In the Supreme Court of Ohio

State of Ohio, Plaintiff-Appellee, v. Danielle Barton, Defendant-Appellant.	)	Case No. 2025-0912 On Appeal from the Hamilton County Court of Appeals, First Appellate District Court of Appeals Case No. C-240427

BRIEF OF AMICI CURIAE IDAHO ASSOCIATION OF CRIMINAL DEFENSE LAWYERS (IACDL) AND NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS (NACDL) IN SUPPORT OF APPELLANT

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I. Statement of Interests of Amici Curiae

The Idaho Association of Criminal Defense Lawyers (IACDL) is the state's organization of criminal defense attorneys. It is a nonprofit, voluntary group with over 400 lawyer members. IACDL's mission is to ensure that criminal defendants in Idaho have fair and just proceedings at all stages of the process. The Chair of IACDL's Amicus Committee is Jonah Horwitz, and the members are Sarah Tompkins, Andrea Reynolds, Brian McComas, and Sally Cooley. This brief was also prepared with substantial contributions from Dennis Benjamin, a well-respected and longtime member of the criminal defense bar in Idaho.

In this case, IACDL's perspective will help the Court properly dispose of Ms. Barton's appeal. Below, the majority included in its opinion an extensive discussion of Idaho law regarding canine searches. *See State v. Barton*, 2025-Ohio-1904, ¶¶ 16–17 (1st Dist.). The majority acknowledged Ms. Barton's argument that the Idaho Supreme Court has "held a dog's sniff of a car constituted a trespass to obtain information about the presence of drugs in violation of the Fourth Amendment." *Id.* at ¶ 16; *see State v. Howard*, 496 P.3d 865, 868 (Idaho 2021) (finding that "a search occurred to which the Fourth Amendment

applies" when a "drug dog entered [a] car during a sniff"). However, the majority adopted the dissenting view in Idaho, i.e., that "when dogs act instinctively, there is no Fourth Amendment violation." *Barton* at ¶ 18 (citing *State v. Randall*, 496 P.3d 844, 862 (Idaho 2021) (Bevan, C.J., dissenting)). By contrast, the dissent below referred approvingly to Idaho caselaw, using that precedent as its main non-binding authority for the correct understanding of how the Fourth Amendment impacts canine sniffs. *See Barton* at ¶¶ 27, 48.

Thus, Idaho law is implicated to a significant extent by the issue framed for appeal. IACDL has an ideal perspective to inform the Court about how the majority rule in Idaho has operated in practice. Most importantly, as set forth below, IACDL has valuable information regarding the critical question of whether the Idaho rule excessively hampers police officers exercising their lawful duties. Such information will allow the Court to reach the most thoughtful determination as it considers whether to embrace the same rule in Ohio.

The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process

for those accused of crime or misconduct. It has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenses and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files numerous amicus briefs each year in the Supreme Court of the United States and in other federal and state courts in cases that present issues of broad importance to the criminally accused, criminal defense lawyers, and the criminal legal system.

NACDL and its members have an important interest in ensuring that the Fourth Amendment remains a vibrant protection against encroachments on the privacy of the individual.

II. Argument

Amici make two points here: 1) an intrusion into the interior of a vehicle by a drug dog is a search under the Fourth Amendment; and 2) Idaho's experience in following that rule has shown that it does not impair effective law enforcement.

A. A dog's intrusion into a car is a Fourth Amendment search.

The Hamilton County Court of Appeals said that a "dog's instinctive jump that briefly breached the vehicle's window is not an unconstitutional search." *Barton*, 2025-Ohio-1904, at ¶¶ 22–23 (1st Dist.). The Idaho Supreme Court has correctly held to the contrary and its decisions have not unduly hampered law enforcement.

In *Randall* and *Howard*, the Idaho Supreme Court held that "intrusions by drug dogs, to any degree, into the *interior* space of a vehicle during a drug sniff, without consent, is a 'search' under the Fourth Amendment." *State v. Dorff*, 526 P.3d 988, 993 (Idaho 2023) (emphasis in original).

Starting with *Randall*, the Idaho Supreme Court recognized there that a drug dog's sniff of the exterior of a vehicle is not a search for the purposes of the Fourth Amendment under *Illinois v. Caballes*, 543 U.S. 405 (2005). Nevertheless, *Randall* concluded that *United States v. Jones*, 565 U.S. 400 (2012), and *Florida v. Jardines*, 569 U.S. 1 (2013), "make clear that a drug dog's trespass into a car during an exterior sniff converts what would be a non-search under *Caballes* into a search." 496 P.3d at

852–53. The *Randall* court noted "the trespassory test of *Jones* affords dog sniffs no special treatment." 496 P.3d at 854 (citation omitted).

On the record presented, the *Randall* court determined there was "no question" that the drug dog's interior sniff of the defendant's vehicle was a search under *Jones* because the dog's entry into the vehicle was a trespass. *Id.* at 854. Furthermore, the trespass was "for the purpose of obtaining information because it occurred during a drug sniff, which serves no purpose other than to provide information to officers about the presence of narcotics." *Id.* at 854–55.

