAMINATED AS TO BE BEYOND THE DOG'S COMPETENCY TO FOLLOW IT."

People v. King - Feb. 2, 1996 [**215 Mich. App. 301**]
Facts: Defendant argued that the court should exclude tracking dog evidence for lack of proper foundation.
Holding: An adequate foundation was established for the admission of tracking dog evidence.

People v. Harper, 43 Mich. App. 500 (Mich. Ct. App. 1972).
The victim was raped in her bedroom. Fresh set of prints going to and from the victim's house were visible in the snow. A police tracking dog was brought into to pick up the trail from where the tracks were no longer visible. The dog continued to follow the trail across the street to a house about three blocks away where the defendant resided with several other persons. When the defendant appeared at the door of the house, the tracking dog began to bark and snarl at him. The barking was the dog's usual means of identifying the suspect. The victim was able to identify the defendant as her attacker. The defendant was convicted of statutory rape. On appeal, the defendant contends that it was reversible error to admit evidence pertaining to the tracking dog. The Court of Appeals of Michigan declared that it was adopting the majority rule that upon a proper foundation being laid, tracking-dog evidence is admissible in criminal cases. The court went on to state that it must be shown as a condition precedent to its admissibility that: (1) the handler was qualified to use the dog; (2) the dog was trained and accurate in tracking humans; (3) the dog was placed on the trail where circumstances indicate the alleged guilty party to have been; and, (4) the trail had not become so stale or contaminated as to be beyond the dog's competency to follow it. The rule applied to bloodhounds and German shepherds. The court pointed out that there were 14 pages of testimony in the case by the dog's handler which demonstrated that both the dog and the handler were intensively trained and accurate in tracking humans, the dog was placed on the trail where the perpetrator of the rape left the victim's home, and the trail was fresh and within the dog's competency to follow it. The court held that since a proper foundation was laid, the trial court did not err in receiving the tracking-dog evidence.

People v. Norwood, 70 Mich. App. 53 (Mich. Ct. App. 1976).
Defendant was convicted of carnal knowledge of a female over the age of 16. On appeal, the defendant only challenged the foundation that the prosecutor laid for the admission of tracking dog evidence. The appellate court stated that in the present case three of the four

required elements articulated in Harper were adequately established through testimony properly admitted at trial. The tracking took place approximately one hour after the incident, the handler testified about the training that he received in handling the dog, other testimony indicated that the culprit had handled the knife from which the dog detected the tracking scent, and there was testimony that confirmed that the dog began tracking at a location where the culprit was known to have been. However, no testimony was introduced to indicate the accuracy of the dog's tracking ability in a non-training situation. The dog became distracted by stray dogs approximately two houses from the defendant's house. As a result, the dog was unable to complete the tracking assignment by identifying the person that he was tracking. As a result, the court concluded that the admission of the evidence was erroneous. In determining whether the admission was harmless, the court stated that it does not view an error in laying the proper foundation for the admission of evidence as so fundamental that it can never be said to be harmless. The court was not convinced beyond a reasonable doubt that the trial court would have convicted the defendant without the erroneously admitted evidence. The judgment was reversed and the case remanded for a new trial.

People v. Sands, 82 Mich. App. 25 (Mich. Ct. App. 1978).
A tracking dog was used to lead officers from the scene of a double homicide, a gas station, to a parking lot located near the station where fresh tire tracks and footprints were observed in the snow. After defendant and his friends arrived in their car to the gas station for questioning, the officers noticed similarities between the car's tire tracks and oil drippings and those previously observed in the snow at the parking lot. The defendant confessed to the double homicide. Defendant was convicted of first-degree murder. On appeal the defendant asserted that 1) his confession was illegal and inadmissible in evidence and 2) the admission of the testimony relating to the use of the police tracking dog was reversible error. The defendant maintained that the foundation laid by the prosecutor was improper. The State admitted that not all the foundational requirements were met in the case; however, it asserted that it did not require reversal of defendant's conviction. The appellate court point out that the defendant made no objection at trial or thereafter until appeal, and absent a showing of manifest injustice, specific objection to the admission of evidence cannot be raised for the first time on appeal. It did not find that there was manifest injustice. The judgment was affirmed.

People v. Orsie, 83 Mich. App. 42 (Mich. Ct. App. 1978).
Defendant was convicted of attempting to break or enter a safe with intent to commit larceny and willfully or maliciously burning a building. On appeal, one of the defendant contentions was that there was no sufficient foundation upon which to admit tracking-dog evidence, specifically the dog's training and accuracy in tracking humans. The appellate court pointed out that no objection was made at trial by defendant with regard to the qualifications of either the tracking dog or his owner-trainer. It stated that failure to object to admission of evidence precludes appellate review and there was no manifest injustice in admitting the tracking-dog evidence.

People v. McPherson, 85 Mich. App. 341 (Mich. Ct. App. 1978).

Defendant was convicted of breaking and entering an occupied dwelling with intent to commit larceny. Defendant appealed the denial of his motion for a new trial or judgment not withstanding the verdict. The issue was whether evidence of identification presented through testimony concerning the actions of a police tracking dog, standing alone, is sufficient to allow the jury to find a defendant guilty beyond a reasonable doubt. It was undisputed that the dog and his trainer were highly trained and proficient. The court was persuaded by the great weight of authority that dog-tracking evidence must have corroborating evidence in order to support a conviction. It held that the evidence presented was insufficient to support a conviction and reversed.

People v. Perryman, 89 Mich. App. 516 (Mich. Ct. App. 1979).
A shoot-out took place at the scene of a breaking and entering between the defendant and neighbors of the victim. The defendant escaped over a fence behind the dwelling. Shortly after the shooting, a police tracking dog was brought to the scene. The dogs were scented at the fence where there was evidence of blood and a footprint. The dog located the defendant lying in a park a few blocks away, with two gunshots in his leg. The defendant was convicted of breaking and entering an unoccupied dwelling with intent to commit larceny. Defendant further alleges that the trial court erred in admitting the tracking dog evidence, maintaining that: (1) such evidence is scientific in nature, and lacks the requisite unimpeachable validity necessary to justify its admission, and (2) the introduction of tracking dog evidence deprived defendant of his constitutional right to confront witnesses. The appellate court declined to review the contentions because neither of them was presented to the trial court. However, the court appellate court did review the trial court's finding that the dog-tracking evidence was admissible. The court concluded that the prerequisites for the admission of dog-tracking evidence were met. The defendant also contended that it was error for the trial court not to give a cautionary instruction on the unreliability of tracking dog evidence. The defendant made no request at trial for the instruction, and counsel stated it was satisfied with the court's intended jury charge, which did not include a reference to the dog tracking evidence. The appellate court stated that there was no manifest injustice and that the defendant's failure to object to the jury instruction barred reversal. Nevertheless, the appellate court held prospectively, that a court has a duty, even absent a request by counsel, to inform the jury that tracking dog evidence: must be considered with caution; is of slight probative value; and if found reliable, cannot support a conviction in the absence of other direct evidence of guilt.

People v. Plantefaber, 91 Mich. App. 764 (Mich. Ct. App. 1979)
A police officer smelled defendant's suitcases and detected the odors of marijuana and talcum powder. The suitcase was opened and found to contain 14 bricks of marijuana. The defendant was convicted of possession of marijuana with intent to deliver. During trial, the defendant claimed that he had been the victim of two unconstitutional searches and seizures. On appeal, the defendant argued that the trial court erred on several grounds. He cited cases involving the admissibility of dog-tracking evidence to attack the reliability of the officers' testimony concerning their detection of marijuana. The appellate court stated that the objections to admitting dog-tracking evidence such as inability to cross-examine the dog and the deprivation of the defendant's right to confront his accusers are not relevant to the testimony of humans who are available for cross-examination. The

court also stated that *McPherson* implicitly recognizes that the corroborating evidence rule would not apply if tracking dogs were capable of understandingly taking an oath, describing their credentials and experience, and detailing the stages of their investigations. As a result, the court concluded that it was not persuaded that the sense of smell of humans cannot be used to establish probable cause or that the "self-serving" testimony of the person doing the smelling is inherently unreliable. The judgment was reversed on other grounds in *People v. Plantefaber*, 410 Mich. 594 (Mich. 1981).

People v. Joyner, 93 Mich. App. 554 (Mich. Ct. App. 1979).
A tracking-dog was used to follow the defendant's trail to the home where he was discovered, a short distance from the scene of a murder. Defendant was convicted of first-degree murder. Defendant contended that, among other things, there was no proper foundation laid for the admissibility of tracking-dog evidence. The appellate court noted that this issue has not been properly preserved for appeal, as no specific objection was made at the time of testimony. Therefore, manifest injustice was necessary for appellate review of the contention. The appellate court, citing *Harper*, found that all conditions precedent to admissibility of the dog-tracking evidence were properly established on the record and as a result, did not find manifest injustice in the case.

People v. Coleman, 100 Mich. App. 587 (Mich. Ct. App. 1980).
A police tracking dog was brought to the scene of the robbery within 30 minutes and was directed to the area where the robber had fallen while fleeing. The defendants were convicted of armed robbery and possession of a firearm at the time of commission or attempted commission of a felony. On appeal, the defendants asserted that the trial court erred in refusing to suppress evidence obtained pursuant to a search warrant issued on the basis of unreliable tracking-dog information. The robbers' footprints were tracked to an apartment where the defendants were located. The defendants' footprints were the freshest tracks in the area that was searched. The dog's actions were observed by the officer making the affidavit. The appellate court stated the applicable rule: "a finding of probable cause sufficient to justify issuance of a search warrant may rest upon evidence which is not sufficient to justify conviction and which may not be legally competent in a criminal trial because it is only the probability, and not a prima facie showing, of criminal activity that is the standard of probable cause". The court acknowledge that a tracking dog is not an "informant" but that the test in *Aguilar v Texas*, 378 U.S. 108 (1964) appeared well-suited to assist a magistrate to determine the factual sufficiency of the affidavit supporting the request for such a search warrant. The court concluded there was little question as to the sufficiency of the underlying circumstances which led the dog to the apartments where they were arrested. Regarding the second prong of the *Aguilar* test, the appellate court agreed with the trial court's conclusion that the dogs assignment to a canine unit indicated he had qualifications as a tracking dog. The court also stated that corroboration of an informant's tip can serve to establish probable cause even if the two parts of the *Aguilar* test are not satisfied completely. The appellate court held that the defendants' motion to suppress evidence was properly denied and the judgment was affirmed.

People v. McRaft, 102 Mich. App. 204 (Mich. Ct. App. 1980).

The dog handler's supervisor was allowed to testify for the handler and the officer in charge of the crime scene was permitted to testify as to the dog's trailing from the scene of the assault to the pocket knife that was used in the crime. The victim identified defendant from the group of photographs shown to him by the police. The trial court did not caution the jury as to the weight or credibility to be afforded tracking-dog evidence. Defendant was convicted of assault with intent to rob and steal, being armed, and of assault with intent to do great bodily harm less than murder. On appeal, the defendant claimed, among other things, that the trial court erred in admitting tracking-dog evidence without the necessary foundation or without giving any cautionary instruction concerning the evidence. The appellate court pointed out that no objection was made during trial to the admission of the knife into evidence on the ground that a proper foundation for its admission had not been established. As a result, the court found the issue not to be preserved for appellate review. Regarding the lack of a cautionary instruction concerning the dog-tracking evidence, the appellate court stated that *Perryman* had been decided less than three weeks prior to defendant's trial and the trial court was probably not aware of the need to provide a cautious instruction. In addition, the court found that it did not perceive the error to be so offensive to the maintenance of a sound judicial process that it could never be regarded as harmless and that there was no reasonable possibility that the error complained of might have contributed to the conviction due to the overwhelming evidence against the defendant. The court did not find any errors necessitating reversal or remand.

People v. Riemersma, 104 Mich. App. 773 (Mich. Ct. App. 1981).
A tracking dog led police from the scene of a breaking and entering to the door of defendant's residence. Defendant indicated that he was being question by police for a breaking and entering before being told by the police of the breaking and entering. Also, defendant's boot print matched those that were found in the snow in the area of the crime. Defendant was convicted of breaking and entering with the intent to commit larceny. The defendant argued that there was insufficient evidence of identification implicating him as the perpetrator of the offense; specifically that his conviction must be reversed, because tracking dog evidence was the only evidence inculpating defendant. The court concluded that sufficient circumstantial evidence was introduced corroborating the identification of defendant. It also found that the tracking dog evidence was admissible because the requisite foundation was established. The dog's handler testified regarding his qualifications as a handler and experience training with the dog for two years and stated that the dog had previously been reliable during testing and in prior criminal investigations. According to the handler, the dog was started at a footprint in the snow where complainant had seen the person near her house and the footprint had not been contaminated by other police officers. The appellate court held that under the circumstances in the case, the tracking dog evidence was properly admitted and, in conjunction with the corroborative circumstantial evidence, justified a reasonable fact-finder in concluding defendant was the culprit beyond a reasonable doubt. The breaking and entering conviction was affirmed on that and other grounds. However, the enhanced sentence was vacated, and the matter was remanded for sentencing.

People v. O'Brien, 113 Mich. App. 183 (Mich. Ct. App. 1982).

A helicopter was dispatched to the scene of a police shooting, along with tracking dogs and their handlers. The defendant was convicted of first-degree murder. After arriving at the scene two tracking dog handlers went to investigate a green object spotted in a swamp. When on of the handler's approached the object he could see that it was the defendant and turned his dog loose. The dog jumped on defendant and the defendant was immediately arrested. The dog's only picked up one scent at the scene of the shooting. The defendant was convicted of first-degree murder. On appeal, the defendant challenged, among other things, the admission of certain evidence, including testimony that the tracking dogs could not pick up a second scent from the scene of the crime. Defendant was arguing that another individual committed the shooting and had successfully escaped from the scene. He contended that since the dogs were not placed on the track of the alleged second suspect, evidence of their inability to find a track should not have been admitted because no proper foundation had been laid. According to the appellate court, a proper foundation had been laid for admission of tracking-dog evidence. It pointed to the fact that the handlers only testified about their dog's actions and did not testify as to whether there was a second scent or not. The court found that despite the potential prejudice that may flow from tracking-dog evidence, it did not think that the court erred, under the facts of the case, in allowing the dog handlers to testify as to their dogs' actions. It also stated that the evidence was properly placed before the jury to be weighed by them as to its probative value. The judgment was affirmed.

People v. McMillen, 126 Mich. App. 211 (Mich. Ct. App. 1983).
Details about the use of tracking dogs were not provided in the opinion. The victim recognized the defendant as someone who lived in the area and was able to provide a detailed description of the defendant and his clothing at the time of the attack. The trial court did not caution the jury as to the weight or credibility to be afforded tracking-dog evidence. Defendant was convicted of two counts of third-degree criminal sexual conduct and one count of breaking and entering with intent to commit criminal sexual conduct. One of the defendant's claims on appeal was that the trial court's failure *sua sponte* to give a cautionary instruction on tracking dog evidence was reversible error. The appellate court, citing *McRaft*, found no reversible error based upon the overwhelming evidence identifying the defendant as the assailant. The court did not find any errors necessitating reversal or remand.

People v. Laidlaw, 169 Mich. App. 84 (Mich. Ct. App. 1988).
A police dog was used to track a scent near the first breaking and entering and had led police to the rape victim's residence. After the defendant was sighted by a police officer and fled, the dog and its handler were taken to a spot closer to the sighting of the defendant. They saw the defendant running and the dog caught up with the defendant and indicated that he was the person whose scent he was tracking. Defendant was convicted of entry without permission, two counts of breaking and entering an occupied dwelling with intent to commit larceny, assault with intent to commit criminal sexual conduct involving sexual penetration, two counts of first-degree criminal sexual conduct, breaking and entering an occupied dwelling with intent to commit larceny, and unlawfully driving away an automobile, and pled guilt to being an habitual offender. On appeal, the defendant complained that, among other things, the evidence that the tracking dog recognized

defendant at apprehension should not have been admitted or the trial court should have ignored it. The appellate court reiterated that there must be other corroborating evidence presented before dog-tracking evidence is sufficient to support a guilty verdict. Defense counsel stipulated to the officer's qualifications as an expert in dog handling and training and the dog's handler testified that he trained the dog for one year before placing him in service and that the dog had passed tests by the North American Police Work Dog Association. The appellate court found that even though there was not a continuous tracking of defendant to where he was found and that the dog only recognized defendant as the source of the scent once he apprehended him, the foundation for admission and consideration of evidence concerning the dog met the *Harper* requirements. The court also pointed out that there was abundant corroborating evidence in this case. It held that defendant's claim failed for lack of merit. The court rejected two more of defendant's claims and reduced the sentence based on his fourth claim.

People v. Stone, 195 Mich. App. 600 (Mich. Ct. App. 1992).
A tracking dog arrived at the scene of a bank robbery about an hour after it occurred. The dog tracked a scent to a nearby wooded area where the defendants were found hiding in a ditch. Some clothes, the stolen money, a ring of keys, and a sawed-off shotgun were found nearby. There were witnesses that identified the robbers and one witness that overheard one of the defendants admit his involvement. Defendants were convicted of armed robbery. The defendants contended that the trial court committed several errors. One of the defendants contended that the trial court erred in admitting the tracking-dog evidence because there was no other direct evidence of his guilt. The defendant did not dispute the foundational requirements. The appellate court reviewed the record and concluded that there was sufficient corroborating evidence of the defendant's identification. According to the appellate court, he was seen in the area and was apprehended near jackets matching the description of those worn by the perpetrators and the gun used in the crime, as well as the money and keys taken from the bank. It held that the trial court did not abuse its discretion. The convictions were affirmed but the case was remanded for resentencing.

MINNESOTA

THE KNOWN HABITS AND HIGH REPUTATION OF BLOODHOUNDS FOR TRAILING IS NOT ALONE SUFFICIENT FOUNDATION FOR THE ADMISSION OF BLOODHOUND TRACKING EVIDENCE.

State v. Staveneau - Mar. 7, 1924 [**158 Minn. 329**]
Facts: Defendant was convicted of stealing chickens.
Holding: The court should have excluded the evidence related to chicken testing.

Crosby v. Moriarty, 148 Minn. 201 (Minn. 1921).
A fire destroyed the plaintiff's barn, six horses, a quantity of hay, and farm implements. A bloodhound was set on four different tracks observed near the straw pile and in the cornfield of the farm on which the barn was located. The bloodhound stopped a short distance from the property when following the first two tracks. The dog led police to two houses, which had not been used by the defendants, when it followed the third track. The fourth track was started about a half a mile from where the fire was and led to the defendant's (neighbor's) house. The barn owner's neighbors were indicted, tried, and acquitted. The owner filed an action against the neighbors to recover damages for fire. There was a verdict and judgment in favor of the neighbors. On appeal, the owner alleged error in the denial of the motion. One of the errors that the defendant claims relates to the exclusion of testimony describing the conduct the dog after it was set on the tracks that were noticed near the straw pile and in the cornfield the morning after the fire. Supreme Court of Minnesota did not decide which rule would be adopted regarding the admissibility of dog-tracking evidence for two reasons: (1) The foundation laid was insufficient even under the authorities most firmly committed to the rule of its admissibility; and (2) the conduct of the dog was so void of any tangible indications as to be utterly valueless. The handler was not present when the dogs were bought in Omaha and he knew nothing about the training or pedigree of the dogs except by hearsay. According to the testimony, he had had the dogs out a few times to trace criminals and lost children but the extent to which they showed themselves efficient was not disclosed. The court also pointed out that there was no evidence tending to connect the tracks on which the dog was set with the person who set the fire. As a result, the court concluded that the foundation was insufficient to admit any testimony of the conduct of the dogs. It held that the trial court ruling that excluded all testimony about the conduct of the dog was correct. The judgment was affirmed.

McDuffie v. State, 482 N.W.2d 234 (Minn. Ct. App. 1992).
There were two robbers in the case was pursued from the scene of the crime and apprehended. The other robber, the defendant, was able to flee and was apprehended at an office building at some distance from the scene of the robbery. A witness observed the defendant climb a fence and flee. A cap and money were found at the fence. A police dog was called in and he was scented with the cap and money. The dog eventually led police to building where the defendant was apprehended but became distracted. As the dog approached the police cars on the street, the dog pulled his handler toward the car containing the defendant and stood up on his hind legs and put his front paws on the back

door of the car. The dog's handler testified extensively about his training and experience, the dog's training, experience and reliability and the circumstances surrounding the dog's tracking of defendant. Defendant was convicted on several counts of robbery. Defendant filed a petition for post-conviction relief seeking a new trial on the grounds that the trial court erroneously admitted the show-up identification evidence and the dog-tracking evidence. The trial court subsequently vacated one of appellant's convictions and denied further post-conviction relief. On appeal, the defendant claimed the trial court erred in admitting identification and dog-tracking evidence. The appellate court adopted the majority rule and stated dog-tracking evidence can be admitted if the following are shown: (1) the experience, qualifications and training of the dog's handler, (2) the dog's experience, skill, training and reliability as a tracker, and (3) the circumstances of the tracking itself. The court stated that once the basic foundational requirements have been met, any alleged weakness in the evidence goes to the weight of the evidence rather than its admissibility. The court also noted that dog-tracking evidence should be used only to corroborate other evidence and is not sufficient standing alone to support a conviction. It concluded that the evidence in the case supported the post-conviction court's conclusion that a sufficient foundation was established for admission of the dog-tracking evidence. The judgment was affirmed.

State v. Scharmer, 501 N.W. 2d 620 (Minn. 1993).
A police dog was called in to conduct a scent search for two burglary suspects. The dog began tracking in the area where the suspects were last seen and followed a trail that led past a baseball diamond and ended at a farm. When the dog and his handler were near the baseball diamond, the dog seemed to indicate a second track to a grain elevator located to the north. The dog was taken back to the squad car, given a drink and had its nose wet, and then, taken to the elevator. The dog ran out of the car and into the building where he found the defendant. The defendant was convicted of two counts of third degree burglary. The court of appeals affirmed. The issue that defendant raised on appeal was whether the evidence is legally sufficient to support the convictions. The defendant's conviction was based entirely on circumstantial evidence. The Supreme Court of Minnesota stated that it must determine whether the reasonable inferences legitimately drawn from the circumstantial evidence presented at trial are consistent with defendant's guilt and inconsistent with any rational hypothesis except that of guilt. The state supreme court acknowledge that the proper foundation was laid for the dog tracking evidence, but concluded that the handler's interruption of and intervention in the tracking raised a reasonable doubt as to whether the dog was alerted to the original scent after being driven to the elevator. The court asserted that even assuming that the dog was alerted to the same scent does not rule out the rational hypothesis that the suspect they were trailing had passed by the elevator where defendant was sleeping and gone on to the north. The court expressed its agreement with the *McDuffie* court in that dog-tracking evidence should be used only to corroborate other evidence and is not sufficient standing alone to support a conviction. It determined that none of the physical evidence introduced by the state was ever linked to appellant and held that the evidence was legally insufficient to support defendant's convictions of third degree burglary. The judgment of the court of appeals was reversed.

MISSISSIPPI

A COURT DOES NOT ERRONEOUSLY ADMIT BLOODHOUND TRACKING EVIDENCE WHERE THE PROPONENT OF THAT EVIDENCE SUBSEQUENTLY SATISFIES THE FOUNDATIONAL REQUIREMENTS OF *HINTON v. STATE* (MISS. 1936) 175 MISS. 308 AND *FISHER v. STATE* (MISS. 1928) 150 MISS. 206.

Dolan v. State - Jun. 14, 1943 [**195 Miss. 154**]
Facts: The court admitted bloodhound tracking evidence before the owner and trainer of the dogs testified as to their pedigree, training and ability, and produced certificates of registration showing purity of breed of those bloodhounds.
Holding: This was not erroneous.

ON APPEAL, DEFENDANT CANNOT COMPLAIN ABOUT THE ADMISSION OF BLOODHOUND TRACKING EVIDENCE IF DEFENDANT FAILED TO OBJECT TO THE ADMISSION OF THAT EVIDENCE DURING TRIAL.

Myers v. State - Jan. 11, 1978 [**353 So. 2d 1364**]
Facts: The State offered bloodhound tracking evidence without laying a sufficient foundation for the admission of that evidence. Defendant failed to object to the admission of this evidence. The trial court admitted this bloodhound tracking evidence.
Holding: A contemporaneous objection is necessary to preserve the right to raise an error on appeal. Thus, Defendant cannot now complain about the admission of the bloodhound tracking evidence.

NO REVERSIBLE ERROR WHERE TRIAL COURT ADMITTED BLOODHOUND TRACKING EVIDENCE WITHOUT PROPER FOUNDATION WHERE TRACKING WAS ACCOMPLISHED VIA FOOTPRINTS, DISCARDED ARTICLES OF CLOTHING, AND A BLOODHOUND.

Chisolm v. State - Jul. 20, 1988 [**529 So. 2d 630**]
Facts: Police followed a trail to a house at which Defendant had been present. At trial, police testified that they followed this trail via footprints, discarded articles of clothing, and a bloodhound. On appeal, Defendant argued that the State failed to lay sufficient foundation for the admission of the bloodhound evidence.
Holding: *Hinton v. State* (1936) 175 Miss. 308 suggests that a predicate to admission of evidence regarding investigative assistance from bloodhounds is proof of the training and experience of the particular canines. Here, however, the evidence reflects that far more than the canine sense of smell led police to the house where the Defendant had been present; rather, that the footprints and discarded articles of clothing were equally of assistance, if not more. Although the State offered no evidence regarding the

"qualifications of the bloodhounds," this inadequacy does not rise to the dignity of reversible error.

NO REVERSIBLE ERROR WHERE DEFENDANT FAILED TO OBJECT TO ADMISSION OF DOG TRACKING EVIDENCE AT TRIAL AND SUFFICIENT FOUNDATION SUPPORTED ADMISSION OF THAT EVIDENCE.

Byrom v. State - Oct. 16, 2003 [**863 So. 2d 836**]
Facts: Defendant's son told police that Defendant employed a shooter to kill Defendant's husband. To confirm this, police used a police German Shepherd to track shooter from where Defendant's son said that he dropped shooter off, to Defendant's home (the location of the killing), and to where Defendant's son purportedly picked shooter up after the killing. This dog was trained when he was purchased, but he had additional training with the police handler who tracked the shooter in this case. The handler and the dog were certified through the Mid-South Police Canine Association on July 3, 1998. After the certification and for approximately one year prior to this murder, the handler worked with the dog at least one day a week to maintain the dog's training. This involved getting officers from other areas to hide objects for the dog to find. The dog hit every single time on drugs and articles of clothing. The dog was trained in narcotics, tracking, and apprehension. He could track the scent of any type article. At trial, Defendant failed to object to the foundation laid for the admission of this dog tracking evidence.
Holding: Defendant is procedurally barred from asserting this dog tracking evidence as error on appeal based upon her failure to properly object at trial. Alternatively, the qualifications of the police dog to perform the type of police activity he did in this case are beyond reproach, and they were well documented at trial. Furthermore, based upon his training with the dog and his certification as the dog's handler, as well as the fact that he worked with the dog at least one day a week for a year prior to this murder, the dog's handler was qualified to testify regarding the dog's actions.

