

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2025-0912
Plaintiff-Appellee,	:	
	:	On Appeal from the First
vs.	:	District Court of Appeals
	:	Case No. C-2400427
DANIELLE BARTON,	:	
	:	
Defendant-Appellant.	:	

BRIEF OF *AMICUS CURIAE* THE CUYAHOGA COUNTY AND OHIO PUBLIC DEFENDERS, THE SUMMIT LEGAL DEFENDER, AND THE OHIO ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF APPELLANT DANIELLE BARTON

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INTEREST OF AMICI CURIAE

The Cuyahoga County Public Defender's Office was established to provide legal services to indigent individuals charged with violations of the Ohio Revised Code. The Summit Legal Defenders is a non-profit legal agency that serves as the public defender for Summit County. These agencies represent clients from the charging stage through trial, conviction, appeal, and in post-conviction. The Office of the Ohio Public Defender (OPD) is a state agency that represents indigent criminal defendants and coordinates criminal-defense efforts throughout Ohio. The primary mission of the OPD is to protect and defend the rights of indigent people in the criminal and juvenile justice systems. As amicus curiae, the OPD offers this court the perspective of experienced practitioners who routinely handle criminal cases throughout Ohio at trial and appellate levels. These agencies have an interest in the present case because it involves a significant issue of constitutional magnitude, which they foresee will impact a significant number of individuals in the populations they serve.

The Ohio Association of Criminal Defense Lawyers (OACDL) is an organization of approximately 700 dues-paying attorney members. Its mission is to defend the rights secured by law of persons accused of the commission of a criminal offense; to foster, maintain and encourage the integrity, independence and expertise of criminal defense lawyers through the presentation of accredited Continuing Legal Education programs; to educate the public about the role criminal defense lawyers serve in the justice system, as it

relates to protecting the Bill of Rights and individual liberties; and to promote the rights of criminal defendants through the legislative and judicial process.

The decision of the First District substantially erodes Fourth Amendment protections by failing to respect the United States Supreme Court's property-based approach to physical intrusions upon constitutionally protected areas. Consequently, Amici urge this Court to establish that when a drug-sniffing dog is allowed by its law-enforcement-officer handler to sniff inside a vehicle during a traffic stop, a Fourth Amendment violation occurs, absent either consent or probable cause to believe that contraband will be found inside the vehicle.

STATEMENT OF THE CASE AND FACTS

Amici defer to the Statement of the Case and Facts contained in Appellant's brief.

AMICI'S ARGUMENT IN SUPPORT OF APPELLANT'S PROPOSITION OF LAW

Introduction

“The liberties of the American citizen depend upon the existence of established and known rules of law limiting the authority and discretion of men wielding the power of government.” *State v. Henry*, 2007-Ohio-6732, ¶ 44 (11th Dist.), quoting Perry & Cooper, *Sources of Our Liberties*, (Chicago: ABA, 1959), at 1. Accordingly, over the past two decades, the United States Supreme Court has issued numerous decisions signaling that the Fourth Amendment’s protections against warrantless government intrusions into the affairs of its citizens must be viewed expansively, lest the exceptions to the warrant requirement swallow the general rule that warrantless searches are “per se unreasonable.” It is instructive to begin by briefly reviewing the recent decisions issued by the U.S. Supreme Court that have the effect of preventing the erosion of Fourth Amendment protections.

First, in *Arizona v. Gant*, 556 U.S. 332 (2009), the Court revisited the then-well-established rule that it promulgated in *New York v. Belton*, 453 U.S. 454 (1981). The *Belton* rule permitted vehicle searches whenever an occupant was placed under arrest. *Gant*, however, took a more restrictive view of what was “reasonable” in such situations, and required law enforcement personnel—*before* conducting a warrantless search—to have reasonable suspicion that a vehicle contains evidence of the offense of arrest, once an arrestee no longer has free access to the vehicle.