In *Howard*, the Idaho Supreme Court similarly announced that the drug dog's entry into the defendant's vehicle during a sniff was a trespass because a sniff is "self-evidently conducted for the purpose of obtaining information" and the defendant did not consent to the entry. 496 P.3d at 868. The *Howard* court went a step further and clarified that there was "no de minimis exception to the test articulated in *Jones*," making it irrelevant whether the dog leapt through an open window, as in *Randall*, or placed his nose momentarily into the vehicle's open window, as in *Howard*. *Howard*, 496 P.3d at 868. The Idaho Supreme Court thus provided a bright line rule for determining whether a non-search exterior

sniff becomes a search, explaining that "when a law enforcement drug dog intrudes, to any degree, into the interior space of a car during a drug sniff, without express or implied consent to do so, a search has occurred under the Fourth Amendment." *Howard*, 496 P.3d at 868–69.

The underlying majority opinion in this case recognized the basic contours of the Fourth Amendment's trespassory test from *Jones* and *Jardines*. *See Barton*, 2025-Ohio-1904, at ¶¶ 11–18. Despite this, the majority did not apply this test to the facts at hand. *Id*. at ¶¶ 19–21. There were two primary justifications for this omission. First, the majority of the Court of Appeals in *Barton* relied on the supposed "instinctual" nature of the dog's actions to sever its causal connection to the trespass onto and within Ms. Barton's car. *Id*. at ¶¶ 17–20. Second, the majority understood *Caballes* to permit trespassory searches by drug detections canines during a traffic stop. *Id*.

The dissenting opinion correctly found that the trespassory test from *Jones* and *Jardines* did apply, and that a straightforward application of this test showed that police conducted an unconstitutional search of Ms. Barton's vehicle. *Barton* at ¶¶ 25–50 (Moore, J., dissenting). In doing so, the dissent explained how the

majority opinion erred in its reasoning. Amici respectfully submit that the dissenting opinion in *Barton* reflects the legal analysis required under the Fourth Amendment, and that its reasoning should be adopted by this Court.

One of the primary pillars upon which the majority decision rests is the notion that a drug dog's act of physically trespassing upon and within a vehicle should somehow be dismissed as "instinctual" behavior in the absence of proof that a handler directly prompted the animal to do so. Below, the parties stipulated that the dog acted instinctually. *See Barton* at ¶ 27 (Moore, J., dissenting). However, that does not mean the majority's reliance on this distinction is legally correct—even if the factual question has been removed from debate.

As the dissent correctly notes, the reliance of the majority on the supposed "instinctual" behavior of the dog is fundamentally inconsistent with the basic underpinnings of *Caballes* and related precedent concerning drug dog alerts and vehicles. "[I]t is difficult to conceive of how a police dog acted instinctively when it comes to doing an act that it was specifically trained to do while under the supervision and direction of its handler." *Id*.

In one of the earliest cases discussing drug detection canines as a law enforcement tool, the United States Supreme Court coined an oft-quoted descriptor for these exterior sniffs: "the canine sniff is *sui generis*." *United States v. Place*, 462 U.S. 696, 707 (1983). In other words, the Court viewed these sniffs, when properly performed, as unique and separate from other law enforcement search tools. When performed by a properly trained and reliable dog and handler, and when an also reliable alert signal is given, the U.S. Supreme Court has taken the position that "the sniff discloses only the presence or absence of narcotics, a contraband item."[1] *Id.*

However, all of this depends on one precondition: i.e., that the dog's conduct and behavior during the free-air sniff for contraband is reliable due to the extensive training of the canine. *See, e.g., Jardines*, 569 U.S. at 3–4, 11 (referring to the training and trained behavior of the

[1] In the ensuing years, members of the U.S. Supreme Court have criticized some of the core assumptions in *Place*. Justice Souter, in his dissent in *Caballes*, referred to this holding as relying on "the assumption that trained sniffing dogs do not err." 543 U.S. at 410 (Souter, J., dissenting). In the intervening years since the issuance of *Place*, however, Justice Souter saw that the "infallible dog" was instead a "creature of legal fiction," and recounted cases where courts have discussed potential causes for error: "errors by their handlers, the limitations of the dogs themselves, or even the pervasive contamination of currency by cocaine." *Id.* at 412.

narcotics detection dog and the "government's use of trained police dogs"); *Florida v. Harris*, 568 U.S. 237, 246–49 (2013); *Caballes*, 543 U.S. at 409.

Such a dog, when dispatched by a trained police handler for the purpose of searching for contraband, cannot be said to be engaging in the type of instinctual behavior that would typify (for lack of a better word) "normal" dogs. The concurring opinion in *Jardines* aptly parses out this distinction:

> Here, police officers came to Joelis Jardines' door with a super-sensitive instrument, which they deployed to detect things inside that they could not perceive unassisted. The equipment they used was animal, not mineral. But contra the dissent, that is of no significance in determining whether a search occurred. *Detective Bartelt's dog was not your neighbor's pet, come to your porch on a leisurely stroll.* As this Court discussed earlier this Term, drug-detection dogs are highly trained tools of law enforcement, geared to respond in distinctive ways to specific scents so as to convey clear and reliable information to their human partners. They are to the poodle down the street as high-powered binoculars are to a piece of plain glass. Like the binoculars, a drug-detection dog is a specialized device for discovering objects not in plain view (or plain smell).