NO ERROR WHERE SUFFICIENT FOUNDATION SUPPORTED THE ADMISSION OF DOG TRACKING EVIDENCE.

Hudson v. State - Apr. 10, 2007 [**977 So. 2d 344**]
Facts: Police used a Labrador retriever and a bloodhound to track Defendant. The Labrador retriever's handler testified that she and the Labrador retriever trained together for 2 years. The first year of training was with the Choctaw County Sheriff's Department's K-9 Unit, and the second year at the Crystal Mountain Ridge Training Center in Hot Springs, Arkansas. The handler also testified that the Labrador retriever was certified through the National Drug Beat Canine Certifications and went through daily narcotics training after being certified. According to the handler, the Labrador retriever was trained on locating small articles or human tracking at least once a week, and had never failed in a human tracking search.

The bloodhound's handler testified that she was a member of Search Dog South, an organization that, for the past ten years, had been assisting law enforcement in searches for missing persons and suspected felons. The handler also testified that the bloodhound trained 40 hours per month in human tracking. The handler further testified that she and the bloodhound were trained by the North American Search Dog Network.
Holding: The court did not err in allowing the dog handler's testimony into evidence.

Spears v. State, 92 Miss. 613 (Miss. 1908).
Trained bloodhounds were used to track the defendant from the scene of an arson attack to his home. At the defendant's home, the dogs identified the defendant in a peculiar way. In addition, a track was found along the way leading to the house which corresponded to a shoe shown to have been worn at certain times by the defendant. The defendant was convicted of arson. The Supreme Court of Mississippi held that the tests as to the competency of the bloodhound testimony set out in the *Pedigo* case were sufficiently met by the testimony in the case. According to the court, the testimony sufficiently showed that 1) the dogs had been well trained to track human beings, 2) they were of pure blood, 3) they were put on the trail at a place where it was shown that the suspects had been, 4) the owner of the dogs was an experienced dog trainer, 5) the dogs had pedigrees showing they were of pure blood, and 6) they had been subjected to severe and satisfactory tests in the tracking of persons. The court, citing *Simpson* v. *State*, 111 Ala. 6 (Ala. 1895), also found that the trial court properly excluded from the jury evidence about the conduct of other bloodhounds which had been trained by the dogs' handler. It also concluded that the testimony furnished by the bloodhounds and the other circumstances sufficiently showed the criminal agency necessary for establishing the *corpus delicti*. The judgment was affirmed.

Carter v. State, 106 Miss. 507 (Miss. 1913).
Bloodhounds arrived at the scene of a commercial burglary at least thirty-two hours after the crime occurred and trailed the defendant to his house. The ground was soft at the time the crime was committed and had thawed once and frozen twice before the dogs arrived on the scene. The bloodhound testimony was the only evidence that connected the defendant with the crime. The trial court denied defendant's motion to exclude the bloodhound evidence. The defendant was convicted of burglary. The Supreme Court of Mississippi stated that dog-tracking evidence alone and unsupported is insufficient to sustain a conviction and there must be other and human testimony to convict. The state supreme court found that there was a failure by the state to produce affirmative proof to justify the verdict of guilty. It held that the motion made to exclude the evidence for the state and to discharge appellant should have been sustained. The judgment was reversed and the defendant was discharged.

Scott v. State, 108 Miss. 464 (Miss. 1914).
No details regarding the use of bloodhounds were provided. The defendant was convicted of burglary. According to the Supreme Court of Mississippi, there was nothing to show that the bloodhounds were started on the track of defendant at the scene of the crime and there was nothing in the record to show that defendant was connected with the burglary, except the testimony of the hounds. The state supreme court held that the trial court should have directed a verdict of not guilty based on *Carter*.

Harris v. State, 143 Miss. 102 (Miss. 1926).
Two dogs followed a track from near the window through which the deceased was shot to the defendant's home. The dogs identified the defendant as the person whose track they followed by barking twice in his direction. Defendant was convicted of murder. The conviction rested wholly on circumstantial evidence. On appeal, defendant contended that the trial court erred in admitting evidence concerning the action of the bloodhounds. During the trial, defendant objected on the grounds that a proper predicate for the admission of the evidence had not been laid. The Supreme Court of Mississippi assumed that the track which the dogs tracked to the defendant was made by the person who fired the shot which killed the deceased. The court, citing *Spears*, stated that dog-tracking evidence is admissible only after preliminary proof that the bloodhound which tracked to the accused is pure bred, has been well trained to track human beings, has been well tested by tracking other men and found reliable, and that the track from which the bloodhound tracked to the accused was made by the person who committed the crime. It concluded that the evidence in the case failed to meet the test for two reasons: (1) the bloodhounds did not appear to be pure bred and (2) they had not been tested by tracking other men and found reliable. The court arrived at the conclusion even though the owner of the dogs stated that they were subject to registration. The court recommended that dogs be tested by putting them repeatedly in a track known to have been made by a particular person to see if it will track to that person. The judgment was reversed and the case remanded.

Fisher v. State, 150 Miss. 206 (Miss. 1928).
Red English bloodhounds were used to trial defendant from a murder scene to the defendant’s house. The dogs were started at the safe in the store where the murder took place. Prior to entering the defendant’s house, the dog’s handler had the dogs circle the house to endure the person they were trailing had not left the house. Defendant was convicted of murder. On appeal, defendant contended that, among other things, the trial court erred in permitting the owner of the bloodhounds to testify about the actions of the bloodhounds before laying the proper foundation. The defendant also argued that the breed of the dog should be proven by written pedigree. The Supreme Court of Mississippi concluded that the record in this case met the requirements for admitting dog-tracking evidence. The owner testified that he trained the dogs, the dogs were of pure blood and breeding, he personally trained the dogs by putting out a person and running him with the bloodhounds by having the tracks of such person crossed by other persons to see if the dogs would leave the trail of the person they were first put upon and take up the trail of such other parties, and he never knew the dogs to leave the first trail to follow the trail of those crossing the first trail. The court also found that it was competent to prove the breeding and training of the dogs by the oral testimony of their owner. Regarding the defendant’s argument that the jury placed too much importance on the dog-tracking evidence, the court stated that the conviction of the defendant did not solely depend upon the trailing by the bloodhounds. The defendant had admitted to being at the store at the time the murder was committed. The judgment was affirmed.

Hinton v. State, 175 Miss. 308 (Miss. 1936).

The wife of the victim witnessed the defendant steal money from their home and escape through the dining room window. Bloodhounds were brought to the home twenty four hours after the theft. They were scented with a footprint found at the dining room window and followed the trail to the defendant's home and leaped upon a bed inside the house which had been slept on. Then, the dogs were taken to the county courthouse, where they immediately picked up the defendant's trail and followed it to the jail and into the cell occupied by the defendant and another person. The dogs leaped into the bunk against the defendant and bayed. The owner of the dogs testified that the two bloodhounds were full-blooded English bloodhounds and registered by the American Kennel Club, he had such registration papers, he had owned one of the dogs for seven years and the other for not as long, he had been an expert trainer of bloodhounds to follow the trail of human beings for fifteen years, the dogs were reliable and true on the trail, they had been permitted to trail no other animal, that once they started on a trail they would not leave it, and he had tested them by running a thousand or more human beings, and they had not failed in such trails. The defendant was convicted of larceny. On appeal, one of the defendant's contentions was that the testimony as to the bloodhounds was incompetent, for the reason that the dogs were not shown to have been purebred, tested, and to have been found reliable. The court concluded that it was not necessary to offer registration papers and the test of reliability provided in *Fischer* was met. The judgment was affirmed on those and other grounds.

MISSOURI

State v. Fields, 434 S.W.2d 507 (Mo. 1968) (overruled on other grounds by *State v. Walker*, 616 S.W.2d 89 (Mo. Ct. App. 1981))

AN APPELLATE COURT CAN LOOK AT EVIDENCE OF A BLOODHOUND TRAILING A DEFENDANT TO DETERMINE THAT THAT DEFENDANT COMMITTED THE CRIME OF WHICH HE WAS CONVICTED.

State v. Kelley - Apr. 25, 1995 [**901 S.W.2d 193**]
Facts: A trained bloodhound tracked Defendant from the scene of an arson. At trial, Defendant was convicted of committing that arson. On appeal, Defendant argued that the State presented insufficient evidence to convict him of arson.
Holding: The bloodhound and other evidence was sufficient to affirm Defendant's conviction.

State v. Rasco, 239 Mo. 535 (Mo. 1912).
Two bloodhounds were taken to the scene of a quadruple murder and arson attack. The dogs were scented at heel print near a pool of blood at the scene of the crime. The trail that the dogs followed was broken at one point where they were fed, rested, and restarted as some distance away, but the dogs eventually led police to the defendant's house and into his bedroom. A pair of shoes matching the heel print was found in the room. A pair of overalls with blood on them was also found. During the trial, defendant objected to the admission of the bloodhound evidence on the grounds that the hounds were not shown to be sufficiently qualified to take up and continue a human trail and that the condition of the premises was not maintained, which resulted in the obliteration and destruction of the scent of any particular trail. Defendant was convicted of murder in the first degree. One of the defendant's contentions was that testimony about the actions of the bloodhounds was so unreliable that it should not have been admitted and that the preliminary testimony was not sufficient to show the bloodhounds were qualified. The Supreme Court of Missouri appears to cite the Supreme Court of Alabama in accepting the majority rule for the admissibility of dog-tracking evidence court. The court went on to concluded that if what the owner of the dogs said was true as to the training, experience and capacity of the dogs, the evidence was competent; the defendant's conviction did not solely depend on the bloodhound evidence; the jury was fully cautioned as to the weight to be given to this evidence; and the evidence tended to show that the dogs were of pure breed and had been successfully trained to track human beings, and that they had in numerous instances, during two years' experience, demonstrated their ability and fidelity in following a human trail. The court did not find any errors in the record and affirmed the judgment.

State v. Dooms, 280 Mo. 84 (Mo. 1919).
A bloodhound was taken to the scene of a murder. A bullet casing was found on the porch and footprints were found along the side of the porch. The dog trailed the defendant from the scene of the shooting to the place where he was staying and pointed the defendant out.

Defendant was convicted of murder in the second degree. On appeal, the defendant alleged, among other things, that the trial court erred in admitting the dog-tracking evidence and in not instructing the jury as to the weight that was to be given to the testimony. The Supreme Court of Missouri point out that no objection was made by defendant concerning the admission of the testimony to the jury, and had it been incompetent its incompetence was waived because timely objections were not made. The state supreme court also stated that trial court gave the jury appropriate instructions regarding the dog-tracking evidence. The judgment was affirmed.

State v. Barnes, 289 S.W. 562 (Mo. 1926).
Bloodhounds were brought to the scene of the rape and were given the scent of the rapist. The dogs followed the trail from the scene of the crime to the place where the defendant had a room. The victim identified the defendant based on his voice, general appearance, and mustache. Defendant was convicted of statutory rape. On appeal, one of the defendant's contentions was that the trial court improperly admitted evidence showing that bloodhounds trailed the criminal to where the defendant lived. According to the Supreme Court of Missouri, the owner of the dog testified that his business was breeding and training bloodhounds, he had been in that business for many years, and dogs used were qualified by pedigree and by many experiments to trail human beings. The court also stated that an instruction was provided to the jury that required it to find the facts showing that the dogs by nature, training, and prior experience were capable of tracing human beings before they could consider the evidence. It found that the evidence and jury instruction were in accord with the ruling in *Rasco*. The court did not find any errors in the record and affirmed the judgment.

State v. Freyer, 330 Mo. 62 (Mo. 1932).
A threshing separator was destroyed in an arson attack. The victim preserved the area of the crime. Two English bloodhounds were used to follow a trail from the scene of the crime. The dogs followed the trial through a corner of the lot, through an opening in the fence, and down a lane. Footprints were observed beyond the fence. The dogs led the police to one house, then to a fence where there was a handprint and boards that smelled of kerosene. From there, the dogs lead their handlers and a neighbor to the defendant's home. The chief, if not the only, evidence connecting the appellant with the fire was obtained through the use of bloodhounds. The defendant was convicted of arson. The Attorney-General admitted that State's evidence fell short of making a case for the jury, especially in establishing the proof of *corpus delicti*. The Supreme Court of Missouri stated that even it was wrong about the proof of the *corpus delicti* failing to measure up to the standards set by law, it was of the opinion that the evidence was insufficient to connect the defendant with the crime. The court reiterated its holding in *Rasco* that dog-tracking testimony is competent for whatever it is worth, upon a sufficient preliminary showing of the breeding, capacity, training and experience of the hounds, assuming the evidence when introduced showed the dogs were put on a trail and followed it out. It also stated that bloodhound testimony alone and unsupported is insufficient to support a conviction. The court concluded that the circumstantial evidence was not irreconcilable with the innocence of the defendant. The judgment was reversed and the case was remanded.

State v. Steely, 327 Mo. 16 (Mo. 1930).
A large number of chickens were stolen from a chicken coop. Bloodhounds were given a scent at the window of the coop with a broken screen. The dogs followed the trail to defendant's home, went up to the defendant, and made their usual sign of identification. There were footprints in the grass and weeds, and along the trail of footprints were found chicken feathers of sufficient number to follow it to defendant's home. Eighteen chickens were found in the defendant's smokehouse. Defendant was convicted of burglary. On appeal, the defendant alleged, among other things, that the trial court committed errors related to the trailing performed by the bloodhounds. According to the Supreme Court of Missouri, a pedigree certificate was offered for each dog; the trainer of the dogs testified about their training, accuracy and experience; and the owner as to the work of the dogs in the case on trial. It also pointed out that the defendant's counsel was permitted to and did cross-examine each witness fully on this subject and the trial court gave cautionary instructions to the jury. The state supreme court concluded that the preliminary showing was sufficient to make the testimony admissible. It did not find reversible error in the case and the judgment was affirmed.

State v. Long, 336 Mo. 630 (Mo. 1935).
Tracks were observed at a patch of trodden weeds and grass near the murder scene. Police secured the tracks and area. Bloodhounds were brought to the crime scene and placed at the patch of weeks and grass. The dog followed the trail to the defendant's land, to his barn, and finally, his home. Bloodstained overalls were found under an old boiler in a chicken yard near the defendant's home. The blood was determined to be human. The defendant was convicted of murder in the second degree. The State relied solely upon circumstantial evidence for a conviction. On appeal, the defendant argued that the evidence was insufficient to sustain a conviction. The Supreme Court of Missouri pointed out that there was no evidence that corroborated the dog-tracking evidence and concluded that the evidence only raised a suspicion against the defendant. The judgment was reversed and the case remanded.

State v. Fields, 434 S.W.2d 507 (Mo. 1968).
A bloodhound was used to investigate a gas station robbery. The dog was given a scent from the defendant shoes at a location north of the gas station. It picked up a trail that led it to mailboxes where a jacket had been found with the amount of cash stolen from the gas station and the location where the defendant had been arrested and taken to the police station in a police car. The victims were able to identify the clothing of the robbers, which matched the defendant's clothing, but could not directly identify the perpetrators. The dog's handler testified that he was in charge of the four bloodhounds, six German Shepherds and one Doberman Pinscher; that he had been in that type of work for two and one-half years; that the bloodhounds practice about once a week, and that he generally worked with the dog; the dog was a registered bloodhound; that the dog had been used for tracking purposes around 30 or 35 times; and that he, personally, had worked the dog for two years and a half on approximately eight or ten actual tracking events. Defendant was convicted of armed robbery. The defendant claimed that the bloodhound was not sufficiently qualified as an expert and that her pedigree was not established. The Supreme Court of Missouri held that a sufficient foundation had been laid to admit the trailing by

the dog. It acknowledged that more detail could have been provided but pointed to the fact that the dog was shown without objection to be a registered bloodhound. The court stated that it doubted whether the admission of the trailing by the dog would have been prejudicial, even had there been error. According to the court, there was other circumstantial evidence to connect the defendant with the crime. The court did not find any errors by the trial court. The judgment was affirmed.

State v. Cheatham, 458 S.W.2d 336 (Mo. 1970).
Two of three robbers were caught at the scene of a grocery store robbery. A German shepherd police dog was taken to the scene of the crime. The dog was started at an abandoned car with a ski mask and cash drawers from the grocery store. The dog picked up a track and lead police through a vacant lot and alley. The dog and his handler came across the defendant during the trailing. The defendant was questioned and then, taken to the police station. The dog did not identify the defendant and could not pick up the trail at the location where the defendant was stopped and questioned. None of the state's seven eyewitnesses could identify appellant as one of the robbers. Defendant was convicted of first-degree robbery. On appeal, the defendant contended that the evidence did not prove his guilt beyond a reasonable doubt and that the state's circumstantial evidence is not inconsistent with appellant's innocence and is therefore insufficient to support the conviction. The Supreme Court of Missouri determined that the circumstantial evidence, based on witness testimony, standing alone, would be inadequate to support a conviction of the appellant. The court considered whether the discovery of the defendant near the scene of the crime as a result of the tracking by the dog would make the circumstantial evidence sufficient to support a conviction. It concluded that the dog-tracking evidence at best placed the defendant within a block of the scene of the crime and did not place him at the crime scene. Since dog-tracking evidence along cannot support a conviction, the court concluded that the overall evidence was inadequate to connect the defendant with the crime. The judgment was reversed and the case remanded.

State v. Thomas, 536 S.W.2d 529 (Mo. Ct. App. 1976).
A German shepherd police dog was taken to the scene of a murder. The dog was scented with an article of clothing, presumably defendant's, at the scene of the crime. The dog led a police officer to a.22 caliber rifle in the basement of a nearby residence. The defendant was found guilty of second-degree murder. On appeal, one of the defendant’s contentions was that the trail court erred in admitting dog tracking evidence without a proper foundation. The State admitted that it did not lay the proper foundation, but argued that its admission was harmless error. The appellate court agreed, based on its conclusion that the evidence was merely cumulative of other evidence connecting the rifle to the defendant and the evidence had nothing to do with the defendant’s claim that he acted in self-defense. The judgment was reversed on other grounds and the case remanded for a new trial.

MONTANA

State v. Storm, 125 Mont. 346 (Mont. 1951) (appeal after new trial in *State v. Storm*, 127 Mont. 414 (Mont. 1953) (overruled on other grounds by *State v. Bouldin*, 153 Mont. 276 (Mont. 1969)))

***STATE V. STORM* (1951) 125 MONT. 346 DOES NOT LIMIT THE ADMISSION OF TESTIMONY RELATING TO THE USE OF POLICE DOGS TO FIND EVIDENCE AT A CRIME SCENE.**

State v. Stewart - Dec. 14, 1977 [**175 Mont. 286**]
Facts: At trial, police testified about using police dogs to find a pool of blood and other evidence at a crime scene. Defendant argued that this evidence should have been excluded under *State v. Storm* (1951) 125 Mont. 346.
Holding: *Storm* is distinguishable. Here, the dogs were not used to track and locate the Defendant, and the testimony allowed did not tend to identify Defendant as having been in the area searched with the aid of the dogs. The testimony objected to here was not that of a dog or other dumb animal as interpreted by his handler. It was that of an investigating officer, whose tools included specially trained dogs. Defendant was afforded ample opportunity on cross-examination to question the relevance of the evidence covered with the aid of the dogs. Police testimony concerning the recovery of this evidence is not "bloodhound testimony" found to be incompetent in *Storm*. The testimony was properly allowed.

State v. Storm, 125 Mont. 346 (Mont. 1951).
The victim was shot and killed while eating with his family in his home. During the investigation, the police identified 19 tracks. Two bloodhounds were brought to the scene of the crime. The dogs were started at track 1, which was an oval depression. After a time, the dogs reached the defendant's trailer house and then lay down. During the trailing by the dogs, they were deliberately taken off the trail to avoid a cat tail bog and then placed on the trail again at another location. It is not clear whether the dogs identified the defendant or were simply interacting with him. The trailing by the dogs was admitted over the defendant's objections. The dog's owner testified that the dogs were bloodhounds of pure blood; that he had never t owned, handled, or trained any bloodhounds but that he had previously owned some coyote dogs; that both dogs began their training when they were two months old; that one had been totally blind since he was five months old and that such blindness did not affect the dog's trailing ability but only made him keener of scent; and that he had never taken lessons from any expert breeder or trainer of bloodhounds. The owner also testified that when the dogs find the person they are trailing they jump up on them and lick them and wag their tails in which way they are begging for their reward of food. The bloodhound testimony alone placed the defendant at the scene of the crime. Defendant was convicted of first-degree murder. The Supreme Court of Montana concluded that the admission of the bloodhound testimony was highly improper constituting prejudicial error and a denial of substantial rights to which the accused was entitled. The court went on to say that bloodhound testimony is incompetent and

inadmissible on the trial of any person accused of crime. The judgment was reversed and the case was remanded for a new trial.

State v. Jaraczeski, 1998 ML 64, 1 (Mont. Dist. 1998).
In evaluating the defendant's motion in limine, the court ruled that a dog's actions, like economic predictions, should be admissible and considered by a jury, if the proper foundation is laid. The court determined that without more information the trailing performed by the dog in the case would not be admitted.

NEBRASKA

No new cases found via shepardizing.

Brott v. State, 70 Neb. 395 (Neb. 1903).
Bloodhounds were taken to the place where the burglary was committed and appeared to trail the burglar to defendant's house. The defendant was convicted of burglary. The competency of the evidence was the only issue brought up on appeal. The Supreme Court of Nebraska repudiated the suggestion that there is any common knowledge of the bloodhound's capacity for trailing, which would justify it in accepting the dog's conclusions as trustworthy under circumstances like those disclosed in the case. The court pointed to the fact that the crime occurred in the morning and the dogs did not trail until that evening, the crime scene had been trampled by individuals, the sun was shining on the crime scene, and the situation the dogs had to deal with was exceptionally difficult. It held that it was reversible error to accept the result of the trailing by the dogs as legal evidence of defendant's guilt. The court contended that the jury can not know whether the reasons on which the dogs act are good or bad, whether they are all on one side or evenly balanced, or whether the dog's faith in the identity of the scent which he followed was strong or weak. It also pointed out that dogs are frequently right and are frequently wrong in their conclusions and, as a result, is unsafe evidence.

NEW HAMPSHIRE

DOG TRACKING EVIDENCE CAN BE GIVEN SOME WEIGHT IN DETERMINING WHETHER PROBABLE CAUSE EXISTS FOR A WARRANTLESS ENTRY IN EXIGENT CIRCUMSTANCES.

State v. Houtenbrink - Apr. 1, 1988 [**130 N.H. 385**] (questioned on other grounds in *State v. Haines*, 142 N.H. 692 (NH 1998))
Facts: Defendant shot victim. Soon after, police used a police dog to track the Defendant to an apartment building. At approximately the same time that police arrived at this building, an informant told police that Defendant was hiding in the first floor of that building. The informant (an occupant of the apartment building) said that he saw his neighbor Keith handling a gun earlier. The police found the Defendant within an apartment with the name "Keith" on the door.
Holding: The dog tracking evidence served to buttress the report of the informant. The reliability of the informant's tip was corroborated by the tracking dog, and the dog's tracking was corroborated by the telephone tip, because each occurred within seconds of the other. The discovery by the police of the name "Keith" on the door of the apartment corroborated the informant's statement to the police that he had seen a person he knew to be named Keith playing with a gun on the porch outside the apartment.

1) UNDER PART I, ARTICLE 19 OF THE NEW HAMPSHIRE CONSTITUTION, EMPLOYING A TRAINED CANINE TO SNIFF A PERSON'S PRIVATE VEHICLE IN ORDER TO DETERMINE WHETHER CONTROLLED SUBSTANCES ARE CONCEALED INSIDE IS A SEARCH.

2) WHERE, AS HERE, A CANINE SNIFF:
(A) IS PART OF AN INVESTIGATIVE STOP BASED ON A REASONABLE AND ARTICULABLE SUSPICION OF IMMINENT CRIMINAL ACTIVITY INVOLVING CONTROLLED SUBSTANCES;
(B) IS EMPLOYED TO SEARCH A VEHICLE;
(C) IN NO WAY INCREASES THE TIME NECESSARY FOR THE MODERATE QUESTIONING OUR PRIOR CASES ALLOW; AND
(D) IS ITSELF BASED ON A REASONABLE AND ARTICULABLE SUSPICION THAT THE PROPERTY SEARCHED CONTAINS CONTROLLED SUBSTANCES,
IT SATISFIES THE REQUIREMENTS OF PART I, ARTICLE 19 OF THE NEW HAMPSHIRE CONSTITUTION.

State v. Pellicci - Aug. 24, 1990 [**133 N.H. 523**]
Facts: Police observed Defendant's suspicious behavior for months. Subsequently, police stopped Defendant's vehicle. A police dog alerted to the presence of contraband in Defendant's vehicle. A subsequent patdown of the Defendant's person uncovered contraband. At a subsequent hearing to suppress this evidence, the State introduced

evidence that: (1) the police dog's handler and the dog had completed a six-month training program of building, vehicle, and open field searches; (2) the dog had been trained to detect cocaine, marijuana, hashish, crack and heroin; (3) the dog had a 95% success rate in detecting such substances in vehicles; (4) when the dog indicated the presence of controlled substances in a vehicle, "his ears would perk up and go straight forward and [he] would also start pushing his nose [into the vehicle]"; (5) the dog alerted the handler twice in this manner to the possible presence of controlled substances in Defendant's vehicle. There was no evidence that the dog was ever directed to sniff the Defendant's person. Thus the trial court could have found that it was unreasonable to conclude anything about the dog's reliability from its failure to alert his handler to the presence of the drugs later found on the Defendant.
Holding: The dog sniff was a search under New Hampshire's Constitution. However, that search was reasonable. Furthermore, the dog was sufficiently reliable for his alert to provide probable cause to search the Defendant's vehicle. That alert also could be used to establish the probable cause to arrest the Defendant. The contraband on the Defendant was found during a valid search incident to arrest.