Next, in *United States v. Jones*, 565 U.S. 400 (2012), the Court determined that the

attachment of a GPS tracking device to a vehicle, and the subsequent use of that device to monitor the vehicle's movements on public streets, was a search within the meaning of the Fourth Amendment. The next year, in *Missouri v. McNeely*, 569 U.S. 141 (2013), the Court held that, in impaired-driving investigations, the inevitable metabolism of alcohol in the bloodstream cannot be deemed to be an exigency in every case that would be sufficient to justify conducting a warrantless blood draw. Also in 2013, the Court decided *Florida v. Jardines*, 569 U.S. 1 (2013), which held that law enforcement officers' use of a drug-sniffing dog on the front porch of a suspect's home, to investigate an unverified tip that marijuana was being grown in the home, was a trespassory invasion of the curtilage which constituted a "search" for Fourth Amendment purposes.

Then, in *Riley v. California*, 573 U.S. 373, 403 (2014), the Court indicated that its "answer to the question of what police must do before searching a cell phone seized incident to an arrest is [] simple—get a warrant." And one year later, in *Rodriguez v. United States*, 575 U.S. 348 (2015), the Court issued a bright-line rule forbidding law enforcement officers from extending traffic stops—to conduct a K-9 sniff around the defendant's vehicle—beyond the duration needed to complete the initial mission of the stop, unless reasonable suspicion of a separate offense is developed during the stop. Lastly, in *Carpenter v. United States*, 585 U.S. 296 (2017), the Court, reversing the Sixth Circuit Court of Appeals, found that tracking a suspect's movements through a longitudinal review of their cellphone location data—as obtained from the suspect's third-party service

provider—violated the Fourth Amendment.

Against this backdrop, where the Court repeatedly gave the Fourth Amendment more force and effect than would have resulted from adoption of the positions advanced by the government in each case, and for reasons set forth below, the First District's extension of *Illinois v. Caballes*, 543 U.S. 405 (2005), to cover the warrantless law-enforcement conduct that occurred here, must be rejected.

To begin with, the circumstances of this case must be contrasted with those in *Caballes*. In *Caballes*, the Court sanctioned free-air K-9 sniffs of the area surrounding a lawfully detained vehicle. *Id.* at 409. Here, in contrast, the K-9 both contacted the door of Ms. Barton's car with its paws and also placed its head inside the passenger cabin of her car, which led to the dog's alert for contraband. (Joint Exhibit at 2:30-2:34.) Thus, it is readily apparent that the rule in *Caballes* does not directly control this case, because it does not involve a "free-air" sniff.

Next, it is necessary to characterize the dog's actions here, to properly analyze what occurred and then apply the Fourth Amendment to formulate an appropriate rule to resolve both this case and similar future cases. Simply put, the dog's act of placing its head inside the passenger cabin of Ms. Barton's car was a physical intrusion into one of her "effects." And, of course, the dog was inarguably an instrumentality of the police, which was under the direct control of the officer/handler at all relevant times.

So, the question here becomes "does this warrantless physical intrusion by an

instrumentality of the police into one of Ms. Barton's effects 'fall[] within a specific exception to the [Fourth Amendment's] warrant requirement.'?" *Riley*, 573 U.S. at 382.

And the answer is, quite plainly, "no."

To see why this is so, one need look no further than *United States v. Jones*. There, the Court was tasked with assessing whether it was a Fourth Amendment search or seizure for law enforcement to attach a GPS tracking device to a suspect's car, for the purpose of keeping track of the suspect's whereabouts. *Jones* at 402. The district court below had concluded that individuals traveling on public roads do not have a reasonable expectation of privacy regarding their movements (*see Jones* at 403). On review, the Court nevertheless, determined that the act of placing the tracking device was a physical intrusion with respect to Mr. Jones's vehicle. That physical intrusion, coupled with the collection of the location data relayed by the device, constituted impermissible police action under the Fourth Amendment. *Id.* at 404-407, 410; *see also Grady v. North Carolina*, 575 U.S. 306, 309 (2015), quoting *Jones*, 565 U.S. at 406, n.3 ("Where, as here, the Government obtains information by physically intruding on a constitutionally protected area, [] a [Fourth Amendment] search has undoubtedly occurred.")