Jardines, 569 U.S. at 12–13 (Kagan, J., concurring) (internal citations omitted) (emphasis added).

Moreover, in *Jardines*, although the trespass at issue centered on the use of "the trained narcotics dog to investigate Jardines' home," the Court imputed the dog's trespass to the officer who dispatched the canine for purposes of the sniff. The question that *Jardines* resolves is "whether *the officers' behavior* was a search within the meaning of the Fourth Amendment." *Jardines*, 569 U.S. at 4–5 (emphasis added).

A foundational premise for treating a reliable drug dog alert as sufficient to establish probable cause is the notion that these dogs are both well trained and behaviorally attuned to the specific task of conducting "free air" sniffs. Additionally, the *Jardines* Court treated the trespassory behavior of the police-trained canine as being imputed to the officer handling the dog—without regard to the extent to which the dog's actions were directly prompted by the officer. For these reasons, the distinction relied on by the majority below between instinctual and prompted alerts is inapposite to the question of whether a trespassory search occurred in this case.

Even prior to *Jones*, *Jardines*, and *Caballes*, the United States Supreme Court drew a line between trespassory and non-trespassory actions during a canine sniff for purposes of the Fourth Amendment:

> A "canine sniff" by a well-trained narcotics detection dog, however, does not require opening the luggage. It does not expose noncontraband items that otherwise would remain hidden from public view, as does, for example, an officer's rummaging through the contents of the luggage. Thus, the manner in which information is obtained through this investigative technique is much less intrusive than a typical search.

Place, 462 U.S. at 707.

The *Place* decision dealt with canine sniffs of luggage at an airport. Shortly thereafter, the Court brought to bear the same core principles from *Place* on the use of drug detection canines at random checkpoints on a roadway. Although the *seizure* was ultimately found unreasonable, the Court reiterated the view that a free-air sniff by a narcotics canine was not—of itself—an unlawful search. *See City of Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000). That is because "an exterior sniff of an automobile *does not require entry into the car* and is not designed to disclose any information other than the presence or absence of narcotics." *Id.* (emphasis added). In *Edmond*, the Court underscored again that "a sniff by a dog that simply walks around a car is much less intrusive than a typical search." *Id.* (internal quotations omitted).

Caballes is no different in this regard. The opinion was limited to its factual context, which involved a challenge to a "canine sniff that occurred *outside* respondent's stopped car." *Caballes*, 543 U.S. at 408. The dissenting opinion in *Barton* aptly recognized this distinction within the case law and explained why "free air" sniffs are permissible. *Barton*, 2025-Ohio-1904, at ¶¶ 29–31. Contrary to the view of the majority below, *Caballes*' holding is simply distinguishable from the challenge at bar. Because there was no physical trespass at issue in *Caballes*, there was simply no occasion for the Court to apply a trespassory test.

B. Idaho's approach does not unduly impair law enforcement.

The Idaho experience, post-*Howard*, has been that law enforcement agents continue to be able to conduct effective drug-dog operations without invading the interior of a vehicle in violation of the Fourth Amendment.

1. Drug dogs have continued to conduct free-air sniffs without intruding into the interior of a vehicle.

Idaho law enforcement has not been obstructed by the holdings in *Howard* and *Randall*. In *State v. Myers*, No. 51671, 2025 WL 2798583

(Idaho Ct. App. Oct. 2, 2025), for example, the officer had the drug dog conduct a free-air sniff around the suspect's vehicle.

> The driver's and passenger's windows were open. Zero sniffed the driver's door, went around the front of the vehicle, and returned to the driver's side. Zero sniffed the driver's door again and Deputy Cox dropped Zero's leash. Zero then sniffed the passenger door and gave his final alert. Based on the final alert, Officer Sousa searched the vehicle and found methamphetamine and a pipe.

Id. at *1. There was no "instinctual" leap into the vehicle even though the windows were open. Similarly, in *State v. Sherwood*, 571 P.3d 464, 467 (Idaho 2025), a drug dog made a final alert without intruding into the driver's open window. The events began while police had "a discussion with Sherwood through the open driver's side window," when "one of the deputies detected the odor of marijuana coming from the car." *Id.* "The deputy asked Sherwood to exit his car and another deputy had his drug dog sniff around the car's exterior," after which "[t]he dog alerted on the vehicle[.]"