State v. Taylor, 118 N.H. 855 (N.H. 1978).
A police officer responding to a security alarm observed two sets of footprints on the dew-covered lawn near the house. A bloodhound was called in and was scented with the footprints. The dog followed the trail into the house, back to the lawn, and eventually into the woods. After approximately forty-five minutes of trailing, the dog indicated that person being tracked was nearby. The defendant and another person jumped from some brush and started to run. The defendant dropped to the ground when ordered to stop. The dog signaled that the defendant's tracks were the ones that were followed. Defendant was convicted of burglary. On appeal, he contended that bloodhound evidence was not admissible. The Supreme Court of New Hampshire adopted the majority rule and held that bloodhound evidence is admissible after a proper foundation has been laid. According to the court, a proper foundation consists of testimony that 1) the dogs are pureblood and of a stock characterized by acuteness of scent and power of discrimination; 2) they are trained to pursue the human track; that they have had experience tracking; 3) they were placed on the trail where the alleged participants are known to have been; and 4) they were placed within the dogs' period of efficiency. It concluded that a laid a proper foundation for the admission of this evidence had been presented in the case. The court's conclusion was based on the testimony and evidence in the record: the dog's current handler and original owner-trainer testified that the dog was a purebred, trained by an experienced trainer, had successfully followed scores of tracks, and had lived and worked with his current handler over a period of time, the dog's current handler was carefully trained in the techniques of bloodhound tracking, and the dog was brought to the scene of the crime four hours after the alarm was tripped, the dog picked up the scent near the house, close to the pried open window, and he followed the tracks into the house and then without interruption, to the defendant.

State v. Maya, 126 N.H. 590 (N.H. 1985).
The defendant fled from a police officer at the scene of a commercial burglary, was stop by a different police officer at some distance away from the burglary scene, was recognized

by the police officer that initially pursued him, and was immediately arrested. Prior to going on trial for that burglary, defendant was suspected of burglarizing a fire station and vandalizing a police car. Two large rocks were observed near the vandalized police car. A certified Alsatian tracking dog was brought to the scene to assist with the investigation. The dog picked up a scent which he trailed to the broken window at the fire station, and from there to a restaurant where local youths congregated. After appearing to backtrack, the dog was taken back to the rocks and scented again with one of the rocks. The dog went in a different direction to the house where the defendant lived with his family. The dog was rescented again with one of the rocks, and again took the police to the defendant's house. Fingerprints found at the fire station matched the defendant's. The police searched the defendant’s house and found the items stolen from the fire station. Defendant was convicted of burglary in two separate trials. The defendant claimed that the trial court erred in denying his motion to suppress evidence. On appeal, the defendant contended, among other things, that in issuing the warrant in the fire station burglary case, the magistrate improperly considered the fingerprint evidence and trailing by the dog. The Supreme Court of New Hampshire found that the fingerprint evidence was properly considered and was sufficient to establish probable cause. Although not necessary, the court decided to also address the propriety of considering dog-tracking evidence for probable cause purposes. The court clarified that the dogs' period of efficiency is the period of time in which he had previously demonstrated that he could follow a scent reliably. It acknowledged that the information concerning the tracking by the dog provided to the magistrate would not provide the necessary foundation for its admission in trial but clarified that the test of admissibility for the purpose of proving guilt is not the test of value for the purpose of establishing probable cause. The court concluded that the tracking evidence was entitled to some weight as an indication that the perpetrator of the burglary had walked to the police station and then, to the defendant's house. Even though it was not enough weight to amount to probable cause, it was nonetheless some confirmation for that conclusion, which the fingerprint evidence was independently sufficient to establish. The court did not find error by the trial court and the judgment was affirmed.

NEW JERSEY

No new cases found via shepardizing.

State v. Wanczyk, 196 N.J. Super. 397 (Law Div. 1984).
After the arrest of the defendant and while in custody, the police removed the defendant's shoe and shirt to scent a bloodhound. The bloodhound followed a trail and the state sought to offer evidence of the trail followed by the dog as circumstantial evidence corroborative of other evidence offered by the State. By pretrial motion, defendant sought an order barring expert testimony from a state witness regarding the use of a bloodhound to track defendant. The trial court found the evidence to be reliable and admissible. It concluded that the handler, not the dog, is the witness, and his testimony falls within the category of opinion testimony. The court was also confident that the jury, given proper instructions, would be able to afford such evidence its due weight. It acknowledged that there are factors that can affect the reliability of the evidence, such as atmospheric conditions, the time lapse between the commission of the crime and the tracking, the number of people who were in a particular area at the time of the commission of the crime, and even how the dog may feel or behave on a particular day. However, the court stated the factors go to the weight of the evidence, not its competence. The rule set forth by the court permits the admission of testimony regarding bloodhound tracking, as long as the proper requirements of the Rule are met and a foundation is first laid. The handler of the dog must first qualify as an expert. It must be shown that the handler has sufficient skill, training, knowledge or experience to be able to evaluate the actions of the dog. Second, the handler, once qualified as an expert, must give testimony regarding the particular dog that he used and the facts. These facts must include testimony: that the dog is of a stock characterized by acuteness of scent and power of discrimination and that the dog in question is possessed of these qualities; that the particular dog used was trained and tested in the tracking of human beings and that the dog was reliable in the tracking of human beings; that he was laid on the trail where the circumstances tended to show that the guilty party has been, or on a track which the circumstances indicated to have been made by him; that he followed such scent or track to or towards the location of the accused, and that he was properly handled. The court rejected the requirement the dog's pedigree be established. After the foundation has been laid, the handler may testify as to what the dog did regarding the tracking and his interpretation and opinion as to what the dog's actions mean. The court noted that the evidence is circumstantial and corroborative evidence. The court held that testimony of the dog handler in the case regarding the bloodhound tracking of the defendant was permitted.

State v. Parton, 251 N.J. Super. 230 (App. Div. 1991).
A bloodhound was used to track the defendant from a mattress where it was suspected that he slept to the building which had been set on fire. Defendant was convicted on two counts of third degree arson and as lesser included offenses, on two second degree aggravated arson counts. Among the contentions made by the defendant on appeal was that it was improper for the trial judge to allow admission of testimony by a bloodhound handler. The appellate court concluded that this testimony of dog tracking was admissible when a proper preliminary foundation has been established. The court agreed with the ruling in *Wanczyk* and chose not to provide a comprehensive analysis. The court pointed

to the fact that the dog's handler had been a member of the police K-9 unit since 1984, he had first trained in tracking with bloodhounds and thereafter attended numerous seminars and other courses on handling and training, the dog he used for the tracking was a purebred bloodhound, the handler had worked with Jackson on approximately twenty-five investigations, the starting point of the tracking was a mattress behind a pharmacy on which it was believed that defendant slept, the track was four to five days old but the day of this tracking was sunny and clear, the dog was properly handled during the trailing, and there was ample circumstantial evidence pointing to defendant as the arsonist. The other contentions were also found to be without merit and the judgment was affirmed.

NEW YORK

BLOODHOUND TRACKING EVIDENCE CAN BE USED IN CONJUNCTION WITH OTHER EVIDENCE TO ESTABLISH PROBABLE CAUSE.

People v. Wilder - Oct. 7, 1992 [**186 A.D.2d 1069**]
Facts: Bloodhound tracking evidence was considered to establish probable cause for the Defendant's arrest.
Holding: While proof provided by the evidence of tracking by a bloodhound alone would not be sufficient to support a conviction, it was sufficient, together with the other evidence, to establish probable cause to believe that Defendant committed the robbery.

DOG TRACKING EVIDENCE NEED NOT SATISFY THE GENERAL ACCEPTANCE TEST OF *FRYE V. UNITED STATES* (1923) 293 F 1013.

People v. Roraback - Aug. 28, 1997 [**242 A.D.2d 400**]
Facts: The court admitted dog tracking evidence. Defendant argues that he was entitled to a *Frye* hearing relating to that evidence.
Holding: The use of a trained canine is an investigative rather than a scientific procedure. Thus, a *Frye* hearing was unnecessary. All the People needed to do was lay a proper foundation for the admission of the dog tracking evidence.

ON APPEAL, DEFENDANT CANNOT OBJECT TO THE ADMISSION OF DOG TRACKING EVIDENCE IF HE FAILED TO OBJECT TO THAT EVIDENCE DURING TRIAL.

People v. Tunstall - Dec. 14, 2000 [**278 A.D.2d 585**]
Facts: A police dog followed a scent from the crime scene to where police apprehended the Defendant. Defendant failed to object to this evidence at trial.
Holding: Defendant lost his ability to argue this issue on appeal.

People v. Whitlock, 183 A.D. 482 (N.Y. App. Div. 1918).
A fire occurred on a farm. There was a large amount of circumstantial evidence connecting the defendant to the crime that included tracks in a freshly plowed field near the scene of the fire. In addition there was evidence, that a German police dog was put upon the trail of track five days after the fire in evidence the conduct of a so-called German police dog, which was put upon the tracks across the plowed ground five days after the fire. The dog followed the trail to the point where the visible tracks were lost, along a pathway and the highway to the point where the defendant was shown to have stood on the occasion of the fire. Defendant was convicted of third-degree arson. On appeal, the defendant contended that the evidence of the dog's conduct was not properly admitted. The appellate court, without deciding the question, stated that it could be assumed that under proper conditions dog-tracking evidence is admissible. The appellate court stated

that the evidence did not attempt to show that the dog had ever had any training in tracking human beings generally and that it simply showed that he had been able to follow the fresh trail of his owner and to find a handkerchief which had been hidden a quarter of a mile away. The court concluded that the testimony did not meet the standard required by the rule for the admissibility of dog-tracking evidence quoted from *State* v. *Dickerson*, 77 Ohio St. 34 (Ohio 1907). The particular standard concerned showing that the particular dog used was trained and tested in tracking human beings and by experience had been found reliable in such cases. The court reversed the judgment and ordered a new trial.

People v. Centolella, 61 Misc. 2d 723 (N.Y. Misc. 1969).
Details regarding the use of bloodhounds in the case were not provided. Defendant filed a motion to suppress any further testimony seeking to lay a foundation for the receipt of dog-tracking evidence. The court stated that in the absence of appellate ruling to the contrary it should accept the dictum of *Whitlock*, in which the appellate court stated that, under proper conditions, evidence of trailing by a dog would be admissible in evidence. The court examined the arguments made against the admission of dog-tracking evidence. According to the court, the dog's reliability must be established by means of testimony as to his pedigree, his training, his previous success or failure in following the trails of individuals, and all other circumstances from which a jury may make a finding of reliability before acting on such evidence, which falls into the category of opinion evidence rather than hearsay. It also stated that it is the handler who is the witness and he is merely asked to testify to what the animal actually did, not his opinion as to the guilt or innocence of a person and the court has a duty to charge the jury to the effect that such evidence must be viewed with the utmost caution. The defendant's motion to suppress further testimony was denied.

People v. Centolella, 61 Misc. 2d 726 (N.Y. Misc. 1969).
Details regarding the use of bloodhounds in the case were not provided. The defendant contended that foundation laid was insufficient to permit the admission of dog-tracking evidence. According to the court, *Whitlock* only addressed what did not constitute a sufficient foundation. The court examined cases in other jurisdictions and formulated a five-part test: 1) the dog or dogs used are of pure blood, and of a stock characterized by acuteness of scent and power of discrimination, 2) the dog or dogs possessed these qualities and have been accustomed and trained to pursue the human track, 3) dog or dogs have been found by experience in actual cases to be reliable in such tracking, 4) the dog or dogs must be placed on the trail of the person at a spot where the alleged participant or participants in the crime are known to have been, and 5) the dog or dogs must have been placed upon the trail within the period of efficiency of such dog. According to the court, in the case, American Kennel Club registration was provided for the dogs, the dogs' handler stated they were trained on practice trails under various conditions and circumstances, the handler also provided details about five previous trailings by one of the dogs, the dogs were started at the location of the home from where the three robbers were observed fleeing, and the trailing occurred within three and a half hours after the crime was committed and the weather conditions were good. The court also noted that the testimony concerning the training and pedigree and experience of the dog was given in the presence of the jury and the court heard the testimony as to the scent given the dog and the location

of the beginning of the trail out of the presence of the jury in accordance with the suggestion in *Buck* v. *State*, 77 Okla. Crim. 17 (Okla. Crim. App. 1943). The court denied the motion to exclude the testimony and stated that the testimony as to the conduct and action of the dog may be permitted to go to the jury for what it is worth.

People v. Muggelberg, 132 A.D.2d 988 (N.Y. App. Div. 1987).
Details regarding the use of bloodhounds in the case were not provided. The defendant was convicted of second-degree murder. The defendant contended that the trial court erred in refusing to instruct the jury on defense alibi, evidence of the trailing of the victim with a bloodhound was improperly admitted, and the court erred in refusing to grant defendant's motion to remove a juror for cause and in not granting a mistrial because victim's mother showed picture of victim to the jury. The appellate court held that the court properly admitted evidence of trailing of the victim by a bloodhound, the prosecution laid the proper foundation for that evidence, and the court gave the required cautionary instruction regarding the evidence. The appellate court also held that the trail court's refusal to instruct the jury on defense alibi was harmless error and the defendant's last two contentions lacked merit. The conviction was affirmed.

People v. Abdullah, 134 A.D.2d 503 (N.Y. App. Div. 1987).
Details regarding the use of bloodhounds in the case were not provided. Defendant was convicted on two counts of second-degree murder and one count of first-degree sexual abuse. On appeal, one of the defendant's claims was that the trial court erred in admitting certain police dog-tracking evidence at trial. The appellate court found the proof adduced at a hearing held to determine the admissibility of the dog-tracking evidence demonstrated the extensive training of both the dog and its handler in the area of human scent tracking, the established record of the dog's accuracy and reliability in this field, and the fact that the dog was introduced to a site where the perpetrator was known to have been under conditions which indicated that the scent trail was still present at the time the tracking took place. It also concluded that the lack of evidence of the dog's pedigree was in itself not sufficient to warrant the exclusion of the tracking evidence at trial as unreliable and the trial court properly instructed the jurors that the evidence was of slight probative value and was to be viewed with utmost caution. The judgment was affirmed on those and other grounds.

People v. Shipp, 166 A.D.2d 900 (N.Y. App. Div. 1990).
Details regarding the use of bloodhounds in the case were not provided. Defendant was convicted of two counts of robbery in the second degree and one count of grand larceny in the third degree. On appeal, the defendant contended that he was deprived of a fair trial by the court's failure to provide the jury with the required cautionary instruction that dog tracking evidence is of slight probative value and is to be viewed with utmost caution. The appellate court concluded that the defendant had failed to preserve this issue for review as a matter of law, as he did not object to the admission of the dog tracking evidence on lack of foundation grounds, did not object to the charge as given, nor did he request the court to provide further cautionary instructions at a time when the court could have corrected its omission. The judgment was affirmed.

People v. Vandenbosch, 216 A.D.2d 884 (N.Y. App. Div. 1995).
Details regarding the use of bloodhounds in the case were not provided. The defendant was convicted of leaving the scene of an accident without reporting it. The defendant contended that the People failed to lay a proper foundation for the admission of dog tracking evidence. According to the appellate court, the People presented evidence of the dog's pedigree, the training of the dog and her handler regarding human scent tracking, and the established record of the dog's accuracy and reliability; that the dog was introduced to a site where defendant's scent was still present; the People presented other evidence of defendant's guilt; and the court accorded minimal weight to the dog tracking evidence. The appellate court found the circumstantial evidence presented at trial was legally sufficient to support the conviction and concluded that the verdict was not contrary to the weight of evidence. The judgment was affirmed.

People v. Gangler, 227 A.D.2d 946 (N.Y. App. Div. 1996).
Police bloodhounds tracked a scent from inside the victim's vehicle to defendant, while he was being questioned at the Sheriff's Office. The defendant was convicted of attempted murder in the second degree, assault in the first degree, criminal possession of a weapon in the second degree, kidnapping in the second degree and two counts of unauthorized use of a motor vehicle. On appeal, the defendant contended, among other things, that the use of a bloodhound to track a perpetrator is a search within the meaning of the Fourth Amendment. The appellate court held that the trailing of the bloodhounds was properly admitted into evidence. It distinguished the case from others cited by the defendant by pointing out that the defendant was identified by the dogs in a public place and their identification of the defendant did not constitute intrusive behavior. It stated that even if the use of a bloodhound to track the scent of a perpetrator is a search, the degree of intrusion would be so minimal that the procedure may be utilized based upon reasonable suspicion. The court also rejected the defendant's alternative argument that the bloodhound tracking evidence should be suppressed as the fruit of an illegal detention. According to the court, the record supported the trial court’s conclusion that the defendant was not in custody at the Sheriff's Office, as the delay in driving the defendant home was minimal and there is no evidence that defendant was not free to leave at any time. The judgment was affirmed.

People v. Tunstall, 278 A.D.2d 585 (N.Y. App. Div. 2000).
A police dog was used to pick up a trail from the scene of a home burglary to the location where the defendant was apprehended. Defendant was convicted of burglary and criminal mischief. On appeal, the defendant contended, among other things, that the testimony of the State Police Investigators was improperly bolstered by the testimony of a canine officer regarding how a dog tracked defendant's scent from the crime scene. The appellate court pointed out that the defendant never objected to the admission of the testimony and determined that the issue was unpreserved for appellate review. The court stated that the trailing of the defendant was not bolstering, but constituted independent relevant evidence, analogous to a blood test or breath analysis, serving to confirm defendant's identity as the intruder. The judgment was affirmed.

NORTH CAROLINA

A PROPONENT NEED NOT LAY THE SAME FOUNDATION FOR TRACKING EVIDENCE IN WHICH POLICE USE A DOG TO FIND A DISCARDED ITEM AS FOR EVIDENCE IN WHICH POLICE USE A DOG TO IDENTIFY THE DEFENDANT.

People v. Wilder - Oct. 7, 1992 [**186 A.D.2d 1069**]
Facts: Police chased Defendant. Police observed Defendant throw something into a gulley. Police used a police dog to locate the discarded item. Defendant argues that this dog tracking evidence was improperly admitted at trial because the dog's handler failed to lay a proper foundation for its admission.
Holding: The dog's tracking abilities were not used to identify Defendant. Rather, the dog's tracking abilities were used to quickly locate the item police saw defendant throw in the gulley. The dog handler's testimony was admissible as a matter about which he had personal knowledge.

State v. Moore, 129 N.C. 494 (N.C. 1901).
An accomplice, who testified that defendants and himself committed a commercial burglary. A bloodhound was taken to the burglary scene the next day. The dog smelt various locations in and around the store and went up to two of the defendant's that were standing in the crowd during the trailing and bayed at them. Two other defendants were in the same crowd. Defendants were convicted of larceny. The defendant's appealed the denial of their motion for a new trial on the grounds that the trial court erred in admitting the conduct of the dog as evidence, either to establish a circumstance or to corroborate the witness accomplice. The Supreme Court of North Carolina concluded that the trail court should have sustained the objection taken to the introduction of the conduct of the dog. The court explained that it failed to see that it was a circumstance which would tend to connect the defendants with the larceny, or that it in any way corroborated the testimony of one of the witness accomplice. The court made it clear that its finding was not based on the ground that the dog's conduct would not be a circumstance to be considered in connecting a person with an act, or in corroborating a statement made by a witness. The reversed the judgment and remanded the case for a new trial.

State v. Hunter, 143 N.C. 607 (N.C. 1907).
Unique tracks were found leaving the burned storehouse. Defendant had one leg short than the other and was known to leave a specific track. The tracks led to a gin-house and then, to the road which went to the defendant's house. A bloodhound was taken to the scene of the fire the following day. The dog followed to the tracks for a distance, caught a scent in the air, broke off the track and entered the woods, and chased the defendant up a tree. The dog's owner testified that the tracks the dog followed were peculiar; that his dog is a clear-blooded English bloodhound, well trained to track human beings; he had often used him for that purpose, and that the dog will track nothing else; and that he put the dog on thee tracks. The defendant's shoes were taken and it was determined that they fit the tracks. Defendant was convicted of feloniously burning a storehouse in the night-time. Defendant's exceptions during trial included the admission of any evidence of the conduct

of the dog and that though the Court gave the defendant's prayer that actions of the dog was not evidence upon which the jury could rely on as substantive evidence upon which they could convict the prisoner but the actions were circumstances in corroboration of the State's testimony as to tracks. The Supreme Court of North Carolina held that the conduct of the dog was competent evidence. According to the court the requirement of other proof of the tracks being those of the prisoner was met. The court stated that the law rejects no evidence, however humble, which in common knowledge may be a guide to a successful search. It also held that the amendment of the prayer by adding that the trailing of the dog was corroborative was in accord with *Moore*.

State v. Freeman, 146 N.C. 615 (N.C. 1908).
The day after the commercial burglary a bloodhound was put on tracks found near a store that was burglarized. Empty shoe boxes were found along the track. A bloodhound was put on the tracks the following day. The dog came across cart and mule tracks along the way. The dog followed the mule tracks to the home of one of the defendants and the human tracks to the house of the other defendant. Upon entering the defendant's house, the dog found a shoe that matched the track and tried to attack the defendant. The dog also found a pair of shoes of the type that were stolen between the mattresses of the defendant's bed. Defendants were convicted of breaking into storehouse with intent to steal. On appeal, the defendant contended that it was error to permit the witness to state that "the dog carried us to the shoe" on the ground that it made the act of the dog substantive testimony and not corroborative. The trial court had admitted the evidence only as corroborative evidence. The Supreme Court of North Carolina stated that if there was error it was from the trial court saying the evidence is only admissible as corroborative evidence. It went on to state that where the training, character, and conduct of the dog make his acts evidence, such acts may be either a circumstance or corroborating evidence. The court did not find any error.

State v. Spivey, 151 N.C. 676 (N.C. 1909).
The victim was shot outside of his home. The victim's son observed the defendant running from the scene, the victim identified the defendant as the assailant, and tracks were found near the shooting scene. Bloodhounds were put on the trail the next day and followed the track to the defendant's house and to his father's. The Defendant was convicted of first-degree murder. Two of the defendant's exceptions concerned the trial court permitting a witness for the State to narrate the conduct of the bloodhound in tracking the defendant. The Supreme Court of North Carolina, citing *Moore*, *Hunter*, and *Freeman*, determined that the evidence was admitted after the State had brought it within the rules laid down for its admissibility.

State v. Norman, 153 N.C. 591 (N.C. 1910).
A bloodhound was taken to the scene of a commercial robbery. The dog was scented with the store's money drawer and followed a trail to the house where the defendant was located. The dog did not signal the defendant as the person he was tracking. Several people had stayed in the house the night before. The defendant lived about a mile from the house, at his father's home. The defendant requested that the court charge the jury that

there was no evidence of the defendant's guilt. The court refused the defendant's request and charged the jury to consider all the circumstances. Defendant was convicted of breaking and entering a store with the unlawful and felonious intent of stealing, taking and carrying away the store's goods and chattels. The Supreme Court of North Carolina held that the trial court should have given the instruction requested by the defendant. The court pointed out that there was nothing in the case connecting the defendant to the scene of the crime, except for the trailing by the bloodhound, which was insufficient of itself to legally establish the defendant's guilt. The Attorney-General also stated that the jury should have been instructed to return a verdict of not guilty. The judgment was reversed and the case was remanded for a new trial.

State v. Wiggins, 171 N.C. 813 (N.C. 1916).
Bloodhounds were brought from Tennessee to the scene of a shooting, which had been carefully protected. The dogs were put on tracks and trailed until they came to the home of one of the defendants and identified him as the one they were trailing. The dogs then followed the track to deputy sheriff, who had the other defendant in custody, and also identified him as the person they were trailing. The defendants were convicted of murder. Several of the defendant's exceptions during trial concerned the admission of testimony as to the trailing of the defendants by bloodhounds. The Supreme Court of North Carolina determined that the testimony of the owner and trainer of the dogs established that that the dog was of pure blood and of a stock characterized by acuteness of sense and power of discrimination, and the dog itself possessed the qualities and had been trained or tested in the tracking of human beings. It found that the trailing of the defendants by bloodhounds was properly submitted to the jury and it was used to corroborate the dying declarations of the victims. The court concluded that there were no errors by the trial court.

State v. McIver, 176 N.C. 718 (N.C. 1918).
The defendant hid under the victim's bed and attempted to grab her. The defendant was unsuccessful and then, fled. Dogs were brought to the crime scene and put on the trail under the bed. They followed the trail to the defendant's house and to items of clothing in the house. Tracks were discovered along the trail followed by the dogs about 300 or 400 yards from the crime scene. The owner of the dogs testified that the dogs were registered, thoroughbred bloodhounds; he had owned one for three years and a half and the other a year; that the dogs were trained to run human beings; he had a good deal of experience with them, and they were trained when he got them; that he had made from three to ten trips a month with them, and they had proved thoroughly reliable. The defendant was convicted of being in the dwelling house of another with intent to commit a felony or other infamous crime therein. The defendant excepted and appealed. The defendant's chief objection was to the validity of the trial judge's refusal to strike out the evidence showing that bloodhounds had tracked the defendant and his refusal to nonsuit on the entire evidence. Based on the facts as they appeared in the record, the Supreme Court of North Carolina stated that it was of the opinion that neither of the defendant's objections could be sustained. The court noted that the dogs were put on the trial of the guilty party and pursued and followed it under such circumstances and in such a way as to afford substantial assurance or permit a reasonable inference of identification.

State v. Yearwood, 178 N.C. 813 (N.C. 1919).
The defendant purchased lumber, purchased insurance on the lumber, and set it on fire. An English bloodhound trailed the defendant from the scene of the burned property to his home and then, to that part of the bed in which he had slept the night before. There was evidence that the dog was an English bloodhound of established reputation, and had been trained and handled by its owner in a large number of cases where human beings had been trailed. The defendant and co-defendant were convicted of willful injury to property by setting fire to and burning the sawed lumber. The Supreme Court of North Carolina stated that the question as to the competency of testimony about the trailing of a person by bloodhounds has been thoroughly well settled by the court and that it was too late to question it. According to the court, the dog-tracking evidence fully complied with the rule of admissibility and disclosed facts and circumstances sufficient for the consideration of the jury in connection with the other evidence in the case, and as corroborative evidence. The court did not find errors.

State v. Palmer, 178 N.C. 822 (N.C. 1919).
Details of the trailing by the bloodhounds are not provided. An accomplice testified to the guilt of himself and the defendant. The defendant was convicted for attempting to burn an outhouse and other property. The Supreme Court of North Carolina examined each of the defendant's exceptions and found them to be without merit. It did not think that the exceptions required discussion. The court mentioned that the accomplice was corroborated by the testimony of his mother and the actions of the bloodhounds put upon the trail of the defendant and stated that evidence of an accomplice, if fully believed by the jury, is sufficient to sustain conviction.