Here, the purpose of the K-9—again, a police instrumentality—readily compares to the purpose of the GPS tracker in *Jones*. The latter was intended to reveal the whereabouts of a drug trafficking suspect, which would, in turn, be used to learn valuable information about the suspect's movement patterns, their associates, their customers, etc. *Jones* at 403-

404, 413. The K-9 here, at the risk of stating the obvious, also had a distinct law-enforcement-related purpose: to detect contraband, in the form of illicit drugs.

And, importantly, the movements of a K-9 that is brought to a traffic stop are as much under the control of law-enforcement personnel as was the tracking device that was placed on Mr. Jones's vehicle in *Jones*. That is because the K-9's handler has the K-9 on a lead at all relevant times during a traffic stop. Thus, if the handler fails to control their K-9, the movements of the K-9 must be viewed no differently than the movements of other law-enforcement personnel on the scene of the traffic stop. To that point, in this case, the bodycam video shows the dog moving toward the passenger side of the car, before his handler leads it around to the driver's side, where the dog is then permitted to jump up onto the driver's door with his front paws, and then insert his head inside the passenger cabin to sniff the interior of the car. (Joint Exhibit at 2:09-2:34.)

These actions, just like the placement of the GPS tracker in *Jones*, constitute a physical intrusion that was the result of police conduct. And, of course, in both cases the police conduct had the goal of producing evidence to be used against the individuals involved. As such, amici respectfully submit that this Court must apply *Jones* here, not an extension of *Caballes*, and deem the K-9's physical intrusion into Ms. Barton's car and the resulting search thereof, to run afoul of the Fourth Amendment.

Amici would also note that this case presents the court with an opportunity to craft a bright-line rule that would be applied in future similar cases. Rather than assessing on a

case-by-case basis, for example, a particular K-9's training, and/or whether the K-9 was perhaps affirmatively encouraged to jump up onto a car, and/or myriad other possible considerations, the nature of this general scenario lends itself well to the bright-line rule that Ms. Barton's proposition of law seeks:

Law enforcement violates the Fourth Amendment when a drug dog sniffs inside a vehicle during a traffic stop without probable cause, consent, or a warrant.

As indicated above and as discussed at length herein, there simply are no circumstances where the K-9 is free to sniff the area of a stopped vehicle without a handler controlling its movements. Thus, if the K-9 jumps up onto a car, makes a physical intrusion into the car, and then alerts to contraband, the K-9's movements only occurred because the law-enforcement handler allowed them. The very notion that the animal's actions were instinctive, as the First District opined, suggests that the handler lacked control, and thereby, undermines the foundation on which the utility of canine use is based – that the canine's instincts have been harnessed – through training, i.e. behavior control, and handling – to assist law enforcement.

The proposition of law submitted by Ms. Barton would have the effect of constraining application of *Caballes* to cases where the facts resemble those in *Caballes*—i.e., where a dog is simply led around the exterior of a stopped vehicle, within the time constraints established by *Rodriguez v. United States*, 575 U.S. 348 (2015). While bright-line rules may cause concern when they tend to authorize conduct that is in derogation of the

Fourth Amendment's warrant requirement, the same concerns are not present when, as here, a proposed bright-line rule acts to limit the warrantless conduct of the police.

Compare Missouri v. McNeely, 569 U.S. 141, 158 (2013) ("While the desire for a bright-line rule is understandable, the Fourth Amendment will not tolerate adoption of an overly broad categorical approach that would dilute the warrant requirement . . ."), *with Bailey v. U.S.*, 568 U.S. 186, 210 (2013) ("A bright line will sometimes help police more easily administer Fourth Amendment rules, while also helping to ensure that the police do not go beyond the bounds of the reasonable." (Breyer, J. concurring, joined by Thomas, J. and Alito, J.)).