Comparable facts were at issue in *State v. Fletcher*, 571 P.3d 444, 447 (Idaho 2025). There, "Corporal Canfield was on scene at the time of arrest with Cano, a drug detection dog. Cano began to sniff the exterior of the vehicle and immediately sat down by the driver's door." *Id.* In

State v. Pendleton, 537 P.3d 66, 68 (Idaho 2023), "Officer Miller arrived on the scene with his drug dog, Edo, and conducted an open-air sniff of Pendleton's vehicle. The dog immediately alerted and a search ensued." *See State v. Karst*, 553 P.3d 938, 940 (Idaho 2024) ("The officer initiating the traffic stop radioed for a drug dog, which arrived and alerted."); *State v. Maahs*, 525 P.3d 1131, 1136 (Idaho 2023) ("Upon its arrival, the drug dog alerted on the car driven by Maahs."); *State v. Stonecypher*, 508 P.3d 1230, 1232 (Idaho 2022) ("Eventually, a K-9 unit arrived and the drug-detection dog alerted to the presence of illegal drugs."); *State v. Huntley*, 513 P.3d 1141, 1144 (Idaho 2022) ("The investigation culminated in an investigatory stop of Huntley at his parked vehicle, a drug dog alert on his vehicle, and the discovery of methamphetamine on his person and in his vehicle."); *State v. Riley*, 514 P.3d 982, 985 (Idaho 2022) ("On his arrival, Officer Lane promptly led the dog to Riley's car and circled the vehicle once. At approximately 04:09:52 on the video (still 9:09 PM), the drug dog alerted on the passenger side of the vehicle.").

In addition, the unpublished opinions from the Idaho Court of Appeals contain many examples of drug dog alerts where there was no

intrusion into the vehicle. *See e.g., State v. Inwood*, No. 51143, 2025 WL 2061379, at *1 (Idaho Ct. App. July 23, 2025) (unpublished opinion) ("From the exterior of the truck, the dog alerted, which indicated the presence of drugs inside the truck."); *State v. Clark*, No. 48117, 2023 WL 2962232, at *1 (Idaho Ct. App. Apr. 17, 2023) (unpublished opinion); ("Thereafter, the dog alerted on Clark's vehicle, and methamphetamine and drug paraphernalia were discovered in the vehicle."); *State v. Hagerty*, No. 49937, 2023 WL 4876114, at *1 (Idaho Ct. App. Aug. 1, 2023) (unpublished opinion) ("[T]he deputy had his drug-detecting canine perform a free air sniff around Hagerty's vehicle. The canine alerted. Based on the alert, the deputy searched the vehicle[.]"); *State v. Gonzalez*, No. 48650, 2022 WL 4137735, at *2 (Idaho Ct. App. Sept. 13, 2022) (unpublished opinion) ("Another officer, who was already on the scene assisting with the warrant's execution, used a drug dog to conduct a dog sniff around Gonzalez's vehicle, and the dog alerted."); *State v. Belcher*, No. 48583, 2022 WL 3041082, at *1 (Idaho Ct. App. Aug. 2, 2022) (unpublished opinion) ("During the ensuing investigation, a drug dog arrived and alerted to the odor of drugs in the car in which Belcher had been sitting."); *State v. Carpenter*,

No. 50903, 2025 WL 1091242, at *1 (Idaho Ct. App. Apr. 8, 2025) (unpublished opinion) ("[T]he drug dog completed an open-air sniff and alerted on the vehicle."); *State v. Owen*, No. 51709, 2025 WL 1013715, at *1 (Idaho Ct. App. Apr. 3, 2025) (unpublished opinion) ("While Officer Anderson was waiting on the results of a records check and preparing a citation, another officer conducted a drug dog sniff of the exterior of the vehicle which resulted in an alert."); *State v. Elliott*, No. 51572, 2025 WL 783661, at *1 (Idaho Ct. App. Mar. 12, 2025) (unpublished opinion) ("Officer Davis had a drug dog, Cisco, conduct an open-air sniff of the exterior of the vehicle. While sniffing the exterior of the vehicle, Cisco showed multiple general behaviors alerting to the presence of controlled substances before putting his paw on the bumper and sitting down."); *State v. Dobson*, No. 50609, 2024 WL 3385620, at *1 (Idaho Ct. App. July 12, 2024) (unpublished opinion) (dog alerted indicating the presence of drugs in the vehicle); *State v. Pen*, No. 49889, 2024 WL 358202, at *1 (Idaho Ct. App. Jan. 31, 2024) (unpublished decision) ("Officer Bangs informed Officer Debias that the drug dog alerted on Pen's vehicle for a controlled substance."); *State v. Ogden*, No. 47735, 2022 WL 2112758, at *1 (Idaho Ct. App. May 18, 2022) (unpublished

opinion), *aff'd in part, rev'd in part*, 526 P.3d 1013 (Idaho 2023) ("Officer Sontag responded to Officer Wirshing's request for assistance, and a drug dog alerted on Ogden's vehicle."); *State v. Burrington*, No. 48676, 2022 WL 1123391, at *1 (Idaho Ct. App. Apr. 15, 2022) (unpublished opinion) ("Officer Knisley and her drug dog approached the car and the dog alerted at the passenger door of the car. Based on the alert, Officer Boardman searched the car and Burrington's person and found drugs and drug paraphernalia."); *State v. Lin*, No. 47985, 2022 WL 842305, at *1 (Idaho Ct. App. Mar. 21, 2022) (unpublished opinion); ("The drug detection dog alerted to Lin's truck, and a subsequent search revealed, among other things, several bags with a substance the officers recognized as marijuana."); *State v. Rule*, No. 48456, 2022 WL 664827, at *1 (Idaho Ct. App. Mar. 7, 2022) (unpublished opinion) ("The State charged Rule with possession of a controlled substance . . . following a traffic stop during which a drug dog alerted on Rule's vehicle[.]"); *State v. Howard*, No. 48154, 2022 WL 222783, at *1 (Idaho Ct. App. Jan. 25, 2022) (unpublished opinion) ("During the stop, a drug dog alerted to the presence of controlled substances in the vehicle Howard was driving."); *State v. Hooper,* No. 48122, 2021 WL 5118059, at *1 (Idaho Ct. App.