State v. Robinson, 181 N.C. 516 (N.C. 1921).
Two English bloodhounds were taken to the scene of the shooting to trail the defendant. The dogs were place on a track of the person that did the shooting and they followed the trail to the defendant's house. One of the dogs identified him as the person he was sitting while the defendant was sitting in a cart. While the dogs were pursuing the trail they once or twice left the trail to go into a nearby yard, but always returned to the trail, which led them to the defendant. There was evidence that the dogs were trained and accustomed to follow the human track and had been found reliable in their work. The defendant was convicted of assault with a deadly weapon. On appeal, the defendant contended that a judgment of nonsuit should have been entered and that the jury instructions on the weight of proof were improper. The Supreme Court of North Carolina concluded that the dog-tracking evidence met the admissibility requirements of the state and that it was supported by other circumstantial evidence. It also held that the jury was not misled as to the degree of proof required by one reference to a preponderance of evidence because the trial court repeatedly stated that the burden was on the State to show defendant's guilt beyond a reasonable doubt. The defendant's other exceptions were found to be without merit. The court did not find any reversible errors.

State v. Thompson, 192 N.C. 704 (N.C. 1926).
Within a couple of hours of the barn burning, bloodhounds were brought to the scene of the crime. The dogs were started at the back of the barn, which had been protected. They

picked up a track there and followed it to the defendant's house. The defendant's shoes matched the track that the dogs followed. The handler of the dogs testified that he did not own them but had worked them, he had them about five or six years, the dogs were English with the female being English and American mixed, he had used them four or five years and the records showed that they had been used longer, the dogs were trained dogs for the purpose of tracking human beings, and they were reliable in tracking humans. Defendant's motion to dismiss the action was denied. The motion was in effect a demurrer to the evidence. Defendant was convicted of burning a barn. The Supreme Court of North Carolina concluded that even without the dog-tracking evidence there was more than a scintilla of evidence to have been considered on behalf of the State. The court also stated that when that evidence was corroborated by the trailing of the dogs two hours after the fire occurred, it had enough probative force was to have justify its submission to the jury. It affirmed the judgment of the trial court.

State v. McLeod, 196 N.C. 542 (N.C. 1929).
English bloodhounds were taken to the scene of a rape and homicide shortly after it occurred. The dogs followed a circuitous trail to within twenty or thirty feet of the defendant's house. When the dogs saw the defendant they did not bay or indicate the defendant in any way. The defendant's shoes did not fit in the tracks that were left by the perpetrator. The defendant moved to strike the testimony about the action of the bloodhounds. The trial court overruled and the defendant excepted. The evidence was circumstantial. On appeal, defendant argued that (1) his motion for judgment of nonsuit should have been allowed, and (2) the evidence concerning the action of the bloodhounds should have been excluded from the jury's consideration. The Supreme Court of North Carolina found the incriminating evidence in the case, taken in its totality, was sufficient to be submitted to the jury. The court agreed with the defendant that the action of the bloodhounds should have been excluded from the jury's consideration. It stated that the incompetency of the evidence rested on the fact that the action of the bloodhounds did not provide a reasonable inference of the identity of the defendant as the guilty party. In addition, the court stated that harmlessness of the admission of the evidence did not appear on the face of the record. The court ordered a new trial.

State v. Lee, 211 N.C. 326 (N.C. 1937).
Details of the trailing by the bloodhounds are not provided. The defendant was convicted of maliciously burning a barn. The evidence in the case was entirely circumstantial and included testimony as to the action of bloodhounds, admitted for the purpose of corroboration. The Supreme Court of North Carolina was unable to say that the evidence did not constitute more than a scintilla of evidence, but it concluded that there was error in the admission of testimony. The court granted a new trial.

State v. Rowland, 263 N.C. 353 (N.C. 1965).
The defendant was convicted of the use of a dangerous weapon to rob an individual. On appeal, one of the defendant's contentions was that he was entitled to a new trial because the bloodhound evidence was both incompetent and prejudicial. The Supreme Court of North Carolina considered whether the trial court erred in admitting evidence of the action of the dog, with which the deputy sheriff tracked defendant. Defendant argued that the

State did not lay a proper foundation for the bloodhound evidence in that it failed to establish either that the dog was of pure blood or that, at the end of the trail, the dog identified defendant with reasonable certainty. The court pointed out that a witness described the dog as a thoroughbred and stated that it has been the conduct of the hound and other attendant circumstances, rather than the dog's family tree, which have determined the admissibility of his evidence in past cases, namely *Wiggins* and *Yearwood*. The court went on to state that the jury probably considered the dog's conduct at the end of the trial immaterial when, there, the deputy found defendant sitting on a cache of money, which included two one-hundred dollar bills. It concluded that the bloodhound evidence was not incompetent for failure to comply with *McLeod*. The court held that the admission of the evidence, if error, was not prejudicial error. The court found that even if the bloodhound evidence were eliminated, the remaining evidence was, taken in the light most favorable to the State, sufficient to support a conviction of common-law robbery and to establish robbery with the use of a club or other blunt instrument. The court did not find errors by the trial court.

State v. Bines, 8 N.C. App. 1 (N.C. Ct. App. 1970).
An officer brought a dog trained for trailing human beings to the scene of a commercial breaking and entering. The dog was cast in a semicircle near the front of the building. It picked up a trail about 50 feet from the front door. Then, it proceeded to the railroad tracks and down the railroad tracks for about 2 miles where the defendants were found in an exhausted condition. There were also footprints linked the defendants to the scene of the crime. The defendants were convicted of breaking and entering and larceny. The defendants had objected to the testimony of the dog trailing. The dog was a three-way cross, being part bloodhound, part black and tan coon hound, and part red bone coon hound. The appellate court found that while the dog was not a pure bred dog, the dog trainer testified as to its breeding and the purpose of the crossbreeding. He also testified as to the training and experience of the dog and the reliability of the particular dog. The court concluded that the testimony as to the breeding, training and experience, as well as the reliability of the made the evidence competent. As permitted by *Rowland*, the dog demonstrably pedigreed his ancestors. The appellate court did not find any errors in the case.

State v. Marze, 22 N.C. App. 628 (N.C. Ct. App. 1974).
Bloodhounds were taken to the scene of residential burglary. The only evidence left by the perpetrator(s) was a tennis shoe print was found on the door. The bloodhounds were put on a trail which started around three hundred feet from the house. After a search of the area, the defendants were apprehended in the woods about two miles from the victim’s house. They fled when the officers approached them and one of the defendants was wearing tennis shoes. The defendants were convicted of breaking and entering a dwelling house with intent to commit larceny, larceny as a result of the breaking and entering, and breaking and entering a motor vehicle with intent to commit larceny. The defendant contended that a judgment as of nonsuit should have been entered at the conclusion of the State's evidence and again at the conclusion of all the evidence. The appellate court concluded that there was not enough evidence to justify submitting the question of the defendants' guilt to the jury, as there was no competent evidence to sustain a finding that

the defendants were ever at the victim's residence. Regarding the testimony concerning the bloodhounds, the appellate court stated that it should not have been given any probative value. The court, citing *Rowland*, reiterated that it was necessary for the State to show that the bloodhounds were put on the trial of the guilty party under such circumstances as to afford substantial assurance that the person trailed was, in fact, the person suspected. It pointed out that in the case the dogs were released at least three to four hundred feet from the victim's house and there was no evidence that the person(s) who broke into and robbed the victim's home was at the position three to four hundred feet away where the dogs were released. The judgment was reversed.

State v. Irick, 291 N.C. 480 (N.C. 1977).

A bloodhound was taken to a location were an individual fled from and fired at two police officers. The dog was taken to the area where the suspect was last seen and picked up a scent. It led police to a fence bordering the used car lot nearby. The dog appeared to want to go inside the fence. Police enter the used car lot, searched vacant trucks, and found the wounded defendant in the cab of a dump truck. The dog was taken to the scene of a burglary to see if he could pick up a scent. The dog picked up a track under the dining room window and followed it through the backyard to another backyard a block away. The dog appeared confused at that point so his handler took him around the house. There he regained the scent and led his handler several more blocks to the gas station where the defendant was initially pursued. The defendant's fingerprint was lifted from a burglary at a residence a few of blocks away from the house. Defendant was convicted of assault on a law enforcement officer with a firearm and one count of first-degree burglary. On appeal, the defendant contended, among other things, that the court erred in admitting testimony concerning the tracking by the bloodhound because the requirements for admissibility of bloodhound evidence were not met. The dog handler testified that the dog was a six-year old purebred bloodhound; that the dog had been trained for six to eight months to pursue a human track by a man who trained dogs for the Army; that the dog had successfully tracked missing and wanted persons at least two dozen times; and when the dog's services were not required he would be taken on practice runs. The Supreme Court of North Carolina, citing *Rowland* and applying the principle for evaluating pedigree, stated that when it comes to establishing the formal training of a bloodhound it is the conduct of the hound and other attendant circumstances, rather than the formal training that will determine the admissibility of the dog's evidence. The court found that the dog's performance record was excellent and within the personal knowledge of the witness. Defendant also claimed that the dog was not put on the trial of the guilty party because the dog was not exposed to an article carrying defendant's scent before the tracking began. The court stated that it was not a required procedure as it was sufficient to take the dog to the place where defendant had last been observed. It also concluded that given all the circumstances, it was highly unlikely that the track from the dining room window could have been left by anyone other than the burglar. The court also stated that although the dog never bayed at the defendant, the bloodhound evidence was competent because to be admissible, bloodhound evidence does not have to result in a positive identification. So long as a reasonable inference as to defendant's guilt arises on the facts, the evidence is for the jury.

State v. Lanier, 50 N.C. App. 383 (N.C. Ct. App. 1981).
A registered bloodhound was taken to the scene of a robbery. The dog was started at the location where deputies stated two men had fled from the scene. The dog lost the first trail it followed. On the second trailing, the dog led police to the defendant. The dog's handler testified that he had been working with bloodhounds to trail humans for about twelve years, the bloodhound was bred for tracking human beings, it was approximately four years old, he had trained it from when it was a puppy, and that it had been used successfully to track human beings on more than one occasion. However, he also testified that the dog wouldn't stay on the scent or track every time. Defendant was convicted of robbery. On appeal, the defendant contended the trial court erred in admitting the testimony of the State's witness as to the actions of the bloodhound and in refusing to grant his motion to dismiss for insufficiency of the evidence. The appellate court did not discuss the first three requirements for the admissibility of dog-tracking evidence, as it found that it clearly failed to meet the fourth requirement: that the dog was put on the trail of the guilty party under such circumstances as to afford substantial assurance that the person trailed was, in fact, the person suspected. The court stated that nothing in the record tended to establish that the defendant was ever at the victim's residence and there was no evidence that the defendant was at the place from which the dog was released to track the thieves. It pointed out that without the testimony, the record was devoid of any evidence which even raises a suspicion or conjecture as to defendant's guilt, and certainly does not contain the substantial evidence of all material elements of the offense necessary to withstand the motion to dismiss. The judgment was vacated and the cause remanded to the superior court for entry of judgment of dismissal.

State v. Porter, 303 N.C. 680 (N.C. 1981).
One of the defendants was seen fleeing a car that was observed at a store at the time it was robbed. A bloodhound was brought to the location at which the defendant was seen fleeing. County officers followed the bloodhound about one mile into the woods to an old bridge under which both defendants were hiding. A .32 caliber revolver was also found under the bridge. One of the defendants informed the arresting officers that the bank bag was in the vehicle. The defendants were convicted of armed robbery. On appeal, the defendants allege, among other things, that the trial court erred in denying their motions to dismiss on the ground that the evidence was insufficient to sustain their convictions. One of the defendants maintained that the trial court erred in admitting the evidence relating to the tracking by the bloodhound. He contended that since the dog handler who testified at trial could not establish the pedigree of the dog that tracked him, the first element specified in *McLeod* was not established. The Supreme Court of North Carolina, citing *Rowland,* stated that it was sufficient if the dog's owner or handler identifies the dog as a bloodhound and the dog justifies this description by his performance. It pointed out that the handler of the dog that tracked the defendant testified that he was familiar with the dog's lineage and that he was a pureblood bloodhound. The handler further stated that the dog had been trained to follow the human scent and had successfully done so on at least 60 prior occasions. The court found this testimony adequate to establish the dog's pedigree under the holding in *Rowland*. The state supreme court concluded that the trial court committed no error which would entitle either defendant to a new trial.

State v. Hawley, 54 N.C. App. 293 (N.C. Ct. App. 1981).
A witness observed three long-haired white males flee from the victim's yard into a corn field located behind the victim's home. The three ran towards a trailer park located on Highway 82 known as Hamilton's Trailer Park. One of the defendants was observed kicking off a pair of flip-flop shoes. A bloodhound was brought to the scene. The dog was scented with the flip-flops and the home. It led police through the corn field behind the victim's house, through some woods and fields, and eventually to a vacant trailer in Hamilton's Trailer Park. Two sets of barefoot tracks and a set made by someone wearing tennis shoes were observed on the route along which the bloodhound led his handlers. Two of the defendants were observed that day without shoes and the third was wearing tennis shoes. The defendants were convicting of felonious breaking and entering and felonious larceny. On appeal, the defendants contended that the trial court erred in not granting their motions for judgment as of nonsuit and for judgment notwithstanding the verdict. The court held that the evidence in the present case was sufficient to enable the jury to draw a reasonable inference that the defendants were guilty of the offenses charged. The appellate court found that the circumstantial evidence presented, considered in the light most favorable to the State, was sufficiently substantial to support a reasonable inference of defendants' guilt and hence to withstand defendants' motions to dismiss. The defendants also argued, among other things, that the State did not provide a proper foundation for the bloodhound's reliability and that admission of the State's testimony about the bloodhound was prejudicial error. The defendant's exceptions challenge only the court's conclusion of law that the bloodhound evidence was admissible. The appellate court reviewed the court's ruling on the admission of the evidence and determined that it was amply supported by the court's extensive findings of fact. The appellate court did not find any error in the case.

State v. Davis, 54 N.C. App. 596 (N.C. Ct. App. 1981).
A pure bloodhound was brought to the scene of a robbery. The dog was carried to the automobile in which the man wearing a ski mask had been seen. The dog was placed in the vehicle and he left the vehicle and went to a police car in which another suspect was seated. The dog was carried back to the parked automobile. The dog then followed a scent to the gas station that was robbed. There were several people and vehicles at the station and the dog's handler took the dog off the scent and carried him to the edge of the service station parking lot to search for the scent. The dog was unable to find the scent in the area. The dog's handler and the dog were then called by some officers in the woods. They went to the place in the woods and the dog picked up the scent and tracked for approximately ten minutes until they came to the defendant. Defendant was convicted of robbery. On appeal, one of the defendant's assignment of error deals with the admission of the testimony as to the bloodhound's actions. The defendant argued that the evidence was insufficient as to the second requirement that the dog had been properly trained to pursue the human track, and the fourth requirement that the dog was put on the trail of the guilty party under such circumstances as to afford substantial assurance or permit a reasonable inference of identification. The dog's handler testified that the dog had been trained by his supervisor; that he had worked with him once in a training capacity and on approximately a dozen other trackings and had found him to have a very sensitive nose. However, he also

testified that during practice sessions the dog was 65% reliable and in other sessions he was 50% reliable while the other dogs at the shelter were 65% to 70% reliable. The appellate court concluded that the handler's testimony was sufficient evidence for a finding that the dog had been properly trained. The appellate court pointed out that there was evidence that the robber had been at the automobile where the dog first started tracking and at the service station. The appellate court did not find any errors in the case.

State v. Green, 76 N.C. App. 642 (N.C. Ct. App. 1985).
Two police dogs, a Rottweiler and a Doberman pinscher, were taken to the scene of a burglary and were started with a scent source consisting of gloves and shoes taken from defendant and a codefendant. The scent source was placed at the scene of the crime, a broken store window, and on command the Doberman tracked the scent to a location where two microwave ovens taken from the store had been abandoned. The Doberman was then taken off the trail to protect it from cold rain. The Rottweiler then traced the scent along the same path and further to a point where the defendant and codefendant were apprehended by the police. The defendant was convicted. On appeal, the defendant contended that the dog tracking evidence against him should have been excluded and that the charges against him should have dismissed because the required foundation for the evidence was lacking. The appellate court considered *Porter*, *Bines*, and *Hawley*, and concluded that there was a decreasing emphasis on the requirement that the tracking dog be a pure blood bloodhound but the requirement that the dog have training, experience, and proven ability in tracking remained. The court went on to state that none of the cases held that a tracking dog must be a bloodhound and no other breed and conclude that evidence of tracking by a dog is admissible where the dog is not a bloodhound as long as the final three foundation requirements quoted from *McLeod* are satisfied. It found that the testimony satisfied the second and third requirements of *McLeod*. Regarding the fourth requirement, the appellate court pointed out that the dog handler testified that the dogs followed a combined scent which began with a scent source consisting of clothing articles taken from defendant and the codefendant. The appellate court stated that the record showed no possibility that the dogs were tracking only the codefendant because the handler repeatedly testified that they were following a combined scent from the clothing articles of both men. It held that the evidence was sufficient to support defendant's conviction.

State v. Styles, 93 N.C. App. 596 (N.C. Ct. App. 1989).
Two bloodhounds were brought to the scene of a rape, burglary, and robbery. The bloodhounds detected a track leading from the back of the victim's residence to a culvert and then to the front door of a trailer where the defendant was staying. The victim was able to identify the clothing and general features of her assailant. Shoe prints were found in the victim's bedroom and in the culvert. Expert testimony revealed that defendant's tennis shoes seized from the trailer made the prints in the victim's bedroom and the prints by the culvert. There were also hairs found in the victim's bedroom that matched the defendant's hair. Defendant was convicted of first-degree burglary, second-degree sexual offense, second-degree rape, and common-law robbery. On appeal, on of the defendant's assignments of error was the court's failure to dismiss the charges of second-degree rape and second-degree sexual offense on the ground there was insufficient evidence to show the defendant was the perpetrator of the offenses. The defendant admitted there was

evidence which tended to link him to the crimes, but he argued that because the victim was not able to identify the defendant as the perpetrator, the evidence was insufficient on the charges. The actions of the bloodhounds were part of the circumstantial evidence in the case. The appellate court found that the circumstantial evidence when taken in the light most favorable to the State was sufficient to give rise to a reasonable inference of defendant's guilt. It did not find error in the trial, but remanded the first-degree burglary conviction for a new sentencing.

State v. Taylor, 337 N.C. 597 (N.C. 1994).
A purebred bloodhound was brought to a murder scene. The dog was scented with the murder victim. It followed a trail and indicated that the scent of the murder victim was in, on, or about the defendant's Pathfinder while it was stuck in the ravine approximately one hundred and fifty feet from the victim's body. Defendant was convicted of first-degree murder. On appeal, the defendant contended, among other things, that he was entitled to a new trial because the trial court erroneously admitted into evidence the bloodhound's actions. The defendant argued that the dog handler's testimony failed parts 2, 3 and 4 of the *McLeod* test. The evidence showed that at the time of the investigation, the dog was a three-year-old pedigreed bloodhound; that the dog and its handler had attended a canine school for two months of bloodhound basic training and another canine school for advanced training; that the dog had been used by the Raleigh Police Department to find and follow individual human scents well over one hundred and fifty times; that the dog was a winder, which meant that she detected scents that were transmitted to the air from objects that had been in contact with a specific individual; and that the dog was keyed to the victim's scent through the use of a hemostat, gauze, and a plastic bag, which the Supreme Court of North Carolina considered a way that isolated it and thereby provided "substantial assurance of identification" of that scent, as distinct from any other scents. The court concluded that each element of the *McLeod* test was met and that the trial court was correct in admitting evidence concerning the bloodhound's actions. The court did not find any errors by the trial court.

NORTH DAKOTA

No new cases found via shepardizing.

State v. Iverson, 187 N.W.2d 1 (N.D. 1971).
A bloodhound was taken to the murder scene and scented with a pillowcase found at the scene**.** The dog followed a trail that ended in the alley outside the apartment. The pillowcase and the bloodhound were then taken to the police station. The defendant had finished testifying at the State's Attorney's Inquiry in the police station. The bloodhound was given a scent from the pillowcase once again and followed a trail into and through the police station to the place where the defendant was seated. The dog smelled the defendant and wagged his tail and looked toward the handler, which was the sign that the dog had identified the source of the scent found on the pillowcase. The dog's handler testified the bloodhound used in this case had been trained by the handler; that the handler owned and operated a bloodhound kennel; that the handler had raised and trained bloodhounds for seven years; that the handler was the vice president of the Bloodhound Club of America; that the handler and her husband had trained the bloodhound used in this case; and that this training was extensive and that to her knowledge the dog had never made a mistake. Defendant was convicted of one count of first-degree murder and one count of second-degree murder. The trial court denied the defendant's motion for a new trial. On appeal, the defendant argued among other things that the trial court erred when it permitted the State to present testimony regarding the identification of Iverson by the bloodhound. The defendant did not object to the testimony during trial. The Supreme Court of North Dakota, in adopting the majority rule as to the admissibility of bloodhound evidence, state a proper foundation must be laid for its admission and that it must be corroborated by other evidence. It went on to explain that a proper foundation generally includes evidence that the dog was of pure blood and of a stock characterized by acuteness of scent and the power of discrimination; that the dog had been properly trained and exercised in the tracking of human beings; that the person who testified to the dog's breeding and training had personal knowledge thereof; and that the dog was put on the trail at the place where circumstances tended to show the guilty party had been. The state supreme court was satisfied that a proper foundation was laid and as a result, concluded that the bloodhound evidence was of sufficient probative value to permit its being submitted to the jury for them to weigh, as they would any other evidence, along with all the other evidence in this case. It also noted that the bloodhound evidence was corroborated by additional evidence. Judgment was affirmed on these and other grounds.

State v. Iverson, 225 N.W. 2d 48 (N.D. 1974).
After the defendant lost his appeal to the Supreme Court of North Dakota's decision in *State v. Iverson*, 187 N.W.2d 1 (N.D. 1971), he petitioned for habeas corpus in the United States District Court for the District of North Dakota. The district court, without an evidentiary hearing, granted the writ of habeas corpus unless the defendant was retried within 90 days by the state of North Dakota. The State appealed to the United States Court of Appeals for the Eighth Circuit, which vacated the grant of the writ of habeas corpus and reversed and remanded the case, but with instructions to hold the case for 90 days pending an evidentiary hearing by the State court on the issues of the voluntariness of Iverson's

statements and his competency. The evidentiary hearing was held and the court held that the defendant was competent to understand and to communicate as of November 27, 1968, and that his statements were voluntarily given, and that no coercive, psychological means were used in such a way as to prevent the statements from being a product of the defendant's free and rational choice. The defendant appealed. One of the defendant's contentions was that allowing the bloodhound to enter the office where his interrogation took place was inherently coercive. The Supreme Court of North Dakota noted that the presence of the bloodhound came either at the end or near the end of the afternoon interrogation, and that there is no evidence to the effect that the presence of the bloodhound had a coercive effect in fact. The orders and judgments of the trial court were affirmed.

OHIO

THE TRIAL COURT PROPERLY ADMITTED TRACKING DOG EVIDENCE.

State v. Weber - Dec. 23, 1997 [**124 Ohio App. 3d 451**]
Facts: A police dog tracked the Defendant from the scene of an arson.
Holding: The Defendant does not dispute that a proper foundation was laid for dog tracking evidence.

THE PROPONENT OF MERE DOG TRACKING EVIDENCE NEED NOT SATISFY THE REQUIREMENTS OF EXPERT OPINION TESTIMONY.

State v. Taylor - Dec. 29, 2003 [**2003 Ohio 7115**]
Facts: Over Defendant's objection, the trial court admitted dog tracking evidence. On appeal, Defendant argues that the trial court erred by allowing the dog handler to testify as to his "expert opinion" as to the tracking of the Defendant in the night in question. Defendant asserts that the State failed to establish that the handler was qualified to testify as to the scientific circumstances of the track. Defendant maintains that the handler was not qualified to give an opinion "as to the track or the action of the human body to give off scent ectera [sic], as this would require scientific knowledge which this witness does not have nor was he qualified to have."
Holding: The admission of evidence concerning the use of a tracking dog is permitted provided that a proper foundation has been established. To establish that foundation, the training and reliability of the dog, the qualifications of the person handling the dog, and the circumstances surrounding the trailing by the dog must be shown. The State laid this foundation. Thus, the tracking evidence was properly admitted. The dog's handler did not testify, nor was he asked, about the scientific nature of dog tracking or the dog's particular biological intricacies. The handler did not testify as to any opinions, expert or otherwise, regarding the tracking of the Defendant.

DOG TRACKING EVIDENCE NEED NOT SATISFY THE REQUIREMENTS OF EVIDENCE RULE 702 OR *DAUBERT V. MERRELL DOW PHARMACEUTICALS, INC.* (1993) 509 U.S. 579.

State v. Armstrong - Oct. 22, 2004 [**2004 Ohio 5635**]
Facts: The trial court admitted dog tracking evidence.
Holding: The foundational prerequisites which are required before a dog-handler's testimony will be admitted, act as a sufficient gate-keeper to exclude unreliable dog tracking evidence. "Before evidence of dog trailing may be admitted, the training and reliability of the dog, the qualifications of the person handling the dog, and the circumstances surrounding the trailing by the dog must be shown." If the foregoing foundational requirements are demonstrated by the dog-handler, as they were in this case,

the dog-tracking evidence may be properly admitted. There is no additional requirement to satisfy Rule 702 or *Daubert*.

THE STATE LAID SUFFICIENT FOUNDATION FOR THE ADMISSION OF DOG TRACKING EVIDENCE.

State v. Pearson - Oct. 20, 2006 [**2006 Ohio 5585**]
Facts: The court admitted evidence of a police dog's tracking of the Defendant. To lay a foundation for this evidence the State presented the following evidence: the dog's handler was trained and certified by the State of Ohio as a canine handler. Both the dog and his handler were trained and certified through the state for patrol work, which consists of tracking, area search, article search, and criminal apprehension. The dog has a drug certification. From December 2001 to February 2002, the dog and handler underwent 3 months of training at the Island County Sheriff's Department Canine Training Facility. The dog is a tracking dog, who can follow scent rafts, which are dead skin cells that are thrown off of a person's body. During 2004, the dog and handler trained once a week for 5 hours per day. They trained on tracking, article searches, and narcotics detection. As part of the training, the handler learned to read the dog's body language. As for the track from the crime scene, the state presented the detailed route that the dog followed and of the dog's behavior during the track. The dog began at the location of the incident and headed in the direction that the assailant reportedly went. The track began shortly after the crime occurred. It was a "strong track" and the dog was not distracted by other animals. Although the dog began to sniff the air and raise his head a lot while they were on Neal Avenue, upon returning to a spot where the scent had been strong, the dog again began to track.
Holding: Evidence of canine tracking is admissible, provided that the state establishes a proper foundation. To establish that foundation, the state must present evidence of the training and reliability of the dog, the qualifications of the person handling the dog, and the circumstances surrounding the trailing by the dog. The state presented a proper foundation for the admission of the dog handler's testimony regarding the canine track, and the court properly cautioned the jury against giving the evidence undue weight.