Nov. 4, 2021) (unpublished opinion) ("Before the officer finished writing Hooper a citation, a drug dog arrived and alerted to the presence of controlled substances in the vehicle Hooper was driving.").

In short, *Howard* and *Randall* have not prevented Idaho law enforcement officers from using drug dogs to conduct effective and constitutional free-air sniffs.

2. Instances of drug-dog intrusions appear to be rare; thus, the social cost of applying the exclusionary rule will be de minimis.

There is only one Idaho appellate case post-*Howard* where a drug-dog entered into the open window of a vehicle. *See State v. Eastis*, No. 49107, 2022 WL 17410097, at *4 (Idaho Ct. App. Dec. 5, 2022) (unpublished opinion) ("Under the Idaho Supreme Court's decision in *Randall*, issued after the district court's decision in this case, the momentary entry of the drug dog's nose into the open window of the vehicle was a search for purposes of the Fourth Amendment."). The Idaho experience therefore suggests that Ohio will not see a large number of other cases where drug dogs intruded into the interior of a vehicle. Accordingly, it appears that the application of the exclusionary rule, if the *Howard* ruling is adopted by this Court, will be infrequent.

3. The police will appropriately respond to a ruling that an intrusion into a vehicle is a search under the Fourth Amendment by preventing their K-9s from intruding into a vehicle.

As noted by the Idaho Supreme Court, "[i]f dogs can be trained to seek out substances they have no natural inclination to seek, and then to respond to their presence with specific and predictable behaviors, then surely they can be trained not to jump through car windows in the process." *Randall*, 496 P.3d at 856. (But even "[i]f they cannot, it is not the Fourth Amendment that must yield." *Id.*) And training material obtained from the Ada County, Idaho Sheriff's Office show that police are being advised that:

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

PSB Legal Update, Spring 2023, p 29.[2] Ohio law enforcement, both human and canine, can be similarly trained.

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[2] Attached hereto as Appendix A. "PSB" stands for Police Services Bureau. The presentation was obtained by amici pursuant to a public records request. Ada County has the largest population of any county in Idaho, and contains Boise, the state capitol and largest city. *See* Ada County, *About Ada County*, https://adacounty.id.gov/about-ada county/#:~:text=Ada%20County%20is%20located%20in%20Idaho.%20It's,River%20Float**%20*%20**The%20Western%20Idaho%20Fair** (accessed Nov. 20, 2025). "The Ada County Sheriff's Office is the largest local law enforcement agency in

Finally, as a practical matter, the police are able to avoid a vehicle intrusion by an undertrained drug dog by simply closing any open windows prior to conducting the open-air sniff. And if that cannot be accomplished for some reason, the K-9 officers can still use the easy expedient of restraining their dog on its leash, just like the ordinary citizen prevents the family pet from jumping on others when going on a walk. These simple, common-sense measures do not impede effective law enforcement and can be taken without difficulty in order to protect and preserve the Fourth Amendment's protections against unreasonable searches.

III. Conclusion

In light of the above, amici respectfully asks the Court to reverse the judgment below and hold that the canine's intrusion into Ms. Barton's vehicle constituted a search within the meaning of the Fourth Amendment.

Idaho, with over 800 employees." Ada County Sheriff's Office, *About the Ada County Sheriff's Office*, https://adacounty.id.gov/sheriff/ (accessed Nov. 20, 2025).

Respectfully submitted this 24th day of November 2025.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on this 24th day of November 2025 by e-mail on the following:

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APPENDIX A

PSB LEGAL UPDATE
Spring 2023

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Spencer Lay
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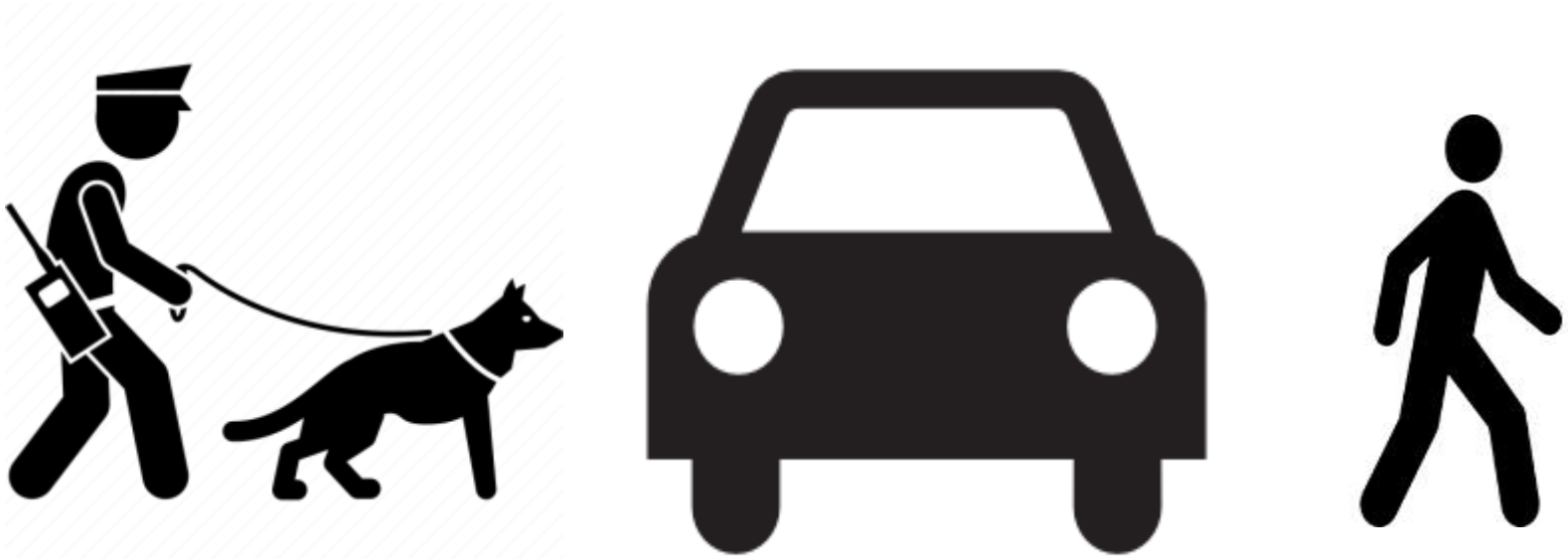
K9 Extension & “Trespass”



Congress of the United States

begun and held at the City of New-York, on
Wednesday the fourth of March, one thousand seven hundred and eighty nine

THE

RESOLVED

ARTICLES

Article the first

Article the second

Article the third

Article the fourth

Article the fifth

Article the sixth

Article the seventh

Article the eighth

Article the ninth

Article the tenth

Article the eleventh

Article the twelfth

Attest:

Frederick Augustus Muhlenberg Speaker of the House of Representatives

John Adams Vice President of the United States, and President of the Senate

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

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

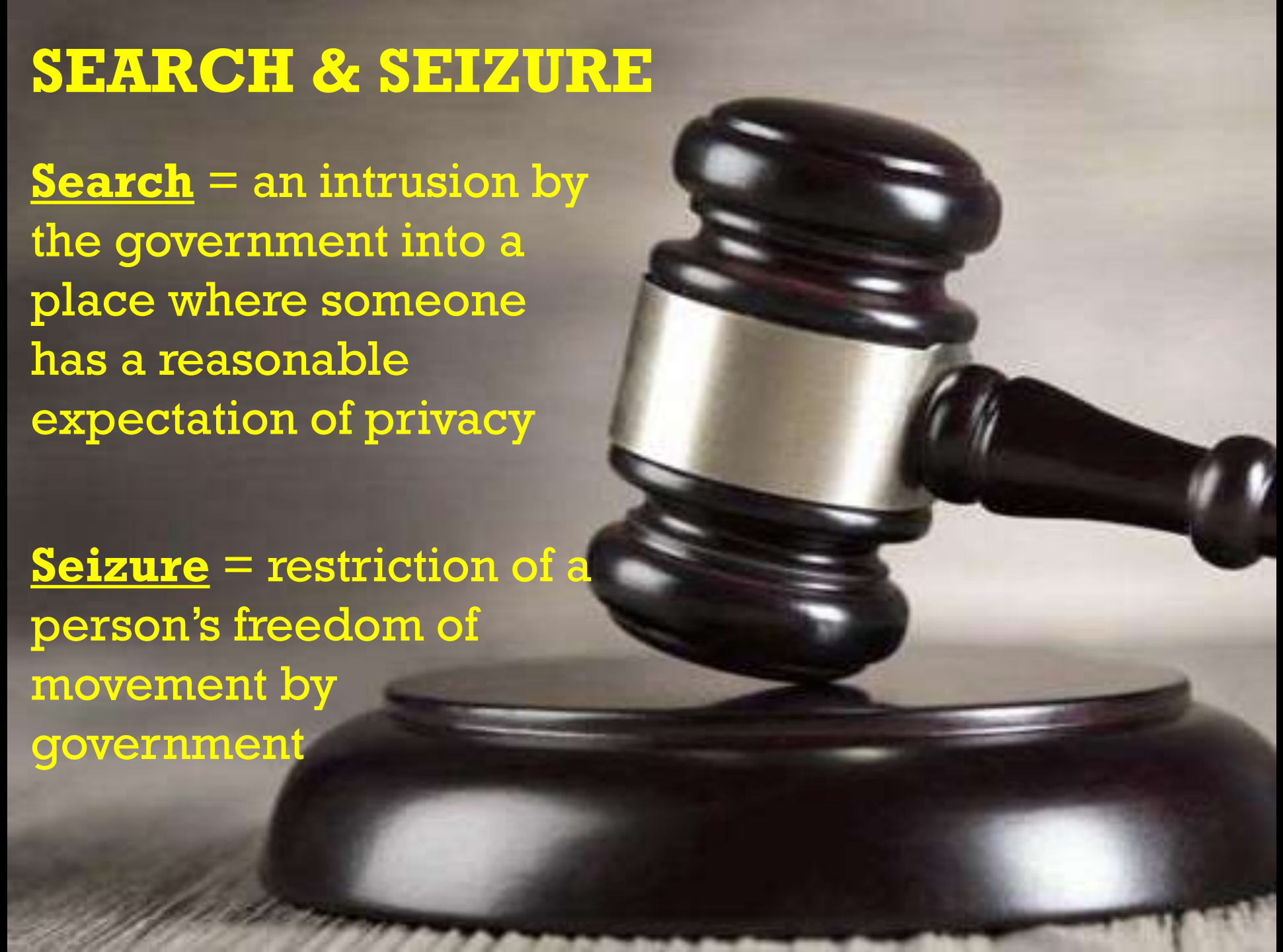
- Brigham City v. Stuart, 547 U.S. 398 , 403 (2006).