DOG TRACKING EVIDENCE NEED NOT MEET THE MORE DEMANDING ADMISSIBILITY STANDARDS OF DOG SCENT EVIDENCE DISCUSSED IN *PEOPLE V. WILLIS* (CAL.APP.2004) 115 CAL.APP.4TH 379.

State v. Dewitt - Jun 29, 2007 [**2007 Ohio 3437**]
Facts: The trial court admitted dog tracking evidence.
Holding: Dog tracking evidence is admissible, provided that the proponent establishes a proper foundation. To establish a proper foundation, the proponent must present evidence of the training and reliability of the dog, the qualifications of the person handling the dog, and the circumstances surrounding the trailing by the dog. The court did not abuse its discretion or commit plain error in admitting evidence of the dog track. The State

presented a proper foundation, and the trial court appropriately cautioned the jury against giving the evidence undue weight.

State v. Hall, 4 Ohio Dec. 147, 148 (Ohio Misc. 1896)
At trial, the state presented a witness testifying to the training and testing the witness's bloodhound possessed and further stating that the same dog had successfully trailed and found the defendant. The defendant objected to all evidence relating to the dog's training and evidence indicating the dog tracked the defendant to his home. The court recognized that bloodhounds possess a high degree of intelligence and acuteness of scent which can be used to successfully apprehend a defendant. Further, the court addressed that in cases where bloodhound evidence is used, full opportunity should be given to inquire into the breeding, training and testing of the dog, and to all the circumstances attending the trailing in the case on trial, and to the manner in which the dog then acted and was handled by the person having it in charge. The court held that there was no error in admitting the evidence offered by the state.

Baum v. State, 1904 Ohio Misc. LEXIS 314 (Ohio Misc. 1904)
A trial witness introduced evidence showing the use of bloodhounds to track the perpetrator of a crime. The court conceded that the use of such evidence was not conclusive; however, the court held that if such animals can be proven to show a facility in tracking, then its conduct in a given case may be admitted into evidence with its effect and weight to be left to the jury. The court installed the following test to establish whether this class of evidence may be admitted: 1) The blood hound in question must be shown to have been trained to follow human beings by their tracks and scent, and to have been tested as to its accuracy in trailing on one or more occasions, and 2) the evidence of the acts of blood hounds in following a trail may be received merely as cumulative or corroborative evidence against the person toward whom other circumstances point as being guilty of the commission of the crime charged.

State v. Dickerson, 77 Ohio St. 34 (Ohio 1907)
A trial witness offered testimony that bloodhounds were taken to the scene of a murder, presented with scents from two saplings between which the neck of the deceased had been found compressed as well as the scent of a branch that had been broken, and allowed to trace the smell that led to the home of the defendant. Defendant raised two challenges to the "bloodhound testimony": (1) such evidence is not competent and violates constitutional guarantees, (2) and that qualification had not been shown to make the conduct of the dogs admissible.

The court held that the use of such testimony is in fact competent only after a proper preliminary foundation is laid showing that the particular dog used was trained and tested in tracking human beings, and by experience had been found reliable in such cases; that the dog so trained was laid on the trail, whether it was visible or invisible, at a point where the circumstances tended clearly to show that the guilty party had been, or upon a track which the circumstances indicated to have been made by him. In addition to this the reliability of the dog must be proved by a person or persons having personal knowledge thereof. This foundation may be strengthened by proof of pedigree, purity of blood, or the exalted

standing of his breed in the performance of such peculiar work. The court recognized it was the testimony of the human trailing the dog that made the evidence competent. Once the above foundation or one similar in effect or efficiency is described, the acts of the animal may be described. This court stressed that the purpose of this evidence should be explained to the jury as well as its limitations.

State v. Bridge, 60 Ohio App. 3d 76 (Ohio Ct. App. 1989).
The defendant appealed the jury verdict of guilt, arguing that the verdict reached by the jury relied too heavily on the testimony offered by the handler of the dog who trailed him. The court recognized that a majority of courts confronted with the issue of "dog tracking" have concluded that before evidence of dog trailing may be admitted, the training and reliability of the dog, the qualifications of the person handling the dog, and the circumstances surrounding the trailing by the dog must be shown. The court found that sufficient evidence was presented to support the jury's finding of guilt beyond a reasonable doubt. The court held that the circumstantial evidence was not as a matter of law as consistent with innocence as it was with a finding of guilt and affirmed the jury conviction.

State v. Neeley, 143 Ohio App. 3d 606 (Ohio Ct. App. 2001).
A trained police dog conducted a search of the park where the victim's body was recovered. Using the jeans found at defendant's home, the dog was able to track a scent from the jeans to a site near the wooded area of the park. The dog was also able to track the scent found on the underwear found in the victim's car to a site near the wooded area. But the dog was unable to track the scent of the victim's purse. A fingerprint lifted from the purse did not belong to the victim or to the defendant. The defendant was convicted of aggravated murder. On appeal, the defendant contended that the trial court erred in, among other things, admitting dog-trailing evidence in the absence of a proper foundation. The Court of Appeals of Ohio, citing *Dickerson*, stated that the admission of evidence concerning the use of a tracking dog is permitted, provided that a proper foundation has been established and to establish that foundation, the training and reliability of the dog, the qualifications of the person handling the dog, and the circumstances surrounding the trailing by the dog may be shown. It also stated that dog trailing evidence must be viewed with utmost caution as it is of slight probative value and must be considered in conjunction with all the testimony in the case and does not warrant a conviction absent some other direct or circumstantial evidence of guilt. The appellate court pointed out that a witness testified that the dog and the handler had been professionally trained, the witness explained how the trailing was performed, and the record indicated that the jury was given cautionary instructions. According to the court, any evidence as to the dog's failure rate went to the weight, not the admissibility, of the evidence. Given that the proper foundation was laid and the court instructed the jury concerning the limited probative value of the evidence, the appellate court concluded that the trial court did not abuse its discretion in admitting the witness' testimony. The judgment was affirmed on this and other grounds.

State v. Cowans, 87 Ohio St. 3d 68 (Ohio 1999).
Police used a T-shirt belonging to the defendant to scent a bloodhound at the murder victim's residence. The dog appeared to track the scent from the victim's backyard, over a fence, and for a short distance into a wooded area. The dog then lost the scent. After being

rescented with the shirt, the dog appeared to follow it to the vicinity of a fallen tree where the handler was told that other deputies had found the victim's personal property. At this location, which was near the back end of defendant's property line, the dog was pulled off the scent. Again the dog was rescented and it continued to defendant's Chevrolet Blazer, which was parked at his house. A week later, an investigator retraced their path, making a videotape as he walked to illustrate the general path the dog had taken in following the scent. The videotape was introduced at trial, supported by testimony by the investigator. Items belonging to the victim were found in the defendant's closet and in the wooded area behind his house. The defendant was convicted of aggravated murder. On appeal, the defendant contended, among other things, that the video was irrelevant and unfairly prejudicial because it was not an exact illustration of the dog's path. The Supreme Court of Ohio stated that the video showed only the general contours of the dog's path, and the officer readily admitted the limitations and fully explained to the jury that the video did not precisely show each deviation in the dog's path. The court held that the introduction of the video was not so prejudicial that its admission rose to the level of an abuse of discretion. According to the court, an exhibit is not necessarily incompetent because it fails to show some exact thing in connection with the subject under investigation, provided it shows some matter bearing directly upon the matter under investigation, with an explanation of how it differs from that which is being investigated. The judgment was affirmed on this and other grounds.

State v. Timerding, 2004 Ohio 6426 (Ohio Ct. App. 2004).
A Fire Inspector arrived at an arson scene with a dog trained to detect the presence of certain accelerants. The canine had been previously deployed at five hundred fire scenes. The dog indicated the presence of an accelerant in the center of defendant's living room. Under the living room carpet, where the dog had indicated there was an ignitable liquid, the inspector found that the floorboards were "alligatored," a pattern suggesting that the fire at that point was fast-burning and fueled by an accelerant. Later, the dog was taken to the police station where defendant was being questioned. The dog indicated that there was accelerant on defendant's shoes and pant leg. They saw that defendant's pant leg was burned at the knee and that his skin was red where it poked through the clothing. They also noted that his beard and hair were singed. Prior to the fire in the building, a witness had observed the defendant outside of the building with a gas can. Firefighters responding to the fire observed a gas can in the defendant's bathtub. Using a gas chromatograph mass spectrometer, forensic scientists found gasoline on the shoes, T-shirt, and pants defendant was wearing on the night of the fire. Defendant was convicted of two counts of aggravated arson. On appeal, the defendant contended that (1) the evidence was insufficient to sustain his conviction, (2) the judgment was against the manifest weight of the evidence, and (3) the trial court did not merge the two sentences as required by law. None of the contentions addressed the admissibility of the actions by the arson dog. Defendant's assignments of error were overruled and the judgment was affirmed.

OKLAHOMA

DOG TRACKING EVIDENCE IS ADMISSIBLE WITH PROPER FOUNDATION.

Benton v. State - Feb. 18, 1948 [**86 Okla. Crim. 137**]
Facts: Police attempted to find the perpetrator of a crime with a bloodhound. They failed.
Holding: The Defendant could point to the failure of the bloodhound in his defense.

A PROPONENT NEED NOT SATISFY THE FOUNDATIONAL REQUIREMENTS OF *BUCK V. STATE* (1943) 77 OKL.CR. 17 IN ORDER TO ADMIT EVIDENCE THAT INVOLVES DOGS THAT ARE NOT TRACKING UNKNOWN SUSPECTS.

Reed v. State - Jun. 13, 1978 [**1978 OK CR 58**]
Facts: Defendant broke into a residence while its owner was absent. The residence's owner returned with her dog. The dog ran into the house. The residence owner's niece confronted the Defendant on the residence's screened-in porch. The dog barked at the Defendant. Defendant objected to the admission of this evidence on the ground that it failed to satisfy the foundational requirements of *Buck*.
Holding: *Buck* concerned the trailing of unknown individuals by bloodhounds and is certainly distinguishable from the case at hand. There was no attempt to show that the scent of an unknown intruder was followed by a dog through swamp and sage and there was no necessity for the laying of a predicate concerning the training and experience of the family pet in this instance.

Buck v. State, 77 Okla. Crim. 17 (Okla. Crim. App. 1943).
Two bloodhounds were taken to the location where a barn burned to the ground about five and a half hours after the fire was discovered. No one had been permitted to go near the barn until the sheriff arrived with the dogs. The dogs pick up a track, lost it for a moment, picked it up again at the top of a creek bank, and followed it some distance until they came to a fence where a horse had been recently tied. The Sheriff and accompanying party followed the horse tracks to the defendant's home. The dogs indicated the presence of the trail that they were following at the gate leading to the defendant's house. The horse was found on the property. The dogs were then turned loose near the house, and soon took up a trail which they followed to a house where the brother-in-law of defendant lived. They were there informed that defendant had gone to the town of Mounds. They returned with the dogs to near the home of defendant, and awaited his return. In the afternoon defendant was seen coming towards his home, walking. The dogs were taken to the point where defendant was seen and when turned loose took up the trail direct to defendant's home. The case rested almost wholly upon circumstantial evidence. The defendant was convicted of arson. On appeal, the defendant contended that the evidence was insufficient to sustain the judgment and sentence, and that the court erred in refusing to direct a verdict of not guilty. After evaluating case law through the country regarding the admissibility of dog-tracking evidence, the Supreme Court of Oklahoma reached the conclusion that the

evidence of the trailing of a human being by bloodhounds which have been found to be of proper breeding and properly trained was supported by reason, and the great weight of authority. The court stated that it is the better practice before this evidence is permitted to go to the jury that the court should first, hear the evidence to ascertain the blood, age, training and experience of the dog, and whether it has been trained to follow trails of human beings by their tracks, and as to accuracy of trailing upon different occasions. The court then determines as a matter of law whether the evidence is such that permits its submission to the jury. If the court decides that the facts justify its submission, the jury is returned and all of the evidence in connection therewith, together with the expert testimony as to the training, blood, and experience of the dogs, is submitted to them under proper instructions of the court. The court also accepted the rule that a conviction will not be upheld upon the evidence alone of trailing by bloodhounds. The court pointed out that there was evidence that corroborated the evidence of the bloodhounds and the handler of the dogs testified that he was employed by the State of Oklahoma at the State Penitentiary, he had charge of the dogs, he had 15 or 20 years experience in the handling of dogs, he selected the dogs used in the case as his two best dogs, one dog was nine years old and the other was younger. The handler also testified at length as to the experience and training which these dogs had received, and gave individual instances of performances by him in the trailing of human beings. The court stated that there could be no question but that the evidence as to the training and experience of the two dogs was such that it entitled the court to submit it to the jury for their consideration, together with the other facts and circumstances. The judgment and sentence of the district court was affirmed.

OREGON

No new cases found via shepardizing.

State v. Harris, 25 Ore. App. 71 (Or. Ct. App. 1976), overruled on other grounds by *State v. Plankinton*, 62 Ore. App. 554, 556 (Or. Ct. App. 1983).
The defendant prevented the victims from stealing cedar wood from the defendant's land by pointing a gun at them. While leading the victims to a remote location on his land, the surviving victim fled and was shot at by the defendant. The other victim was missing for a while and was eventually found dead near the scene of the shooting. As part of the effort to locate the dead victim when he was considered missing, two bloodhounds were brought in and given scents, one from defendant's clothes and the other from the missing victim's clothes, and were put upon scent tracks which they picked up at the location of the crime. The hound on the missing victim's track lost the scent in heavy undergrowth. The one on defendant's scent track pulled steadily upon his leash and led directly to a point 40 yards from defendant's house, which was a substantial distance away, where the tracking was terminated. An Explorer Scout search and rescue team found the dead victim the next day. Defendant was convicted of criminally negligent homicide, two counts of kidnapping in the second degree, and two counts of committing a felony while armed with a concealable weapon. On appeal, one of the defendant's allegations of reversible error was that bloodhound evidence offered at trial should have been excluded, and that if it is not excluded his objection thereto should have been sustained because a proper foundation was not laid. The Court of Appeals of Oregon adopted the majority rule and stated the evidence supplied by the dogs, if there is a proper foundation laid, has relevance. The court also stated that where the evidence has some probative value, it allows the trial judge some latitude in deciding whether the detrimental aspect of the testimony outweighs its probative value. It determined that the evidence appeared to have probative value and there was other evidence of the defendant having committed the crime. Regarding whether there was sufficient foundation laid for the evidence, it pointed to the testimony of the officer who was the keeper and handler of the hounds that they were registered bloodhounds with the American Kennel Club, that the hounds have not chased animals, that they do not switch from one scent to another, and that they have the ability to follow a scent through an area where there has been a large number of people. The officer also testified that the hound which followed defendant's scent had successfully followed a seven-day-old scent and that he can track through heavy rain. The court also emphasized that the dogs were the scent within 45 hours after the track was laid. The court was satisfied that a sufficient foundation was laid. The judgment was affirmed.

PENNSYLVANIA

BLOODHOUND TRACKING EVIDENCE IS ADMISSIBLE SO LONG AS IT SATISFIES *COMMONWEALTH V. HOFFMAN* (1912) 52 PA. SUPER. 272.

Commonwealth v. Nace - Feb. 24, 1915 [**59 Pa. Super. 210**]
Facts: There was evidence, admitted without objection, that Defendant had been trailed by a bloodhound, trained for that purpose, from a place at the road about where the crime was perpetrated to his own home.
Holding: This testimony was admissible.

Commonwealth v. Hoffman, 52 Pa. Super. 272 (Pa. Super. Ct. 1912).
A bloodhound was brought to the scene of the fire that destroyed a barn within about an hour after the beginning of the fire. The hound was placed within forty or fifty feet of the eastern side of the barn and took the track or trail at a point about fifty feet easterly from the barn and followed the track to a point near the defendant's house. The dog encountered the defendant, smelled him, jumped upon him and manifested the same indications that the hound usually did when running and successfully locating the object of pursuit. There were footprints at intervals along the trail that the dog followed. The dog was a bloodhound of pure blood and pedigree, about four or five years of age, trained to track and follow human footsteps, had been subjected to many severe tests and without failure. The dog was handled by an experienced party and the dog prior to the trailing had been trained for purposes and found to be successful and reliable by an experienced person. There was additional evidence that corroborated the evidence of the bloodhound. Defendant was convicted of arson. On appeal, the defendant contended, among other things, that the trial court erred in admitting in evidence the conduct of a bloodhound in following a trail. The Superior Court of Pennsylvania adopted the majority rule. According to the court, there must be an intelligent and truthful starting point, which will make an impression that the dog is able to recognize and distinguish from all other impressions; personal attendants and surrounding conditions may modify his certainty, time, weather conditions and other circumstances must be considered in giving proper weight to the conclusion reached. The court also stated that in order to make such testimony competent, even when it is shown that the dog is of pure blood, and of a stock characterized by acuteness of scent and power of discrimination, it must be established that the dog in question is possessed of these qualities, and has been trained and tested in their exercise, in the tracking of human beings, by a person who has knowledge and experience in such a matter, and that the test was made by starting the dog at a point where the circumstances tend clearly to show that the alleged guilty party had been, at a time when his presence would instinctively be known to the dog. When so indicated, testimony as to the trailing by a bloodhound may be permitted to go to the jury for what it is worth, as one of the circumstances which may tend to connect the defendant with the crime with which he is accused. The court found that every precaution suggested in the cases it cited was carefully observed by the trial judge, and the jury was directed to take such evidence into consideration in connection with the other evidence in the case, relied on by the

commonwealth, for the purpose of establishing the guilt of the defendant. The judgment was affirmed.

Commonwealth v. Michaux, 360 Pa. Super. 452 (Pa. Super. Ct. 1987).
A bloodhound was scented from the front seat of an abandoned vehicle that was pursued from the scene of a commercial burglary. Three set of tracks in the snow were observed from the vehicle. The dog followed one of the tracks to the defendant which had been arrested by police. The defendant was convicted of burglary and criminal conspiracy. The conviction was based entirely upon circumstantial evidence. On appeal, the defendant argued that (1) the evidence was insufficient to prove his guilt beyond a reasonable doubt; (2) the testimony that a bloodhound had trailed and identified him was inadmissible hearsay, the admission of which violated his right to confront witnesses against him; (3) the trial court erred in allowing the dog tracking evidence to be received because a proper foundation for the receipt of the evidence had not been laid; and (4) the trial court erred when it ruled that defendant's expert witness could not testify on the subject of dog tracking. The Superior Court of Pennsylvania pointed to its decision in *Hoffman* and explained that most courts are in substantial agreement that the proponent of the evidence must show that (1) the handler was qualified, both by training and experience, to use the dog; (2) the dog was adequately trained to track humans; (3) the dog, by virtue of experience, was reliable in tracking humans; (4) the dog was placed on track at a place where circumstances showed the guilty party to have been; and (5) the trail had not become so stale or contaminated that it was beyond the dog's ability to follow. The court also stated that even where evidence of dog tracking is properly received, however, most courts hold that standing alone it is not sufficient to support a conviction. It reviewed the sufficiency of the evidence and concluded that the evidence was adequate to prove the defendant's guilt. The court pointed to the fact that the evidence provided by the bloodhound was corroborated, the dog handler's testimony was clearly sufficient to establish his qualifications as an expert dog handler, there was detailed testimony as to the methods used to train the dog in tracking human scents and described actual situations in which the dog had successfully tracked humans, and the evidence established that the dog had been scented at a place where the burglars were known to have been. The court held that the training and reliability of the dog in question were satisfactorily established. Concerning the defendant's other arguments, the court stated that it is the human testimony that makes the trailing done by the animal competent, as the dog's actions are described by human testimony as it would describe the operations of a piece of intricate machinery; and the record showed that defense counsel abandoned his attempt to present the witness' testimony and excused the witness without attempting to qualify him as an expert. The judgment was affirmed.

Commonwealth v. Patterson, 392 Pa. Super. 331 (Pa. Super. Ct. 1990).
Five days after the murder of a girl, police utilized the victim's and appellant's clothing along with a volunteer dog-handler, to track the scent of the victim and appellant at the murder scene. Testimony revealed that the dogs tracked the victim to the scene of the killing and then tracked appellant's scent from the bridge to close to the scene. A witness identified the defendant as the person that led the victim away and there were other witnesses that observed defendant's vehicle near the scene of the murder on the day it

occurred. The defendant was convicted of murder. On appeal, one of the defendant's arguments was that the prosecution failed to lay a proper foundation for admission of testimony regarding the dogs' tracking. The defendant alleged that the police accidentally might have added their scent to the clothing and that their prior search of the area might have contaminated the trail, thereby inducing the dogs to track the policemen's scent by mistake. Appellant further contends that the tracking was questionable since one dog was guided by an inexperienced handler, one dog could not detect appellant's scent at all, and "dry, practice runs" were not made that day to test the dogs' fitness. In addition, the trail was over five days old at the time of the tracking, and according to experts' opinions, three or four days is the maximum period that a scent can be detected. Finally, appellant contends the dogs were underweight, one recently had been injured, and they were fatigued as a result of travel to the site. The Superior Court of Pennsylvania pointed to testimony at the suppression hearing, which revealed that the dog handler had over forty years experience in the field of dog tracking, the dogs were kept in an air-conditioned trailer to keep their nostrils fresh, the dogs were primed with the victim's and appellant's clothing near the bridge where circumstances and witnesses placed them both. The dog trainer also testified, contrary to accepted authority, that in his experience trails were viable for five days or more in certain similar, moist, wooded conditions; that the dogs were able to track despite the travel, their reduced weight, or injury; and to corroborate their ability to track appellant, the dogs were given appellant's scent near his dwelling, and they proceeded to his automobile, and then to the rear entrance of his apartment. The court concluded that the trial court did not abuse its discretion in determining that a proper foundation existed, leaving the jury to weigh the credibility and reliability of the testimony concerning the various aspects of dog tracking. The judgment was affirmed.

SOUTH CAROLINA

State v. Brown, 103 S.C. 437 (S.C. 1916) (overruled on other grounds by *State v. Osborne*, 335 S.C. 172 (SC 1999))

A DEFENDANT WHO FAILS TO OBJECT TO BLOODHOUND TRACKING EVIDENCE AT TRIAL CANNOT ARGUE ON APPEAL THAT THE TRIAL COURT SHOULD HAVE EXCLUDED THAT EVIDENCE.

State v. Jordan - May 9, 1972 [**258 S.C. 340**]
Facts: The trial court admitted bloodhound tracking evidence. Defendant did not object to this evidence during trial.
Holding: Since the appellant did not object to the admission of the bloodhound evidence, he is not in a position to raise any question as to its competency.

A SUFFICIENT FOUNDATION FOR THE ADMISSION OF DOG TRACKING EVIDENCE IS ESTABLISHED IF

(1) THE EVIDENCE SHOWS THE DOG HANDLER SATISFIES THE QUALIFICATIONS OF AN EXPERT UNDER RULE 702;
(2) THE EVIDENCE SHOWS THE DOG IS OF A BREED CHARACTERIZED BY AN ACUTE POWER OF SCENT;
(3) THE DOG HAS BEEN TRAINED TO FOLLOW A TRAIL BY SCENT;
(4) BY EXPERIENCE THE DOG IS FOUND TO BE RELIABLE;
(5) THE DOG WAS PLACED ON THE TRAIL WHERE THE SUSPECT WAS KNOWN TO HAVE BEEN WITHIN A REASONABLE TIME; AND
(6) THE TRAIL WAS NOT OTHERWISE CONTAMINATED.

State v. White - Apr. 27, 2009 [**382 S.C. 265**]
Facts: A police dog tracked the Defendant from the scene of a crime. The police dog was a German shepherd that descended from a bloodline of known police and military working dogs. Through testing, the dog has been certified in several areas of tracking, yet the dog's strongest skill is tracking people. The dog and its handler had been "partners" in excess of 7 years and had accomplished approximately 750 tracks together. On appeal, Defendant concedes the dog's handler met the Rule 702, SCRE, qualifications due to his experience and training. However, Defendant contends the trial court failed in its gatekeeping role to vet the reliability of the dog's tracking skills, thus leaving the jury to speculate about the dog's reliability.
Holding: There was ample evidence concerning the training and reliability of the dog.

State v. Brown, 103 S.C. 437 (S.C. 1916).

The tracks of three people were discovered near the place where the barn had been burned. Dogs were put on the tracks. The dogs went to where one of the defendants was under arrest. The other defendant rode up to the place where a crowd was assembled, and when he got on the ground the dogs went up to him. The defendants were convicted of arson. On appeal, one of the defendant's exceptions was the admission of the evidence of the conduct of the dogs in following the tracks. The Supreme Court of South Carolina stated that it could not say there was no value in the use of dogs in identifying criminals. However, the conduct of the dogs is only a circumstance to be weighed with other circumstances and if the instinct of the dogs is to be relied upon, then that instinct must be free and untrammeled. The court pointed out that the dogs were not permitted to go into an area in which they wanted to enter and the control of the animal by the man, who has not the instinct, destroyed any value it may have as evidence. It also pointed out that the dog handler did not approve of pursuing a trail more than 15 hours old. The court stated that the only thing the conduct of dogs could prove was that the defendants were at the place of the fire within 15 hours, and that would have put the defendants at the place of the fire after the fire had been burning for some unknown time. As a result, the court held that reference to the conduct of the dogs should have been stricken from the record. The court also stated that the dog is not the witness and the inability to cross-examine the dog is not an applicable objection. The judgment was reversed.

State v. Bostick, 253 S.C. 205 (S.C. 1969).
Bloodhounds were brought to the scene of a homicide shortly after it was committed. A cap, of unusual type, and a rifle which were found as the bloodhounds followed a trail leading from the scene of the homicide through the woods and along a freshly plowed fire break. Additional details of the trailing by the bloodhounds were not provided. Defendant was convicted of murder. On appeal, one of the defendant's contentions was that the court erred in allowing evidence as to the conduct of certain bloodhounds. The Supreme Court of South Carolina pointed out that the only objection to the evidence at the trial was that it was irrelevant, and it was the error assigned by the only exception touching the point. It found that the exception had been waived by failure to argue it in the defendant's brief. The defendant argued that the testimony concerning the conduct of the dogs violated his right to be confronted by the witnesses against him as provided by both the state and federal constitutions. The court concluded that the question was not properly before it as it had not been presented to the lower court nor raised by an exception on the appeal. It added that the point is without merit, as the trainer was the witness, not the dogs. The judgment was affirmed on this and other grounds.

State v. Childs, 299 S.C. 471, 472 (S.C. 1989).
Bloodhounds were used to track a scent from the victim's body to a white fence behind the Hess station, down Stone Avenue and to the home of the defendant's co-defendant. A witness identified the defendant as being at the scene of the murder the night it occurred and the defendant admitted being his co-defendant's lookout person for the armed robbery. Defendant was convicted of conspiracy, armed robbery, and murder. On appeal, the defendant alleged that the trial judge erred in, among other things, allowing a witness to testify about his work with bloodhounds during the investigation because the appropriate foundation was not established for the admission of such testimony. The Supreme Court

of South Carolina stated that the qualification of a witness as an expert is largely within the sound discretion of the trial judge and that the testimony of dogs' handler provided a sufficient foundation for the admissibility of the evidence. The handler testified that he had run bloodhounds the county for eleven to twelve years, the dogs had the characteristics of acuteness in scent as well as the power of discrimination between human and other scents, he found the bloodhounds to be reliable, and he had been qualified as an expert witness between ten to fifteen times in prior court proceedings. The court also concluded that the trial judge did not abuse his discretion in qualifying the handler as an expert witness. The judgment was affirmed on these and other grounds.

State v. Johnson, 306 S.C. 119 (S.C. 1991).
The defendant shot and killed a state trooper during a stop of the RV that he obtained after shooting and killing its owner. Two witnesses were present in the RV at the time of the shooting. During the pretrial hearing, the Solicitor agreed not to introduce evidence with respect to bloodhound tracking. At trial, the State examined a SLED dog handler to corroborate two of the witnesses' story about where they went when they fled from the RV. During the handler's testimony, several references were made to the dog that helped him track the footprints. Defendant was convicted of murder. On appeal, one of the defendant's contentions was that the trial court erred by allowing testimony about bloodhound tracking at the scene of the crime. The Supreme Court of South Carolina, citing *Childs* and *Brown*, stated that the testimony of a dog handler based upon his observation of a tracking dog may be properly admitted into evidence and that in the case, the evidence would be admissible but for the pretrial agreement that the Solicitor would not mention the dogs. However, the court stated that the prosecutor made a good faith effort to comply with the agreement and the defendant failed to demonstrate the prejudice resulting from the evidence. The defendant also contended that the prosecutor committed reversible error when he referred to the bloodhounds in his closing argument. The court pointed out that the defendant failure to object at the time of trial demonstrated that the prejudicial effect of the matter was negligible and the prosecutor's brief mention of bloodhound corresponded to the trial testimony. The jury is presumed to remember and know the trial testimony, and the prosecutor had the right to comment on its weight and state his version of the testimony. The defendant's conviction and sentence were affirmed on these and other grounds.

TENNESSEE

No new cases found via shepardizing.

Copley v. State, 153 Tenn. 189 (Tenn. 1925).
Details of the actions by the bloodhounds were not provided. The defendant was convicted of arson. The Supreme Court of Tennessee determined that there was nothing in the evidence to indicate a felonious burning. Since the judgment was going to be reversed and the case remanded, the court evaluated the admissibility of bloodhound evidence. The court observed that bloodhound for many years have been bred and schooled to track human beings; so, when a dog of good blood, and of proven individual merit, is laid upon a trail, visible or invisible, at a point where circumstances indicate the guilty party has been, or upon a track appearing to have been made by the guilty party, conduct of the dog in following such a trail which fairly points out the defendant as the author of this trail is admissible as a circumstance against such defendant. It also observed that a jury should be cautioned that a dog's performances are not infallible, should not be given undue weight, and that such evidence alone is not sufficient to convict, but requires corroboration. The court held that bloodhound evidence is competent and adopted the majority rule. The court stated that the performance of the dog is seldom competent as evidence of the *corpus delicti* in an arson case. It also pointed out that the instructions of the trial judge as to the bloodhound evidence had some errors and it doubted whether any adequate foundation had been laid for the introduction of the evidence. The judgment was reversed and the case remanded for a new trial.

State v. Barger, 612 S.W. 2d 485 (Tenn. Crim. App. 1980).
A shirt and shoe belonging to four suspects, including the defendant were collected. The defendant's shirt and shoe were sniffed by a bloodhound. The bloodhound then led its handler to a cache in the woods behind the burglary victim's yard of items missing from the residence, including a rifle, two shotguns, a tool box, and camera equipment. Defendant was convicted of second-degree burglary and grand larceny. On appeal, the defendant challenged, among other things, the admissibility of evidence obtained through the use of a bloodhound. He contended that its use violated his rights under the state and federal constitutions to confront and cross-examine the witnesses against him, and that the State failed to lay a proper foundation for the admission of the bloodhound evidence. The appellate court reviewed the record and concluded that the trial judge committed no reversible error in permitting this testimony to go to the jury. The court cited *Copley* and stated that the inability of the defendant to cross-examine the dog is not considered prejudicial, so long as its owner, trainer, or handler is made available for examination as to the dog's general qualifications and specific activities on the day in question. It pointed out that the dog's owner-trainer-handler was cross-examined at length by counsel for the defense as to the dog's heritage, training, and behavior on the day of the burglary. The court reiterated the five-step procedure delineated in *Copley*: 1) The dog must be of pure blood, and of a stock characterized by acuteness of scent and power of discrimination; 2) The dog must possess "acuteness of scent and power of discrimination," and must have been accustomed and trained to track human scents; 3) the dog must be shown by experience in actual cases to be reliable in tracking humans; 4) the dog must have been

placed on the trail at a spot where the suspect in the crime was known to have been, or on a track which the circumstances indicated to have been made by him; and 5) the dog must be placed upon the trail within its period of efficiency. The court noted that the bloodhound in the case was identified by his owner and handler as a full-blooded bloodhound, the dog's handler detailed for the trial court the dog's training, the proof showed that the dog had been used successfully to track the scents of human beings on three prior occasions, the dog was placed on the trail at the victim's home, where the police investigation indicated that the defendant had been, and the dog was placed on the track before any change in weather and within a short time after the burglary was discovered. The court concluded that the State laid the requisite foundation for the admission of bloodhound evidence in this case and it did not matter whether the dog "tracked in reverse," *i.e.*, sniffed the suspect or his belongings and then tracked the scent to stolen merchandise. The court did notice that there was a failure to give a proper limiting instruction on the weight to be given bloodhound evidence. However, the court concluded that the omitted instruction was not "fundamental" in nature, and that the omission therefore did not deprive the defendant of a fair trial. In finding that both the evidence taken from the defendant's car and the located by use of the bloodhound to be admissible, the court concluded that the proof against the defendant was sufficient to support the verdict of the jury beyond a reasonable doubt. The judgment was affirmed.

State v. Jones, 735 S.W.2d 803, 807 (Tenn. Crim. App. 1987).
A trained German shepherd dog tracked the defendant's presence around the deceased residence, at the schoolhouse on the defendant's property, and at and around the deceased's vehicle some sixty days after the disappearance of the victim. The defendant was convicted of two counts of murder. On appeal, the appellant asserted that the State failed to lay a proper foundation for the evidence; that the dog was not placed on the track within its period of efficiency. The court reiterated that one of the requirements for the admission of bloodhound evidence is the showing that the dog was placed upon the trail within its period of efficiency. It pointed out that the dog's handler testified that the dog had been utilized and proven reliable in excess of one hundred cases where the tracks were sixty to seventy days old, as in the case. The court held that the trial court's finding that a proper foundation was laid for the admission of the evidence was warranted. All issues raised by the defendant were found to be without merit and the judgment of the trial court was affirmed.

State v. Brewer, 875 S.W.2d 298 (Tenn. Crim. App. 1993)
A full-blooded Belgian Malinois was brought to the scene of a commercial burglary to assist with the investigation. The dog arrived within an hour of the burglary. The dog had been purchased about a month earlier by the police department after a six-week training period. After hours of classroom and practical training, the dog's handler and the dog had received certification as a police canine team. The extent of the dog's training was to follow the most recent human scent; it was unable to distinguish one human scent from another. At the scene of the crime, the dog first followed the trail of an officer that had walked from the roadway to garbage bags in the vicinity of the burglary. Then, the dog found another trail on the north side of the bags. The dog tracked the scent to the defendant's automobile in a parking lot at a distance of between 100 and 150 yards from

the garbage bags. The defendant was convicted of one count of burglary and one count of theft over $ 1,000.00. On appeal, one of the issues that the defendant presented for review was whether the trial court erred in admitting evidence that a scent dog followed a trail from the scene of the crime to the defendant's automobile. The Court of Criminal Appeals of Tennessee pointed out that although the dog was unable to follow the scent of a particular individual, the early morning hours of the robbery indicated that there was little likelihood that anyone other than the perpetrator had established a more recent trail away from the crime scene. The defendant claims that the evidence should not have been admitted because there was not adequate proof that the dog was a pure-blood; the dog was trained only to recognize a human scent and not that of a particular individual; there was no history of reliability; and that there was no reliable point of placement. The court disagreed. It found no error and affirmed the judgment of the trial court.

State v. Shepherd, 902 S.W. 2d 895 (Tenn. 1995).
During the search of the victim a bloodhound was taken to the location where the defendant had stopped the car when the victim disappeared. The dog was scented from an article of the victim's clothing. It tracked a path from the area where the car had been parked to a brush pile about 100 yards away. No trail was found away from the brush pile in any other direction. Searchers noticed an indentation in the pile and evidence that the brush had been disturbed. The body of victim was found buried in a shallow grave in the backyard of the home where the defendant lived. Defendant was convicted of one count of felony murder in the commission of rape and one count of aggravated assault. On appeal, one of the defendant’s contentions was that the evidence of the tracking by the bloodhounds searching for the victim should not have been admitted. The Supreme Court of Tennessee noted that although defendant objected to the admission of the evidence at trial, no specific ground of his objection was made. It also found that the reasons were considered waived, as the issue was not raised in the motion for new trial and the. According to the court, the State proved each of the five criteria necessary to establish a foundation for the dog-tracking evidence. Due to error in the sentencing process it was necessary for the Supreme Court of Tennessee to remand for sentencing.

TEXAS

THE HYDRO-CARBON SNIFFING DOG EVIDENCE WAS NOT MADE INADMISSIBLE BY *KELLY-FRYE*.

Fitts v. State - Aug. 6, 1998 [**982 S.W.2d 175**]
Facts: Hydro-carbon sniffing dogs alerted to the presence of accelerants at the scene of an arson.
Holding: This evidence satisfies the requirements for admissibility of *Kelly-Frye*. Hydrocarbon-sniffing dogs are utilized around the country in arson investigations. Based on extensive use by various law enforcement agencies, it is clear that the dogs' handler's training technique and the theory on which it is based are accepted by the arson investigation community. The potential rate of error for these particular dogs is small, in that the dogs have been correct as to the presence of hydrocarbons 49 out of 50 times. Their reliability was further proven in this case, as evidenced by the laboratory tests showing the presence of gasoline at the scene. Other experts had tested and evaluated the handler's technique, and found it to be valid. Other individuals from law enforcement agencies testified to the high level of skill and reliability of the handler and his dogs. The handler was able to clearly explain his theory and experience to the trial court, and was thoroughly cross-examined by Defendant.

TO DETERMINE THE ADMISSIBILITY OF A SCENT LINEUP, A COURT SHOULD LOOK AT
(1) THE QUALIFICATIONS OF THE PARTICULAR TRAINER,
(2) THE QUALIFICATIONS OF THE PARTICULAR DOG, AND
(3) THE OBJECTIVITY OF THE PARTICULAR LINEUP.

Risher v. State - Dec. 7, 2006 [**227 S.W.3d 133**]
Facts: To link the Defendant to contraband, police organized a scent lineup. The scent lineup was made up of 5 Caucasian and the African American Defendant. The dog smelled the scent pad and then went to the Defendant and alerted. At a hearing to suppress the evidence of this scent lineup, the dog's handler testified that he had handled canines for the Bellaire Police Department for 12 years. He had worked first with a Labrador retriever that was a narcotics dog and then, for eight years, with the dog in this case, that was a human-scent dog. He also testified that he had attended training schools for handling human-scent dogs twice a year for 3 years and was also trained by the dog handler whose qualification were found to be adequate in *Winston v. State* (2002) 78 S.W.3d 522, 526-27. The handler further testified that he had given instruction to other officers or canine handlers in "trailing and bloodhound training" and that his skills in conducting human-scent lineups had been used by at least 30 other law enforcement agencies. The handler testified that the dog in this case had participated in 74 lineups and had successfully identified the suspect in 63 of them. The remaining 11 were "no starts," meaning that the person she was to identify was not in the lineup. Oglesby testified that, to his knowledge, the dog had not misidentified anyone in a lineup.

On appeal, Defendant argues that the dog's handler lacked the qualifications to conduct a human-scent lineup, that the dog was not a reliable scent trailer, and that the lineup was not objective.
Holding: Application of the evidence to the factors listed above permits the admission of the scent lineup. The fact that the handler did not perform the lineup merely from scent pads, use participants of the same race, or remove the Defendant's handcuffs did not destroy the objectivity of the lineup.

1) THE RELIABILITY OF EXPERT TESTIMONY THAT DESCRIBES A DOG'S ALERT TO A SCENT IS DETERMINED BY USING THE *NENNO V. STATE* (1998) 970 S.W.2D 549, 561 CRITERIA:

(1) WHETHER THE FIELD OF EXPERTISE IS A LEGITIMATE ONE,
(2) WHETHER THE SUBJECT MATTER OF THE EXPERT'S TESTIMONY IS WITHIN THE SCOPE OF THE FIELD, AND
(3) WHETHER THE EXPERT'S TESTIMONY PROPERLY RELIES UPON OR UTILIZES THE PRINCIPLES INVOLVED IN THE FIELD.

2) TO DETERMINE WHETHER TESTIMONY DESCRIBING THE ALERTS OF CADAVER DOGS MEETS THE THIRD PRONG OF *NENNO,* EXAMINE

(1) THE QUALIFICATIONS OF THE PARTICULAR TRAINER,
(2) THE QUALIFICATIONS OF THE PARTICULAR DOG, AND
(3) THE OBJECTIVITY OF THE PARTICULAR CADAVER SEARCH.

3) A CADAVER DOG IS QUALIFIED UNDER THE ABOVE TEST IF IT

(1) IS OF A BREED OR TYPE THAT TYPICALLY WORKS WELL OFF-LEAD,
(2) HAS BEEN TRAINED TO DISCRIMINATE BETWEEN HUMAN SCENTS AND ANIMAL SCENTS, AND
(3) HAS BEEN FOUND BY EXPERIENCE TO BE RELIABLE.

Trejos v. State - May 24, 2007 [**243 S.W.3d 30**]
Facts: Police dogs trained to detect the scent of cadavers alerted to the presence of a cadaver. However, police found no remains where the dogs alerted. On appeal, Defendant argues that the dog handler's testimony did not rely upon or utilize the principles involved in his field of expertise as required by *Nenno*.
Holding: The proper foundation was established as required by the *Nenno* test. The trainers were qualified to handle the dogs in this case. The dogs were qualified to search for cadavers. The search for the cadaver was conducted objectively, using practices and procedures that are generally used in searches by cadaver dogs. The trial court did not abuse its discretion in determining that the evidence regarding the cadaver dogs was

reliable and admissible. The trial court did not err by overruling Defendant's rule 403 objection.

DOG SCENT LINEUP EVIDENCE CAN BE USED TO CONVICT A DEFENDANT OF MURDER.

Winfrey v. State - Jun. 11, 2009 [**291 S.W.3d 68**]
Facts: During a scent lineup to determine whether Defendant's scent was on a murder victim's clothing, police dogs alerted to the Defendant's scent.
Holding: Based on the scent-lineup evidence, the jury could have reasonably concluded that Defendant was in the victim's house at the time of the murder and that he had significant physical contact with the victim.

Parker v. State, 46 Tex. Crim. 461 (Tex. Crim. App. 1904).
Tracks corresponding to those of the defendant were found at and near the place of the homicide and led to the home of the defendant. The tracks were followed by witnesses and a dog. The dog followed the tracks from the scene of the homicide to where the defendant lived. The case depended on circumstantial evidence. Defendant was convicted of second-degree murder. On appeal, the defendant contended that the trial court erred in admitting testimony of the tracking by the dog, over his objections. The dog's handler testified that the dog was kept for the purpose of running people, and was a bloodhound; that he had had experience with the dog, and it had been trained and was reliable; that if he was taken to a place and put on the track he would run that track to its destination, and he would run no other track except that particular track; that after he had run a track to its destination he could be put on another track. In adopting the majority rule concerning the admissibility of dog-tracking evidence, the Texas Court of Criminal Appeals quoted the decision in *Pedigo v. Commonwealth*, 103 Ky. 41 (Ky. 1898) as follows: "After a careful consideration of this case by the whole court, we think it may be safely laid down that, in order to make such testimony competent, even when it is shown that the dog is of pure blood and of a stock characterized by acuteness of scent and power of discrimination, it must also be established that the dog in question is possessed of these qualities, and has been trained or tested in their exercise in the tracking of human beings, and that these facts must appear from the testimony of some person who has personal knowledge thereof. We think it must also appear that the dog so trained and tested was laid on the trail, whether visible or not, concerning which testimony has been admitted, at a point where the circumstances tend clearly to show that the guilty party had been, or upon a track which such circumstances indicated to have been made by him. When so indicated, testimony as to trailing by a bloodhound may be permitted to go to the jury for what it is worth, as one of the circumstances which may tend to connect the defendant with the crime of which he is accused." The court held that the testimony was admissible. The judgment was reversed on other grounds and the case was remanded.

Asbeck v. State, 70 Tex. Crim. 225 (Tex. Crim. App. 1913).
The defendant shot and killed his wife. He purchased muriatic acid prior to the murder to avoid being trailed by dogs. After the murder, dogs were brought in and placed on the

defendant's trail. When the defendant was finally captured he had this bottle of muriatic acid open in his hand, appearing to try to use it as to prevent the dogs from trailing him. Defendant was convicted of first-degree murder. On appeal, the defendant argued that the errors of the trial court errors related to the introduction of testimony, and the selection of the jury. There were no alleged errors related to the dogs that trailed the defendant. The Texas Court of Criminal Appeals did not find any errors and the judgment was affirmed.

Birmingham v. State, 103 Tex. Crim. 309 (Tex. Crim. App. 1926).
Defendant was convicted of an assault, with intent to rape. According to the Texas Court of Criminal Appeals there was very unsatisfactory testimony as to the conduct of man-trailing dogs. No details about the trailing by the dogs were provided. The court noted that if it was conceded that defendant's identity was established by the testimony it was still insufficient to show that defendant was guilty of the offense of assault with intent to commit rape. The State conceded that the evidence in this case was insufficient to support the verdict. The judgment of the trial court was reversed and the case was remanded.

Winston v. State, 78 S.W. 3d 522 (Tex. App. 2002).
A police bloodhound was taken to the scene of a residential burglary. The dog trailed a scent from the house to the defendant's front door. Then, the dog was driven to the victim's house, which was the location of an earlier burglary in the same neighborhood. The dog was given a sample of the scent from the second house and the dog located that same scent at the victim's house and trailed it back to defendant's front door. Detectives later discovered a receipt with defendant's signature showing he pawned two items that were stolen from the victim's residence on the same day that they were reported missing. In the presence of his attorney, the defendant gave police a scent sample. The dog used in trailing the defendant and another bloodhound each compared the scent obtained from the initial residence that was investigated to a "scent lineup" of five gauze pads, one of which contained the defendant's scent sample. A witness testified that both bloodhounds alerted to the gauze pad containing defendant's scent. Defendant was convicted of burglary of a habitation. On appeal, the defendant challenged the trial court's denial of his motion to exclude evidence of a scent lineup and his motion for a directed verdict based on the scent lineup evidence. The defendant contended that the qualifications of the dog's handler as an expert as well as the admissibility of his testimony regarding the dog sniff test based on Texas Rule of Evidence 702. He did not challenge the admission of evidence concerning the dog's tracking of a scent from the two separate houses to the defendant's house. The Texas Court of Criminal Appeals analysis focused on the first and third prongs of the test in *Nenno v. State*, 970 S.W.2d 549 (Tex. Crim. App. 1998). Under the first prong of the *Nenno* test, that court had to determine whether the proffered field of expertise is legitimate. The court stated that Texas courts have recognized the admissibility of many types of dog-related evidence. The court determined that there was little distinction between a scent lineup and a situation where a dog is required to track an individual's scent over an area traversed by multiple persons. The use of scent lineups was considered a legitimate field of expertise. Under the third prong the court had to determine whether the proffered expert testimony properly relies upon or utilizes the principles involved in the field of expertise, which turns in each case on three factors: (1) the qualifications of the particular trainer, (2) the qualifications of the particular dog, and (3) the objectivity of the

particular lineup. The court concluded that a dog is "qualified" for a particular case if (1) the dog is of a breed characterized by acuteness of scent and power of discrimination, (2) the dog has been trained to discriminate between human beings by their scent, (3) by experience the dog has been found to be reliable, (4) the dog was given a scent known to be that of the alleged participant in the crime, and (5) the dog was given the scent within the period of its efficiency. The dog's handler had worked with bloodhounds for eleven years, published article, attended seminars, gave lectures at seminars, trained dogs for other police departments, and has testified as an expert in other cases and his had never been excluded. The court determined that the dog met the five-part qualification test and that the lineup was objective. At no time was the dog's handler informed which gauze pad contained defendant's scent and he testified that the procedure was consistent with the National Police Bloodhound Association's manual on how to conduct a scent lineup. The court found that the foundational requirements established in this case complied with the *Nenno* test and that the trial court did not abuse its discretion in admitting the scent-lineup testimony. The judgment was affirmed.

VERMONT

No new cases found via shepardizing.

State v. Bourassa, 137 Vt. 62 (Vt. 1979).
A bloodhound was taken to the scene of a commercial breaking and entering to track two culprits that were observed fleeing the store by a civilian witness and police officer. The dog's nose was dropped over a patch of grass by the northeast corner of the store, where witnesses said the men had landed from the roof. The dog circled in back of the store, went through a fallen section of fence into the fields and through the fields into an orchard. The dog ultimately led her handler to the defendant, which was lying face down in tall grass. The dog placed it paws on the defendant chest to identify that it was his trail it was tracking. At trial the parties stipulated that the dog's handler was an expert in the handling of bloodhounds and that the dog was trained and experienced in tracking human scent. Defendant was convicted of breaking and entering in the nighttime. On appeal, the defendant's challenges included the admissibility of tracking dog testimony to prove the identification of a criminal defendant. The defendant argued that even if such evidence was admissible, a proper foundation had not been laid. The Supreme Court of Vermont held that tracking dog evidence may be relevant to prove the identity of a criminal defendant in particular cases only upon a showing of reliability in that instance. The court stated that in order to establish the reliability of the evidence, a proper foundation must be laid: (1) the handler was qualified to use the dog; (2) the dog was trained and accurate in tracking humans; (3) the dog was placed on the trail where circumstances indicate that the accused had been; and (4) the trail had not become so stale or contaminated that it was beyond the dog's tracking capabilities. It also explained that the sufficiency of the foundation is a preliminary question for the discretion of the trial court and it is reviewable only for abuse. The defendant argued that the State failed to prove the dog's pedigree and the dog was not properly placed on the scent. The court pointed out that most recent cases have not stressed pedigree as a prerequisite for the admission of trailing evidence, reasoning that a dog's reliability lies in performance. It stated that since no attempt was made to impugn the dog's lineage at trial, the point would not be considered for the first time on appeal. The court also stated that the dog did not have to be scented with an object that the defendant abandoned on the roof of the store and that the grass patch was a sufficient starting point to link the accused with the scene of the crime. It held that the trial court properly exercised its discretion in admitting the bloodhound evidence. No errors were found and the court affirmed the judgment.

VIRIGINIA

THERE WAS NO NEED FOR PROSECUTOR TO TURN OVER EVIDENCE OF HOW POLICE HANDLED THE SCENT OBJECT USED IN DOG TRACKING BECAUSE NEITHER THE SCENT OBJECT NOR THE TRAIL THE DOG TRACKED WAS CONTAMINATED BY POLICE.

Epperly v. Booker - Mar. 4, 1988 [**235 Va. 35**]
Facts: A trained German shepherd tracked the Defendant from a scent object. On appeal, Defendant argues that the trail that the dog followed was contaminated by police mishandling of the scent object. Defendant argues that the prosecutor's failure to disclose this evidence deprived him of the opportunity to discredit the reliability of the dog-tracking evidence and infringed his right to due process of law.
Holding: Even assuming the prosecutor had a duty to disclose any instructions he may have received from the dog's handler on how to handle the scent object and any violation thereof, "[t]he evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States* v. *Bagley* (1985) 473 U.S. 667, 682. Because the evidence the Defendant says the prosecutor suppressed fails to show that either the scent object or the trail the dog tracked was contaminated, we hold that the evidence does not satisfy the test of materiality, and we reject the petitioner's due process argument.

A TRIER OF FACT CAN CONSIDER DOG TRACKING EVIDENCE WHEN DETERMINING GUILT.

Derr v. Commonwealth - Nov. 8, 1991 [**242 Va. 413**]
Facts: In addition to other evidence, the Commonwealth produced evidence at Defendant's trial that a police dog tracked a scent from the crime scene to a parking lot where Defendant had parked his car. On appeal, Defendant argues that the evidence was not sufficient to support convictions of burglary of a dwelling house while armed with a deadly weapon, rape, forcible sodomy, and abduction because the Commonwealth did not prove that he was the perpetrator of the crimes.
Holding: The evidence considered as a whole is sufficient to support the jury's findings that the Defendant perpetrated the criminal acts.

EXPERT TESTIMONY WITH RESPECT TO A DOG'S REACTION TO THE ODOR OF NARCOTICS IS ADMISSIBLE WHEN SUPPORTED BY A PROPER FOUNDATION. SUCH FOUNDATION MUST ESTABLISH THE APPROPRIATE TRAINING AND RELIABILITY OF THE DOG IN THE DETECTION OF SPECIFIC DRUGS BY ODOR AND THE WITNESS HANDLER'S EXPERTISE IN INTERPRETING THE DOG'S BEHAVIOR, TOGETHER WITH CIRCUMSTANCES CONDUCIVE TO A DEPENDABLE SCENT IDENTIFICATION BY THE ANIMAL AND A CREDIBLE EVALUATION OF ITS RELATED BEHAVIOR.

Hetmeyer v. Commonwealth - Oct. 4, 1994 [**19 Va. App. 103**]
Facts: During a scent lineup, a police dog alerted to the presence of drugs on money seized from the Defendant.
Holding: The dog's handler was qualified, without objection, as an expert in handling the dog and interpretation of his reactions. Evidence regarding the dog's certification, recertification, training regime, and near-perfect past performance was clearly sufficient to demonstrate the dog's high degree of reliability. The only two officers to handle the money after its seizure and prior to the lineup, testified that the currency in issue did not come into contact with narcotics prior to the dog's alert, and the evidence was uncontroverted that the "currency run" was conducted in accordance with procedures proven to produce accurate responses from the dog. Under such circumstances, the trial judge correctly ruled that Defendant's challenges to the protocols of the "lineup" went "to the weight of the evidence, not as to [its] admissibility," and were appropriate factual considerations for the jury. Therefore, evidence of the dog's reaction to the currency and the handler's related interpretation was properly admitted into evidence. The prejudicial effect of this evidence did not outweigh its probative value. Evidence of the dog's reaction to the currency permitted an inference that the money, portions of which belonged to Defendant, had been in contact with the offending drugs. It thus connected Defendant to the contraband and tended to establish his constructive possession of it, a fundamental element to the crimes in issue. The proof was, therefore, relevant, material, and highly probative and properly admitted into evidence by the court.