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

SEARCH & SEIZURE

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

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



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

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

Vehicle Consent

K9 Search of Vehicle
"Free Air Sniff Theory"

Illinois v. Caballes

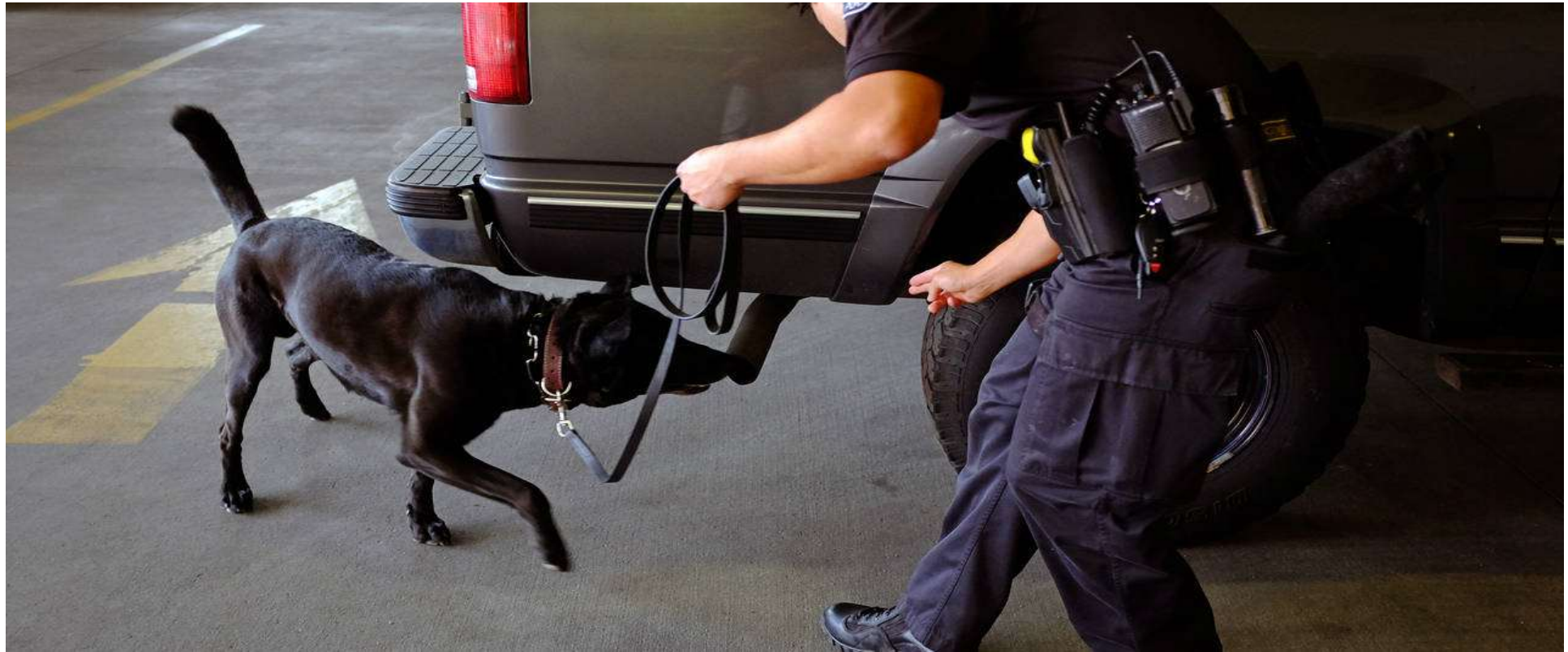
543 U.S. 405 (2005)

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

2 PART ANALYSIS:

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

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



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

ALERT of Exterior = Probable Cause

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

And going back to Carroll Doctrine… Remember…

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

K9s & TRAFFIC STOP EXTENSION CASES

Rodriguez v. United States, USSC (2015)

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

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

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

Rodriguez v. United States, USSC (2015)

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

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

Rodriguez v. United States, USSC (2015)

Two Versions of a T-Stop with K9

Option 1: NOT EXTENDING STOP….

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

Rodriguez v. United States, USSC (2015)

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

State v. Linze

(Idaho Supreme Court, 2016)

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

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

State v. Behrens

(4th Judicial District, 2017)

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

Any time we abandon stop = unconstitutional delay.