A TRIER OF FACT CAN CONSIDER DOG TRACKING EVIDENCE WHEN DETERMINING GUILT.

Allard v. Commonwealth - Jan. 28, 1997 [**24 Va. App. 57**]
Facts: In addition to other evidence, the Commonwealth produced evidence that a police dog tracked the Defendant from the crime scene. The Defendant argued that insufficient evidence supported his conviction.
Holding: The jury could reasonably infer from this evidence that Defendant was present at the scene of the crime.

A POSITIVE ALERT FROM A NARCOTICS DETECTION DOG ESTABLISHES PROBABLE CAUSE TO CONDUCT A SEARCH OF A VEHICLE. EVIDENCE SEIZED DURING THAT SEARCH IS ADMISSIBLE AFTER A PROPER FOUNDATION HAS BEEN LAID TO SHOW THAT THE DOG WAS SUFFICIENTLY TRAINED TO BE RELIABLE IN DETECTING NARCOTICS. THE NARCOTICS DETECTION DOG'S RELIABILITY CAN BE ESTABLISHED FROM ITS TRAINING AND EXPERIENCE, AS WELL AS A PROVEN TRACK RECORD OF PREVIOUS ALERTS TO THE EXISTENCE OF ILLEGAL NARCOTICS. SPECIFIC CERTIFICATIONS AND THE RESULTS OF FIELD TESTING ARE NOT REQUIRED TO ESTABLISH A

SUFFICIENT FOUNDATION. HOWEVER, IF THE DOG'S QUALIFICATIONS ARE CHALLENGED, THE TRIAL COURT MAY CONSIDER ANY RELEVANT EVIDENCE IN DETERMINING WHETHER THE COMMONWEALTH HAS ESTABLISHED THE DOG'S RELIABILITY IN DETECTING NARCOTICS.

Jones v. Commonwealth - Jan. 16, 2009 [**277 Va. 171**]
Facts: Police stopped Defendant's vehicle. A narcotics detection dog called to the scene alerted at the driver's side door of the Defendant's vehicle. Based upon the dog's alert, officers searched the passenger compartment of the vehicle and found a small amount of green leafy material that the officers believed to be marijuana embedded in the driver's side floorboard. Police then searched the trunk of the vehicle and found a loaded firearm. In his motion to suppress the firearm, Defendant argued that the narcotics detection dog alert was not proven sufficiently reliable to establish probable cause to search his car.
Holding: The trial court did not abuse its discretion in holding the narcotics detection dog's training and experience sufficient to establish the dog's reliability for purposes of supporting a finding of probable cause. The police department's failure to conduct backwards-looking checks of the dog's accuracy in detecting narcotics did not negate the dog's reliability.

A POSITIVE ALERT ON A VEHICLE BY A TRAINED NARCOTICS DETECTION DOG, COMBINED WITH THE SUBSEQUENT FRUITLESS SEARCHES OF THE VEHICLE, THE DRIVER, AND TWO PASSENGERS, DOES NOT PROVIDE SUFFICIENT PARTICULARIZED PROBABLE CAUSE TO ALLOW A SEARCH OF THE ONLY REMAINING PASSENGER IN THE VEHICLE.

Whitehead v. Commonwealth - Sept. 18, 2009 [**278 Va. 300**]
Facts: Defendant was a passenger in a vehicle stopped by police. Subsequently, a narcotics detection dog alerted to the presence of contraband at the driver's side door of the vehicle. Police then searched the vehicle and the occupants of the vehicle other than Defendant. Police found no contraband. Subsequently, police searched the Defendant and discovered contraband.
Holding: Probable cause to search Defendant was absent. After the positive alert by the trained narcotics detection dog, police unquestionably had probable cause to search the vehicle. However, without something more, the positive alert did not provide probable cause sufficiently particularized as to Defendant to allow the search of his person. The positive alert by the dog and the subsequent fruitless searches of the vehicle and three of its occupants may have created a strong suspicion that contraband was present on the Defendant's person; however, probable cause requires more than a strong suspicion.

1) THE TRIAL COURT PROPERLY DENIED DEFENDANT'S SUPPRESSION MOTION BECAUSE POLICE LAWFULLY STOPPED THE DEFENDANT BASED ON REASONABLE ARTICULABLE

SUSPICION THAT HE WAS, OR WAS ABOUT TO BE, ENGAGED IN CRIMINAL ACTIVITY, AND THEN DETAINED HIM ONLY SO LONG AS WAS REASONABLY NECESSARY TO CONFIRM OR DISPEL THAT SUSPICION VIA THE USE OF A NARCOTICS CANINE UNIT.

2) THE USE OF A TRAINED NARCOTICS DETECTION DOG TO DETECT DRUG CONTRABAND IN A VEHICLE DOES NOT CONSTITUTE A SEARCH FOR FOURTH AMENDMENT PURPOSES.

Lawson v. Commonwealth - Jan. 12, 2010 [**55 Va. App. 549**]
Facts: Police received information from a confidential informant that Defendant was selling narcotics. During a two-week surveillance of the Defendant, police observed activity by the Defendant consistent with the sale of narcotics. Subsequently, police stopped the Defendant as the Defendant was driving his vehicle. A consensual search of the Defendant's person uncovered no contraband. After this search, police detained the Defendant for 20 to 25 minutes while waiting for a narcotics canine unit to arrive in order for the Defendant's vehicle to be scanned by a trained narcotics detection dog. The dog alerted on the exterior of the partially opened driver's door of Defendant's vehicle. Once inside the vehicle, the dog alerted on the back of the driver's seat. Upon searching that area of the vehicle, police recovered a small quantity of cocaine. The trial court denied Defendant's motion to suppress this evidence.
Holding: Given the information police collected during their two-week surveillance of the Defendant, police were justified in stopping Defendant's vehicle and detaining him, while awaiting the canine unit's arrival and investigation of the vehicle. The police diligently pursued their investigation of the Defendant's vehicle for narcotics by dispatching the canine unit to the scene within 20 to 25 minutes. The fact that the Defendant was placed in the back seat of a police vehicle while awaiting the arrival of the canine unit did not take his detention beyond the scope of a lawful *Terry* stop.

Epperly v. Commonwealth, 224 Va. 214 (Va. 1982).
A German shepherd dog, which had been used in over 150 criminal cases, was taken to the area where the victim's car was found abandoned. The dog was scented on underwear taken from defendant. After making a casting search to find the scent, the dog ascended a path to a railroad bridge across the New River, crossed the bridge, followed the tracks into Radford, and eventually walked up to the front door of defendant's house. The trail followed by the dog had led past the locations of the clothing and other items which had been found by searchers. Later, the dog performed other tracking tasks indicating that it was tracking defendant. When informed of what the dog had done, the defendant put his head on his arms and said, "That's a damn good dog" several times. The victim's body was never found. The case was based largely on circumstantial evidence. Defendant was convicted of first-degree murder. On appeal, one of the defendant's contentions was that the trial court erred in admitting evidence of experiments conducted with the tracking dog. The Supreme Court of Virginia held that dog-tracking evidence is admissible in a criminal case after a proper foundation has been laid to show that the handler was qualified to work with the dog and to interpret its responses, that the dog was a sufficiently trained and proven tracker of human scent, that the dog was placed on the trail where circumstances

indicated that the guilty party had been, and that the trail had not become so stale or contaminated as to be beyond the dog's tracking capabilities. The court pointed out that the dog handler's qualifications and the dog's training and abilities were fully developed; the dog was placed on the track at a point where other evidence showed that the perpetrator had been; and the dog unerringly followed the trail past the various points where the victim's clothing and the bloodstained towel had been hidden, and came to the defendant's front door. In addition, the court noted that the trail was eleven days old and had been subjected to considerable rainfall, but the foundation testimony showed that the dog had successfully followed older trails and had succeeded despite far worse atmospheric conditions. As a result, the factors of staleness and contamination of the trail had been properly submitted to the jury's consideration in connection with the weight to be given to the handler's testimony. The judgment was affirmed.

Pelletier v. Commonwealth, 42 Va. App. 406 (Va. Ct. App. 2004).
A bloodhound was used to trail the defendant, beginning from the point on the beach where the victim's body was recovered. The bloodhound was scented with a towel collected from the defendant's home. The dog followed the scent to the door of defendant's residence, where the dog indicated the trail ended. The victim's scent was also trailed, starting at the front door of her residence. The trail led into a wooded area along a path to a bluff, then to flat ground and the water's edge. The dog's handler described an area of "pool scent" at this location. The dog eventually left the "pool scent" area and trailed along the water's edge ending on the point of land nearest the place where the victim's body was recovered. Another bloodhound and its handler trailed the victim and defendant and obtained similar results. There was also a taped telephone confession, DNA evidence, and a letter to a friend requesting that the friend lie at the defendant's trial. Defendant was convicted of rape; capital murder during the commission of, or subsequent to, rape; using a firearm during the commission of murder; and possessing a firearm after having been convicted of a felony. On appeal, one of the defendant's contentions was that the trial court improperly allowed the dog trailing evidence. Defendant argued that the Commonwealth failed to lay a proper foundation for the admission of the dog handler's expert testimony and all expert testimony, whether it involves a scientific field, such as DNA analysis, or a highly specialized one, such as dog trailing or tracking, must be preceded by adequate scientific explanation that establishes its reliability. The Court of Appeals of Virginia stated that *Epperly* does not hold that dog tracking evidence must be explained scientifically before it can be admitted. The court articulated the principle that an expert's testimony is admissible not only when scientific knowledge is required, but when experience and observation in a special calling give the expert knowledge of a subject beyond common intelligence and ordinary experience. It went on to explain that *Epperly* holds that dog trailing evidence must be empirically shown to be reliable from experience and the showing of reliability is met by testimony from the handler establishing that he was qualified to work with the dog and to interpret its responses and that the dog was a sufficiently trained and proven tracker of human scent. According to the court, the Commonwealth met the foundational requirements for dog trailing evidence established in *Epperly*, and the handler's opinion on the direction of travel and the age of the trail was properly allowed. Pelletier also challenged the handler's opinion regarding the age of the trail, contending it was nothing more than post-hoc rationalization and further argued that

all of the dog trailing evidence should have been excluded because it constituted nothing more than post-hoc rationalization. The court noted that the handler explained that his opinion regarding the age of the trail did not rest solely on his dog's trailing efforts and that he relied on other evidence signifying the age of the trail and then observed the dog's responses on the trail to determine if they corroborated the known data on trail age. The court found that the requisite foundation admitting evidence of trail age was laid and that defendant's objection to the handler's opinion on the age of the trail goes only to the weight of his testimony, not to its admissibility. The defendant did not cite authority in support of this argument that all of the evidence should have been excluded because it was post-hoc rationalization and the court declined to address it. The judgment was affirmed on these and other grounds.

WASHINGTON

State v. Carlin, 40 Wn. App. 698 (Wash Ct. App. 1985) (overruled on other grounds by *City of Seattle v. Heatley*, 70 Wn. App. 573 (Wash Ct. App. 1993))

A NARCOTICS DETECTION DOG'S ALERT TO THE PRESENCE OF NARCOTICS WITHIN A VEHICLE CAN BE USED WITH OTHER CIRCUMSTANTIAL EVIDENCE TO ESTABLISH THE PROBABLE CAUSE NECESSARY TO SEIZE THAT VEHICLE AS A CONVEYANCE USED TO FACILITAR THE SALE OR DELIVERY OF A CONTROLLED SUBSTANCE.

Adams County v. One 1978 Blue Ford Bronco - Jun. 30, 1994 [**74 Wn. App. 702**]
Facts: During a search of the Petitioner's residence, a narcotics detection dog alerted to the presence of narcotics in Petitioner's vehicle. Police seized that vehicle as a conveyance used to facilitate the sale or delivery of a controlled substance.
Holding: Circumstantial evidence relied upon by the County warrants a person of ordinary caution in the belief that the vehicle was used in the proscribed manner. Thus, there existed probable cause to seize the vehicle. The Petitioner failed to show by a preponderance of the evidence that the vehicle had not been used in illegal drug activities. Forfeiture was appropriate.

INSUFFICIENT EVIDENCE EXISTED TO SUPPORT A FORFEITURE OF MONEY AS PROCEEDS OF ILLEGAL DRUG TRANSACTIONS WHERE A NARCOTICS DETECTION DOG MERELY ALERTED TO THE PRESENCE OF NARCOTICS ON THAT MONEY.

Valerio v. Lacey Police Dep't - Feb. 1, 2002 [**110 Wn. App. 163**] (superseded on other grounds as noted by *Sam v. Okanogan County Sheriff's Office*, 136 Wn. App. 220 (Wash Ct. App. 2006)
Facts: A narcotics sniffing dog alerted to the presence of drugs on Petitioner's money. Police seized this money as proceeds of illegal drug transactions.
Holding: The dog-sniff evidence did not establish probable cause for the officers to believe that the money had been used in connection with the drug business because: (1) the money had been stored for four days in a city police department safe, where the money could have absorbed controlled substances odors from other evidence stored in the same safe; (2) according to the dog's handler, the dog could have reacted to such absorbed odors; (3) there was no evidence that this dog had been trained to differentiate between odors absorbed from contact with drugs as opposed to odors absorbed from other sources; (4) there are trace amounts of controlled substances on virtually all circulated U.S. currency; and (5) the state crime lab could not confirm the presence of traces of illegal drugs on the money.

State v. Socolof, 28 Wash. App. 407 (Wash. Ct. App. 1981).

A police dog arrived at the scene of an assault shortly after it occurred. Prior to the dog's arrival a buck knife was found near the victim. The dog trailed the defendant until he came to the second of two vans parked on the street. The dog lost the track at the rear of the second van, continuing on for 50 to 100 yards trying to pick up the scent. The dog was brought back to the van, at which time the dog gave a very strong suspect identification at the point where he had lost the track. According to the dog's handler, the dog had been unable to detect the presence of the suspect the first time because the suspect had not been in the van long enough for his scent to seep out. The defendant's clothing matched the description of the assailant, the victim identified the defendant as her assailant, and an empty buck knife sheath was found near the defendant in the van. Defendant was convicted of first-degree assault. At the trial the court failed to give a unanimity instruction regarding the underlying charges of intent to kill, rape or kidnap and the State conceded that the Court of Appeals of Washington had to remand for new trial but joined in defendant's request that the court consider the issues on appeal to avoid error in the new trial. One of the issues was defendant's contention that tracking dog evidence is in the nature of expert testimony which is not subject to cross-examination and its admission is therefore a denial of his right of confrontation. The defendant pointed out that the dog handler could not testify whether the dog followed a track or merely began to search for one, whether the track he followed was that of defendant or another, whether the dog abandoned the original track for another, how certain the dog was or upon what bases the dog made the fine distinction between one track and another. The court stated that what must be shown as a condition precedent to admissibility of tracking dog evidence is: (1) the handler was qualified by training and experience to use the dog, (2) the dog was adequately trained in tracking humans, (3) the dog has, in actual cases, been found by experience to be reliable in pursuing human track, (4) the dog was placed on track where circumstances indicated the guilty party to have been, and (5) the trail had not become so stale or contaminated as to be beyond the dog's competency to follow. According to the court, the testimony indicated that the dog handler had been working with the canine unit for seven years, had worked with the dog used in the case for 4 1/2 to 5 years, had gone through a basic training program with the dog, had attended many seminars and lectures on police dog tracking, and had helped in the training of other police dogs. The testimony also showed that the handler and dog had received many awards including Canine Team for the Year; the dog was an experienced dog, having made approximately 500 arrests as a result of his tracking efforts; and the dog was placed on track where circumstances indicated the assault to have taken place at a time when it was improbable that the trail could have become stale or contaminated. The court held that a proper foundation was laid for admission of the tracking evidence in this case and the trial court properly admitted the dog handler's testimony as circumstantial evidence.

State v. Loucks, 32 Wn. App. 77 (Wash. Ct. App. 1982); reversed by *State v. Loucks*, 98 Wn.2d. 563 (Wash. Ct. App. 1983).

Within minutes of an initial alarm to police, a Seattle police officer arrived at the scene of a residential burglary with his specially trained police dog. The officer commanded the dog to search for the intruders, and the dog wandered through the house, picked up a scent in

the basement, ran to the prayer desk on the patio, and then left the house with the officer close behind. The dog went to the residence just south of the burglarized house, ran down some outside steps, rounded a corner and stopped. The officer, following behind, could only see the back of the dog when it stopped and, thinking that it might have become distracted, ordered it to keep tracking. When the officer came closer to the dog, he saw that the dog was biting the leg of the defendant who was crouched in the stairway. Further investigation revealed that the defendant had been stopped by police near the victim's home about an hour before the burglary and cited for jaywalking. The police found fresh blood smears around the basement door and in the main floor library. Fingerprints were found near the basement door, in the room where the prayer desk had been located, and in the library. Neither the blood nor fingerprints matched the defendant's. The State theorized that there were two entry points, the basement door and the main level stained glass window, and that two persons were involved in the burglary. Defendant was convicted of second-degree burglary. The sole issue on appeal was whether the State's evidence was sufficient to permit any rational trier of fact to find defendant guilty beyond a reasonable doubt. The court, citing *Socolof*, stated that tracking dog evidence is admissible in court if an adequate foundation is laid: (1) a qualified handler; (2) a dog adequately trained in tracking humans; (3) a showing that the dog is reliable and has successfully tracked humans in the past; (4) placement of the dog where circumstances indicate the guilty party to have been; and (5) evidence that the trail had not become so stale or contaminated as to be beyond the dog's competency to follow. The court held that the conditions were met and the trial court correctly admitted the evidence. According to the court, the evidence most favorable to the State included the defendant's unexplained presence in the area of the victim's home just before the burglary, the tracking dog's detection of the defendant's scent inside the home and about the prayer desk, and the quick apprehension of the defendant crouched in a stairway in an adjoining home. The judgment was affirmed.

State v. Loucks, 98 Wn.2d. 563 (Wash. 1983).
The Supreme Court of Washington stated that it agreed that dog tracking evidence should be admissible where a proper foundation is made showing the qualifications of dog and handler and adopt the conditions precedent to admissibility spelled out in *Socolof*. However, the court also stated that dog tracking evidence must be supported by corroborating evidence. The court found that the evidence presented by the State failed to corroborate tracking evidence provided by dog handler and police dog. It stated that the State presented no evidence the intrusions were made by different individuals or that more than one person passed through the two alleged points of entry, the unexplained presence in the Capitol Hill vicinity is susceptible to too many constructions to constitute evidence of defendant's complicity in the burglary, and standing alone, the police dog's identification of defendant as the burglar was insufficient to sustain his conviction. The defendant's conviction was reversed.

People v. Wagner, 36 Wn. App. 286 (Wash. Ct. App. 1983).
A police dog and his handler arrived at the burglary scene within 3 minutes, searched the basement, and found that a window had been removed. Shortly thereafter, the dog handler scented his dog with the basement window. The dog tracked the scent to a nearby

intersection where the handler saw the defendant talking with another officer. The handler then took the dog off the scent. The defendant was convicted of burglary in the second degree. On appeal, defendant contended that the trial court erred by refusing to instruct the jury that he could not be found guilty solely upon dog-tracking evidence. The Court of Appeals of Washington stated that the rule in Washington is that dog tracking evidence must be supported by corroborating evidence and that standing alone it is insufficient for a criminal conviction. The court stated that circumspection was required in the form of an instruction stating, in substance, that such evidence must be viewed with caution; that it must be considered with all other testimony in the case; and that, in the absence of some other evidence of guilt, it does not warrant conviction. It acknowledged that independent evidence of the defendant's presence in the victim's home was introduced, but that the jury needed to be informed so that there would not be a conviction upon the dog-tracking evidence alone. The judgment was reversed and the case was remanded for a new trial.

State v. Nicholas, 34 Wn. App. 775 (Wash. Ct. App. 1983).
A police dog was taken to the scene of rapes on two different occasions. The dog picked up a scent on the bushes near the victim's house, but lost it at a nearby street intersection. The dog picked up a scent again on the other side of the intersection after hunting for a while. The dog and his handler ran down the street into a school yard, where they found the defendant, extremely sweaty and red-faced, and as apparently having an erection. The defendant had scratches on his face. The victim could not identify the person that raped her but believed that it was the defendant. Fingernail scrapings taken from the victim contained human blood. An acid phosphatase test on a vaginal smear failed to eliminate the defendant as a suspect. Defendant's mother gave police a sweatshirt of defendant which was similar to that worn by the rapist during one of the rapes. Defendant was convicted of one count of burglary in the first degree and one count of rape in the first degree. On appeal, one of the defendant's contentions was that tracking dog evidence was legally insufficient to provide proof of identity beyond a reasonable doubt, that under *Loucks*, there must be independent substantial evidence of identity sufficient to satisfy the standard of *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980), and that such evidence was lacking. The Appeals Court of Washington found that the rule urged by the defendant, that the corroborating evidence required under *Loucks* must be sufficient by itself to satisfy the *Green* standard, would go beyond the holding in *Loucks* and would in effect make tracking dog evidence *inadmissible* absent such corroborating evidence. The defendant conceded that a proper foundation was made for admitting the tracking dog evidence and the court stated that once ruled properly admissible the tracking dog evidence, albeit insufficient to convict by itself, must be considered along with all of the other evidence of identity in determining under *Green* whether there was substantial evidence to convict. According to the court, the test was whether all of the evidence of identity, including that of the tracking dog, and the reasonable inferences to be drawn therefrom, when viewed in the light most favorable to the State, is sufficient to permit a rational trier of the fact to find beyond a reasonable doubt that defendant was the perpetrator one of the rapes and burglary. The court pointed out that the defendant fit the victim's description of the rapist, he was extremely sweaty, he was reasonably close to the victim's residence and he was not excluded from consideration by the medical tests, he had fresh bleeding cuts on his cheek and nose and a scratch on the other side of his nose, fingernail scrapings taken from the

victim contained human blood. It held that this evidence, taken together with the tracking dog identification, was sufficient to satisfy the *Green* standard.

State v. Welker, 37 Wash. App. 628 (Wash. Ct. App. 1984).
Approximately one-half hour after the rape was committed a deputy arrived at the victim's home with his police dog. Prior to the dog's arrival, steps were taken to protect the exit from the victim's home from contamination until the dog could arrive. The dog was instructed to track commencing at the point where the attacker was believed to have emerged into the yard. The dog tracked south across the backyards of the victim's neighbors and then east toward the street, passing between two houses. The dog continued tracking south for two or more houses but then lost interest in the track, which indicated to the deputy that the dog had lost the scent. As they had passed between the two houses, a sergeant that was accompanying the canine unit observed the light on in a home where defendant, who was a person of interest, lived. Further investigation at the home eventually led to the arrest of the defendant. The victim was able to provide a partial description of the person that raped her and had scratched the person during the rape. The defendant had fresh scratches on his face and met the description provided by the victim. Defendant was convicted of first degree rape and first degree burglary. On appeal, one of the defendant's contentions was that the evidence of the track made by the dog should have been excluded because an insufficient foundation was laid showing the dog's reliability. The deputy testified that he had been assisting in the training of police dogs for the last one and a half years under the supervision of a professional trainer and had been assigned to the canine unit for 4 months before the track of the defendant, he and his dog had been trained to be a team by a professional trainer in a two-and-a-half week session, he had recently attended a week-long seminar on all aspects of canine tracking, the dog who did the track had been with the police force since May 1980 and had been trained by a professional trainer to track humans, he had participated in the dog's training, the dog followed the defendant's track with vigor, pulling at the leash, and the dog had successfully tracked human quarry on hundreds of occasions in practice. In addition, he testified that his dog had made one successful track of human quarry leading to an arrest and on two other occasions had tracked human quarry to a location where escape was made in an automobile. The defendant conceded that condition 4 was met and the Court of Appeals of Washington found that all other conditions were met as well. The judgment was affirmed on this and other grounds.

State v. Carlin, 40 Wn. App. 698 (Wash Ct. App. 1985).
In response to an officer's call for assistance, a police dog handler and his dog arrived at the scene of a burglary. The dog handler saw three people on the railroad tracks start to run when the officer yelled at them to stop. Upon command, the dog tracked southwest to a place where several cases of beer were found and then toward some office buildings. The dog ran around the corner of a building, and when his handler followed him, he saw the dog standing beside the officer and the defendant. At trial the dog's handler testified that experienced police dogs like his dog tracked by following a guilt or fear scent and that his dog tracked the defendant in this case by following a "fresh guilt scent." The defendant was convicted of second degree burglary. On appeal, the issue was whether the police officer's testimony that his police dog located the defendant by tracking a "fresh guilt

scent" was an opinion as to guilt whose admission violated the defendant's right to a trial by an impartial fact finder. The Appeals Court of Washington stated that the issue can be raised for the first time on appeal since it involves a constitutional claim. The court stated that an opinion as to the defendant's guilt is an improper lay or expert opinion because the determination of the defendant's guilt or innocence is solely a question for the trier of fact and in a nonjury trial a witness' opinion as to the defendant's guilt violates the defendant's jury trial right by invading the province of the impartial fact finder. It found that the dog handler's testimony that the police dog tracked the defendant by following a fresh guilt scent was an improper opinion as to the defendant's guilt. However, it also found that even if the testimony's admission was error, the error was harmless beyond a reasonable doubt. The court pointed out that the court commissioner mentioned "scent" several times, but never prefaced by the word "guilt" and that the language in the oral opinion reflects an awareness of the impropriety of considering the testimony as to "guilt" scent in determining the defendant's guilt or innocence. It also noted that there was overwhelming evidence in that the police officer apprehended the defendant prior to the trailing by the dog and the defendant admitted to his mother that he committed the crime. The trial court's judgment was affirmed.

State v. Ellis, 48 Wash. App. 333 (Wash. Ct. App. 1987).
Police officers, responding to a silent alarm at an elementary school, saw two men running from the south end of the school. The police pursued, but lost sight of them. A tracking dog was brought to the scene, and a person was quickly located by the dog under a car. The person's clothing matched the clothing of one of the men seen running from the scene. After being returned to the school, the dog picked up a second scent leading to a nearby house, and pursued the defendant who ran from some bushes into a swampy area. The defendant's clothing matched the clothing of the second man seen running from the school. The defendant was eventually apprehended. Defendant was convicted of second-degree burglary. On appeal, the defendant contended that the trial court erred by not giving his proposed instruction on the necessity of corroboration for dog-tracking evidence. A portion of the instruction that the defendant requested read: "To sustain its burden of proof, the State must introduce other evidence which clearly connects the accused with the commission of the offense. If the State has not introduced such evidence, it has not borne its burden of proof beyond a reasonable doubt, and you must find the defendant not guilty." The Appeals Court of Washington explained that corroborating evidence is defined as evidence supplementary to that already given and tending to strengthen or confirm it and the proposed instruction implied that the other evidence must be sufficient by itself to convict the accused. The court found that because defendant's proposed instruction incorrectly stated the standard for dog track evidence, the trial court properly did not use and held that there was sufficient evidence taken as a whole, including the dog track evidence, to find the defendant guilty beyond a reasonable doubt. The judgment was affirmed.

WEST VIRGINIA

THE TRIAL COURT PROPERLY ADMITTED $1840 IN MARKED CASH FOUND BY A TRAINED POLICE DOG.

State v. Broughton - Apr. 8, 1996 [**196 W. Va. 281**]
Facts: Defendant sold drugs to a police informant. The informant paid the Defendant with $1840 in cash marked by the police. After arresting the Defendant, police used a trained dog to find the $1840.
Holding: The lower court did not abuse its discretion in admitting the $1840 in cash as authentic and relevant evidence. The foundation presented by the State adequately established that the marked bills were located by a trained, experienced police dog thirty-five to forty feet from the point of the Defendant's apprehension just hours after that apprehension. That testimony adequately established a nexus between the Defendant and the money, justifying its introduction as evidence before the jury. Any issues regarding the qualifications of the handler, the training of the dog, or the passage of time between the apprehension and the recovery of the cash affect the weight of the evidence rather than its admissibility.

State v. McKinney, 88 W. Va. 400 (W. Va. 1921).
The victim was shot in the face while sitting on his porch. The aid of a man having two young blood hounds was secured. The bloodhounds were taken to the point from which the shot seemed to have come, picked up a trail there, and followed it for a distance of about eight miles, to the front door of the home of the father of the accused. The dogs were taken behind the house and kept there until the defendant was aroused and taken from his bed and to a point seventy-five or a hundred yards from the house. Then, they were again put upon the defendant’s trail and went to him and indicated that he was the person that they had been trailing. The defendant admitted he had been at the victim’s house on the previous evening and also that he had fired the shot. Defendant was convicted of malicious shooting. On appeal, the defendant contended that the trial court erred in overruling his motion to quash the indictment. The defendant claimed the he went to the scene of the shooting and back to his home on horseback. The Supreme Court of West Virginia stated that whether the accused made the trip on horseback or on foot was a question for jury determination and that it was not improper to admit the evidence of the trailing of the accused by the bloodhounds if it was sufficiently shown that they were bloodhounds, that they had acuteness of scent, and power of discrimination between persons, and had been trained to trail human beings. The court pointed out that the owner of the dogs testified that they were of pure blood, that they had acuteness of scent, that they had been trained to track human beings, and that on more than one occasion, they had successfully trailed and identified persons accused of crime. The court found that the exclusion of evidence that the defendant’s sister, who was also the wife of the victim, told the defendant that the victim beat her and threatened to kill her whole family was erroneous. The verdict was set aside and the case was remanded for a new trial.

U.S. COURT OF APPEALS FOURTH CIRCUIT

No new cases found via shepardizing.

United States v. Carroll, 710 F.2d 164 (4th Cir. 1983).
Police responded to a silent alarm set off at a Wilmington, North Carolina, branch of the First National Bank. The police discovered some freshly made footprints near the bank and followed them into the woods. The officers discovered two burlap bags and a piece of copper tubing with a treble hook attached to one end. A trained dog handler arrived at the bank within a half an hour. The dog's handler instructed his tracking dog to smell the night deposit box and to track the individual whose scent he smelled on the box. The dog led his handler to the path leading into the woods and to the location of the two burlap bags and copper tubing. From there, the dog proceeded deeper into the woods to a dense thicket. The dog then indicated that there were at least two suspects who had gone in opposite directions. The dog and his handler then went a few yards further and the dog indicated that he could smell a suspect nearby. The handler then halted the search under instructions received over his police radio to go to a nearby parking lot where the defendant was being detained. The defendant had scratches on his face, neck, and hands. The next day, the dog handler and his dog went back to the bank and the dog was scented with the defendant's confiscated trousers. The dog led his handler into the woods past the spot where the bags and copper tube were found and, at the point where the dog previously had indicated that the trail had split, followed the trail to the right. The dog then indicated that the trail turned back toward College Road. The handler did not follow the trail through the woods but took the dog to the area where the deputy sheriff had been parked and the dog indicated that the defendant had exited the woods near where he had approached the deputy's car. The handler did not follow the trail from the exit point back through the woods to the bank. None of the footprints found at the scene were later identified as the defendant's. However, soil samples taken from defendant's clothes matched the soil behind the bank. Defendant was convicted of attempting to enter a federally insured bank with the intent to commit a felony. On appeal, one of the defendant's assignments of error was that the evidence relating to the tracking dog should have been suppressed. The defendant argued that 1) the prosecution did not establish a proper foundation, namely that the evidence was unreliable because the dog did not have a sufficiently successful tracking record, the trail the dog followed had been contaminated by the police, the dog never followed the complete trail, and the handler did not allow the dog to smell defendant when he was taken into custody by the deputy sheriff; 2) that the district court erred by failing to warn the jury not to give undue weight to the dog tracking evidence; and 3) that it was error for the district court to quash his subpoena of the tracking dog. The 4th Circuit Court pointed out that the dog's handler testified that he and the dog successfully completed a 10-day detection and tracking training course, practiced tracking at least three times a week, and previously had worked on about 17 to 25 cases, and that the dog successfully had tracked objects and people on hundreds of prior occasions in training sessions and in actual police work. The court stated that the testimony established a proper foundation for the evidence. Regarding the quashing of the subpoena of the dog, the court stated that where the handler testifies that the dog successfully has completed a training course, practices several times a week, and successfully has completed hundreds

of tracking exercises, no purpose would have been served by having the dog appear before the jury to perform a set of tests. The court pointed out that the defendant failed to request an instruction that warned the jury not to give undue weight to the dog tracking evidence and as a result, he has waived his objection to its omission, absent plain error. It did not find that there was plain error. The judgment was affirmed.

Epperly v. Booker, 997 F.2d 1 (4th Cir. 1993).

About ten days after the victim's disappearance, investigators used a tracking dog to search for evidence. The dog was scented with a pair of defendant's unlaundered underwear. For over an hour, the dog followed a trail from the place where the victim's car had been abandoned, pausing at each point where evidence had been discovered, and winding around for nearly two miles before walking up to defendant's front door and stopping on his porch. The dog scented the defendant on two other occasions as well. The first scent line-up was conducted with one of the towels in evidence, which officers had spread out with six similar towels in an auditorium, and the second was with the defendant's car, which was in the police station parking lot. In the second line-up the dog followed the defendant's trail into the station, and into the office where the defendant was being questioned. The defendant responded by putting his head into his arms and saying, "That's a damn good dog." He was convicted of first-degree murder. He exhausted his state remedies by direct and collateral challenges to his conviction and was then denied relief on his federal habeas corpus petition. This case was an appeal from the denial of the petition. One of the defendant's contentions was that the defendant violated his right to due process by suppressing material exculpatory evidence, which was that the dog-tracking expert typically instructs prosecutors to prevent scent item contamination by ensuring that the item is secured in a sealed container and separated from anyone involved in the investigation. At the state habeas proceeding there was testimony that one of the officers received the underwear in a paper bag and that, although he kept the bag with him for nine or ten hours, he never touched the scent item directly before giving it to the dog's handler. Moreover, while the officer was present at the outset of the tracking, the dog did not nuzzle him as would have been expected if the officer had contaminated the scent item. The defendant argued that (1) because the prosecutor failed to ensure that those instructions were followed, the dog-tracking was invalid from the outset and that (2) defense counsel's ignorance of these instructions at trial prevented him from undermining the dog-tracking evidence, which weighed dispositively against the defendant. The court pointed out that the protocols governing dog-tracking were not possessed exclusively by the state and that the evidence was available from other sources through the efforts of a diligent defense attorney through discovery, independent expert testimony, or cross-examination of the dog handler himself. It stated that even if *Brady* were applicable, the evidence in question was insufficiently material to warrant reversal, for two reasons. First, during the state habeas proceedings the state rebutted defendant's factual claims that the track was contaminated. Second, the dog-tracking provided a merely cumulative link between the defendant and victim's death, rendering any nondisclosure immaterial. The judgment was affirmed on these and other grounds.

United States v. Griffin, 148 Fed. Appx. 169, 170 (4th Cir. 2005).

A police trained was taken to the passenger side of a vehicle that crashed into a tree. One of occupants of the vehicle had fired at a police officer and the driver tried to run him over. The driver was quickly apprehended but the passenger fled. The dog picked up a scent and first found a rifle, then a single boot, in some nearby woods. The items were turned over to the police department. When the police discovered the passenger in the woods, he was missing a boot that matched the one that the dog found. The defendant was convicted of possession of a firearm by a convicted felon. On appeal, one of the defendant's contentions was that there was insufficient evidence to support his conviction. There were not contentions related to the admissibility of the dog-tracking evidence. The 4th Circuit Court concluded that the evidence was sufficient to convict the defendant. The judgment was affirmed on this and other grounds.

U.S. COURT OF APPEALS SIXTH CIRCUIT

THE TRIAL COURT PROPERLY ADMITTED DOG IDENTIFICATION EVIDENCE.

United States v. Little - Jun. 10, 1988 [**849 F.2d 610**]
Facts: The trial court admitted evidence that a trained dog identified the Defendant from a stocking mask. The court gave the following admonition to the jury: "Ladies and gentlemen of the jury, let me advise you that there has been evidence here about this dog, that they made certain investigations with the aid of a trained dog. Because, of course, it's not possible for the dog to communicate its findings to us directly, we must rely upon interpretation by its handler here, Mr. Wallen. Because of the nature of this evidence, you are instructed to receive it with caution and not give it undue weight. It's to be considered along with all the other evidence in the case in your deliberations."
Holding: Considering both the court's warning to the jury and the difficult hurdle posed by the plain error exception (because Defendant did not object to the admission of the dog identification evidence during trial), we are reluctant to find that the court below was plainly erroneous in admitting evidence of the dog identification.

United States v. Gates, 680 F.2d 1117 (6th Cir. 1982).
Defendant lost a sandal while fleeing a police officer that responded to a bank robbery. Eight months after the bank robbery, a tracking dog was scented with the recovered sandal, which had been kept in a sealed package. The dog then entered a room where a lineup had been composed, walked up to the defendant, and placed its head on defendant's lap. The police officer that responded to the bank robbery was able to identify the defendant as one of the robbers. Defendant was convicted of armed bank robbery. On appeal, the defendant claimed (1) that the District Court erred in admitting the tracking dog evidence in the absence of a proper foundation and (2) that the evidence was insufficient to produce a finding of guilt beyond a reasonable doubt. The 6th Circuit Court, citing *People v. Centolella*, 61 Misc.2d 726, 305 N.Y.S.2d 460, 462-63 (Oneida County Ct. 1969), stated that before a jury may pass on evidence of trailing by a bloodhound, it must be shown (1) that the dog is of pure blood and of a stock characterized by acuteness of scent and power of discrimination, (2) that the dog has been accustomed and trained to pursue the human track, (3) that the dog has been found by experience in actual cases to be reliable in such tracking, (4) that the dog was placed on the trail at a spot where the alleged participant or participants in the crime were known to have been, and (5) that the dog was placed on the trail within the period of his efficiency. The court pointed out that the dog used in the case was a German Shepherd who received extensive training in Germany and with his American handler, the dog had been on 100-150 tracking cases, the dog had tracked in fifteen states and qualified before in court, the American handler is the owner/director of a kennel which provides 24 hour-a-day nationwide manhunting services for law enforcement agencies, the American handler trained in the military and with a civilian tracker and has been working with dogs for seven years during which time he has been on three hundred manhunts and participated in seventy-seven actual case lineups and again that many demonstrative-type lineups. The American handler described his association memberships and the training procedures he employed and had been qualified in court before as the

dog’s handler. The court also noted that the district court judge admonished the jury to be wary about placing too much weight on this evidence. It concluded that sufficient evidence was presented to support the jury's finding of guilt. The court also concluded that even if the evidence supplied by the dog were inadmissible, there was more than enough clearly admissible evidence to support the jury verdict beyond a reasonable doubt. The judgment of the District Court was affirmed.

U.S. COURT OF APPEALS SEVENTH CIRCUIT

No new cases found via shepardizing.

Rumfelt v. United States, 445 F.2d 134 (7th Cir. 1971).
Defendant attempted to rob a bank and fled in a vehicle. A police car encountered the defendant and chased him for a distance. The defendant stopped the car, exited his vehicle, and fled into nearby woods with a gun. After a short while, the defendant exited the woods in clothes that were different from those he was wearing when he entered the woods. He was arrested by the pursing officer. State police began a search of the same woods with a German shepherd tracking dog. The dog found fresh tracks and led them to a pair of overalls and a blue sweat shirt before losing the scent. After returning to the abandoned Oldsmobile and giving the dog a scent from the ski mask which was found there, the dog led them to a suitcase which contained some clothing, assorted personal toilet items, a letter addressed to Rumfelt and a medication bottle with a prescription made out to Rumfelt. The letter and bottle were introduced into evidence at trial. The woods in question were surrounded on three sides by water. On the first tracking, the dog led the State Troopers to a certain point leading off into the water. The next day, State Troopers returned to this same spot and eventually uncovered an M-1 carbine, a.22 caliber pistol, two clips of ammunition, binoculars in a case, and a belt all in the water. The Government marked these items and attempted to introduce them at trial, but the Court did not admit thee items. Defendant (appellant) was convicted of attempted bank robbery. On appeal, one of the defendant's arguments was that the Government's attempt to admit the carbine and pistol was prejudicial error. The 6th Circuit Court was convinced that the jury could have inferred from the uncontradicted evidence that the weapons found under the ice at the point where the dog lost defendant's scent, were the property of the defendant. It also stated that the items, along with others identified by the dog and admitted into evidence, were connected to defendant through the qualified tracking dog and by the positive identifications of the trooper. The judgment of conviction was convicted on those and other grounds.

U.S. COURT OF APPEALS EIGHTH CIRCUIT

No new cases found via shepardizing.

Warren v. City of Lincoln, Nebraska, 864 F.2d 1436 (8th Cir. 1989).
One of the officers who responded to the call of an attempted breaking and entering was teamed with a police dog. The dog tracked the intruder's scent east from the crime scene to appellant's parked car four and one-half blocks away. The appellant matched the description of the witness to the attempted breaking and entering. As the police approached the car, appellant started his engine and attempted to drive away. A police officer flagged appellant down and told him to park his car. The police officer then approached appellant in his car and asked for some identification. She briefly questioned appellant and then ran a check on appellant's license from her squad car. She discovered an outstanding warrant for appellant's arrest for failure to appear on a traffic violation. The officers arrested appellant on the failure-to-appear warrant, performed a pat-down search, and put him in her squad car. He was taken to a jail complex and questioned about recent prowling incidents. Appellant's requests to see an attorney were denied and he was not read his Miranda rights. The appellant brought the suit against the city and three police officers. Appellant's complaint alleged that the police officers, pursuant to Lincoln police department policy, violated his constitutional rights in contravention of the fourth, fifth, sixth, and fourteenth amendments by falsely imprisoning him, denying him access to counsel, subjecting him to harassing interrogation, fingerprinting him, and photographing him. During trial, the suit against the city and one of the police officers was dismissed. The jury found in favor of the remaining police officers. On appeal, no issues regarding the dog-tracking that was performed were raised. The 8th Circuit Court ultimately concluded that the uncontroverted facts demonstrated that appellant's rights were not violated and affirmed the judgment of the district court.

U.S. COURT OF APPEALS NINTH CIRCUIT

No new cases found via shepardizing.

Grant v. City of Long Beach, 2003 U.S. App. LEXIS 13038 (9th Cir. 2003).
The victim was raped by a man she described as white with an ethnic accent. From a scent pad created at the crime scene, a police bloodhound attempted to track the assailant. The dog eventually led the officers to a twenty unit apartment building almost two miles away from the crime scene. The dog went directly to the second floor of the building, attempted to track the scent for ten more minutes, and then gave up after failing to identify any particular unit or individual. At the time, appellee lived in a unit on the first floor. The dog did not show any interest in appellee's unit or in the first floor at any point. Police observed the light in appellee's apartment was on and attempted to have him come out of his unit. When he did not, they considered him a suspect. Eventually, appellee was arrested and charged with a series of highly publicized rapes and related felonies (the "Belmont Shores rapes") that occurred over eighteen months in the City of Long Beach. When forensic evidence found at several crime scenes failed to match appellee's DNA, the prosecutor dropped all charges and released him from jail, where he had been sitting for over three months awaiting trial. Appellee then sued the City of Long Beach, the Long Beach Police Department, and the two police officers that spearheaded the investigation under 42 U.S.C. § 1983 for false arrest and false imprisonment. There was a jury award of $ 1.75 million in compensatory and punitive damages in favor of appellee. The officers assigned error to the district court's denial of two motions for judgment as a matter of law, first on probable cause and then on qualified immunity. They also challenged the exclusion of proffered testimony. According to testimony presented at trial, the officers based their determination of probable cause on the following information: (1) A trained police dog proceeded from a crime scene to appellee's apartment building in pursuit of a scent trail; (2) the only two victims capable of identifying their assailant selected appellee from a six person photo array; and (3) appellee resembled the general physical description provided by other victims of their assailant. The Ninth Circuit Court determined that the evidence did not amount to probable cause and the district court properly submitted this issue to the jury and entered judgment upon its verdict. In addressing the actions of the trained police dog, that court stated that whether a reliable canine identification outside of the drug context provides probable cause for an arrest is an issue that it did not need to decide, as the parties presented enough evidence at trial to call into question the threshold element of the dog's reliability. The court pointed out that the dog neither showed interest in appellee's apartment located on the first floor nor any other apartment on that floor; her handler testified that the dog was young for a police dog, with only 150 opportunities to track during both training and active duty; and compared to the *Lingenfelter* dog that had participated in over 500 actual investigations, she was still a novice. The officers did not provide any evidence regarding the dog's accuracy rate to bolster her reliability. The court stated that while it recognized the importance of dogs in police investigations, it also adhered to the requirement of reliability as a safeguard against faulty canine identifications. It concluded that the facts of this case provided no reason to depart from a showing of the dog's reliability and the jury had good reason to question the reliability of the dog's "identification."

United States v. Hornbeck, 63 Fed. Appx. 340 (9th Cir. 2003).
Details of the tracking performed by the bloodhound in the case were not provided. Defendant was convicted of armed bank robbery. On appeal, one of the defendant's arguments was that the district court erred in denying his motion in limine to exclude evidence concerning the bloodhound alert. The defendant asserted that the evidence was inherently unreliable, and therefore could not meet the methodology and reliability requirements of *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579, 125 L. Ed. 2d 469, 113 S. Ct. 2786 (1993). The 9th Circuit Court reviewed the district court's decision to admit or exclude evidence for an abuse of discretion and concluded that it was well within the discretion of the district court to admit this evidence. The court found that the evidence made it more likely that defendant was the bank robber by connecting the car with the evidence from the robbery to the defendant. Additionally, the court noted that when the district court conducted a pretrial hearing on defendant's motion in limine to exclude the dog scent evidence, it assessed the reliability of the evidence and determined that a proper foundation had been established for the admission of the scent tracking evidence. The district court noted that the K-9 Trainer had been working in the field successfully alerting police to defendants for eight years and the bloodhound had been used in 22 criminal investigations. The court stated that even if it concluded that the trial court failed to apply or misapplied the methodology and reliability requirements of *Daubert,* the non-constitutional errors would not have required reversal unless it was more probable than not that they affected the verdict. It concluded that in light of the other evidence connecting defendant to the robbery, any alleged error would have been harmless and as a result, the district court did not abuse its discretion when it determined that the canine tracking evidence was relevant and not unfairly prejudicial. The judgment was affirmed on this and other grounds.

U.S. COURT OF APPEALS ELEVENTH CIRCUIT

No new cases found via shepardizing.

United States v. Lavado, 750 F.2d 1527, 1530 (11th Cir. 1985).
A tracking bloodhound and her trainer had been following a trail from a location where the drug-running suspects had been beached to the area where the suspects were apprehended. The suspects had been placed on the U.S. Coast Guard patrol boat. When the dog was placed aboard the patrol boat she went up to the four suspects and sniffed them. This was her way of indicating the source of a scent or scents she had been following. She sniffed no one else on the boat. The defendants were convicted of conspiracy to possess with intent to distribute marijuana while on board a vessel subject to the jurisdiction of the United States and possession with intent to distribute marijuana. On appeal, the Colombian defendants alleged that the trail court erroneously admitted the tracking dog evidence. The 8th Circuit Court held that the evidence concerning the tracking dog was not erroneously admitted. The court pointed out that 1) the trainer testified to his own experience in training and using tracking dogs, extending over nearly ten years; 2) he explained the methodology for training and testified to prior experience with the dog and to her reliability; and 3) he testified that the dog began tracking at the site where four sets of footprints going in the same direction left a life jacket lying on the beach. According to the record, other footprints left the area of the life jacket and went in another direction. In addition, the life jacket was identified to the dog's handler as having been removed from the beached boat, and as marking the location where the occupants of the boat had left the boat. Another witness placed the beaching point at another location, but the circuit court stated the jury could accept the trainer's location as correct. The circuit court also stated that the dog did not run the Colombians down but sniffed them after they had been arrested. According to the court, the jury was entitled to accept the trainer's testimony that this was her way of identifying the subject of the track. In distinguishing the case from *U.S. v. Rozen*, 600 F.2d 494 (5th Cir.1979), the circuit court stated that the nexus between beaching point, jacket from the boat, four sets of prints, four persons arrested and sniffed by the dog, identification of the four as Colombians, and nexus of the boat to Colombia, sufficiently connected defendants to the scent and to the boat. The judgment was affirmed on this and other grounds.

United States v. McCreary, 901 F.2d 1028 (11th Cir. 1990).
Police arrived on a property where marijuana patches were observed by a pilot in the state's marijuana eradication program and found two pickup trucks (one beige, one red) and a shed. Officers also found keys to the access gate, marijuana residue, ammunition, and a shotgun inside the red truck; ammunition in the beige truck; and marijuana inside a freezer in the shed. Defendant owned the beige truck and freezer. Police used tracking dogs to find two persons whom the pilot had seen running from the area of a shed. Before losing the scent due to rain, the dogs found a trail and led police to a hat and a loaded rifle. Police found.22 caliber long-rifle, hollow-point shells in the rifle; the shells were the same type of shells found in the defendant's truck, which was on the property. The rifle and hat were found near a house lived in by defendant's sister and brother-in-law, and by

defendant's niece. The house was located a short distance from the shed where police found the freezer, pickup trucks, and marijuana. The defendant's father owned the land on which the shed was located. The defendant, along with his co-defendant, was convicted of possession with intent to distribute marijuana and of conspiracy to possess with intent to distribute the same. On appeal, the defendant claimed that the trial court improperly admitted the statement of defendant's niece. The 11th Circuit Court concluded beyond a reasonable doubt that the jury would have convicted the defendant in the absence of his niece's statement. The defendants also made a claim that the prosecution failed to lay a proper predicate for testimony about the tracking dogs, a sufficiency claim, and a claim that the trial court erroneously allowed the state to show that the seized substance was, in fact, marijuana. The court found no merit in the claims without discussing them. The judgment was affirmed on these and other grounds.

U.S. COURT OF APPEALS DISTRICT OF COLUMBIA CIRCUIT

THE TRIAL COURT PROPERLY ADMITTED DOG TRACKING EVIDENCE.

Starkes v. United States - Feb. 19, 1981 [**427 A.2d 437**]
Facts: A trained dog tracked Defendant. At trial, the dog's handler testified that the dog had been "trained to track suspects, do article searches, search buildings where people might be hiding [and] to locate lost children." He also pointed out that the dog had received courses in agility, obedience, and scent training during his thirteen years with the Canine Corps and that the dog's tracking ability had been rated as excellent. The dog had been successful in locating criminal suspects in more than one hundred cases. The record shows that the handler placed the dog on the trail shortly after the commission of the crime. He testified that the dog followed a scent from the crime scene to a chair inside the Ria Restaurant. Other witnesses corroborated the handler's testimony and established that Defendant had been sitting in the chair minutes before the arrival of the dog. Defendant contends that the trial court committed reversible error by permitting the dog's handler to testify about the dog's performance. He specifically maintains that a proper foundation was not laid to establish the tracking dog's past record of accuracy and reliability. He also contends that since the dog could not be cross-examined, testimony regarding its actions is inadmissible.
Holding: Proper foundation was laid and the trial court did not err in permitting testimony as to the dog's actions. The fact that the Defendant could not cross-examine the dog is irrelevant.

United States v. Joyner, 160 U.S. App. D.C. 384 (D.C. Cir. 1974).
A police tracking dog was taken to the scene of a murder robbery and followed a trail from the victim's rear door through the alleys and pathways to Jay Street and finally stopped on the sidewalk at the point where a black and white Cadillac had been parked. There was evidence that the vehicle was parked on Jay Street and three men entered the car and drove off a short while after the shooting. The Police Department's Chief Instructor for training of police dogs, a qualified expert in the field of training and observing tracking dogs, was called as a witness. He described and explained the methods of training and the actions of dogs on a track, and expressed his opinion as to the general reliability of the Police Department's trackers. In response to a hypothetical question he gave his interpretation of the actions of the dog. Money orders were stolen from the victim's home and defendant was arrested after trying to pass one of them. There was also a witness that testified that defendant admitted that he shot the victim. The government proved that Joyner's palm print was on Turner's file cabinet and two of his fingerprints were on a knife blade which apparently had been used to pry open Turner's desk. The defendants were convicted of murder, first-degree burglary, and armed robbery. On appeal, the defendant Joyner claimed, among other things, that the proof of the dog's tracking from the victim's back door to Jay Street was inadmissible because there was no evidence that the killers of the victim had left by the back door. The court of appeals stated that the argument missed the mark. According to the court, the critical fact shown by the evidence was that a track led

from the victim's house to the spot where the getaway Cadillac had been parked. Whether the track led from the back door or the front door had nothing to do with the admissibility of the evidence. The court stated that the testimony of the Police Department expert was competent. The judgment was affirmed on these and other grounds.