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

State v. Hansen

(4th Judicial District, 2017)

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

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

State v. Riley

(Idaho Supreme Court, Jan 2022)

- District court used officer's body camera to build a timeline of the case and found that at the time of the K9 alert, the stop should have already been completed.
- Literally, found the dog alerted 40 seconds before the citation was completed, but that there was at least 48 seconds before the citation was completed that Deputy #1 spent not on the purpose of the stop.

- The Idaho Supreme Court then re-does the math, again using the videos and their time stamps and finds that the two possible extensions could not have lasted more than 28 seconds so the K9 alert is not made when there was an extension by a matter of seconds.

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

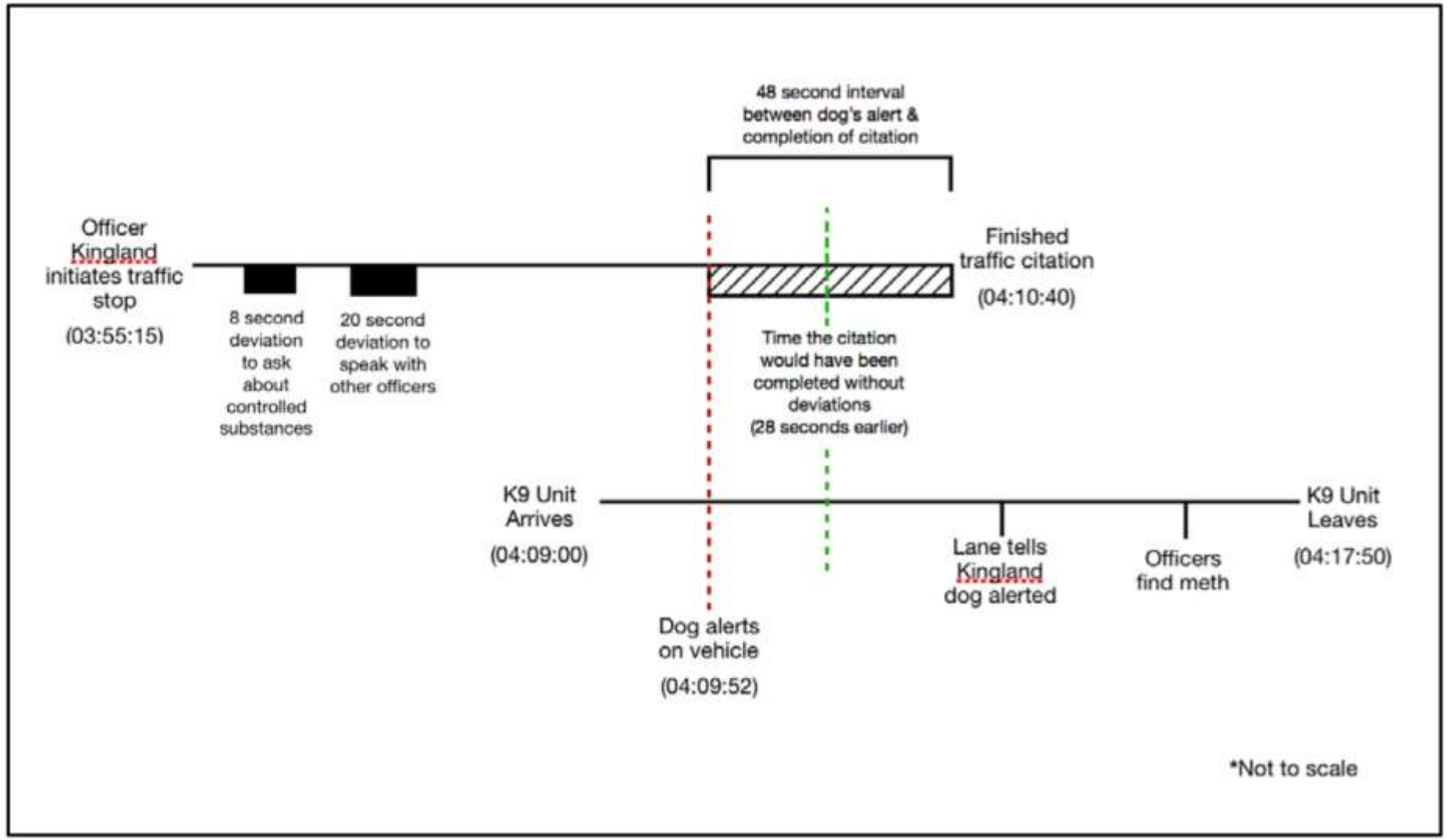


Figure 1. Timelines of the stop.

State v. Riley

(Idaho Supreme Court, Jan 2022)

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

“K9 Trespassing”???

State v. Randall *(Idaho Supreme Court 2021)*

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

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

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

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

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

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

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

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

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

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

State v. Ricks

(Idaho Court of Appeals, Feb 2023)

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

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

State v. Ricks

(Idaho Court of Appeals, Feb 2023)

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

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

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

State v. Dorff

(Idaho Supreme Court, Nov 2022)

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

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

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

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

Takeaway:

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