There are ongoing concerns surrounding the reliability of a canine as a substance detection device.

The need for such a bright line rule is further underscored by scientific research that calls into question the reliability of canines as objective substance detection devices and the influence, unintended or otherwise, a police handler may apply. Then, there is the simple fact is that dogs, along with many other intelligent animals, are extremely eager to please their humans and, for better or worse, will do almost anything to accomplish that goal—commendable in a pet but dubious indeed in a K-9 "officer."¹

¹ The symbiotic relationship between dogs and humans is believed to have formed over 18,000 years ago. Elyssa Payne, *et al.*, *Current Perspectives on Attachment and Bonding in the Human-Dog Dyad*, *Psychology Research and Behavior Management*, 2015:8 71-79. Dogs form close relationships with humans which has been attributed to social dominance in which the canine views the human as a surrogate pack leader. *Id.* Dogs have been selected for their

There is a long tradition of human reliance upon dogs and other intelligent animals to make judgments that, in the end, simply cannot bear the weight placed on them.

“Clever Hans” (c. 1894 – c. 1916), for example, was a horse that appeared to perform arithmetic and other intellectual tasks during exhibitions in Germany in the early 20th century. His owner, a certain Herr von Osten, had seemingly trained Hans to be able to do things like counting the number of spectators in line for their show or telling (by means of hoof stomps) the color of a given audience member’s cap. See Edward T. Heyn, *Berlin’s Wonderful Horse: He Can Do Almost Anything but Talk—How He Was Taught*, New York Times, Sept. 4, 1904, available online at <https://shorturl.at/eNCT0> (last accessed November 14, 2025). Hans was said to have been taught to add, subtract, multiply, divide, work with fractions, tell the time, keep track of the calendar, differentiate between musical tones, and even to read, spell, and understand German. *Id.*

In 1907, psychologist Oskar Pfungst demonstrated that the horse was not really performing these mental tasks. Instead, Clever Hans was merely watching the reactions of Herr von Osten and would, for instance, stop stamping his hoof when von Osten reacted to Hans reaching the desired number of stomps. That is, Clever Hans was responding directly to involuntary cues in the body language of van Osten, who was *entirely unaware*

ability to perceive human signals and cooperate with humans. *Id.* at 74. The ability of dogs to demonstrate social referencing, adapting their behavior according to human emotional signals, further reinforces the relevance of social learning in the dog–human relationship. *Id.*

that he was providing such cues. See Oskar Pfungst, *Clever Hans (The Horse of Mr. Von Osten): A Contribution to Experimental Animal and Human Psychology* (Henry Holt & Co., 1911), at pp. 102-140, available online at <https://shorturl.at/kd3iw> (last accessed Nov. 14, 2025). It is this last point that is crucial in our context—the *involuntariness* of the cues.

Dogs react similarly, of course. *United States v. \$80,760 in U.S. Currency*, 781 F.Supp. 462, 478, n.36 (N.D. Tex.1991) (“[W]e are mindful that less than scrupulously neutral procedures, which create at least the possibility of unconscious ‘cuing’, may well jeopardize the reliability of dog sniffs.”), citing *United States v. Trayer*, 898 F.2d 805 (D.C. Cir.1990) (A “retired Baltimore police dog trainer, testified that it is possible for a handler through voice or physical cues to compromise a dog’s objectivity.”); see also Mesloh, C., Henych, M., and Wolf, R., *Sniff Test: Utilization of the Law Enforcement Canine in the Seizure of Paper Currency*, J. 1 of *Forensic Identification* (2002) (“[H]andler error occurs when the handler fails to properly interpret the behavior of the dog, leading to misidentification. The response bias on the part of the handler varies as some are more conservative or liberal with their interpretations.”).

In a study published by *Animal Cognition*, “Handler Beliefs Affect Scent Detection Dog Outcomes,” three researchers set up testing environments in a church and told 18 handlers that the testing environments would contain markers for scent locations and decoy scents, when in fact no scents to which the dogs had been trained to respond were actually present. Lit, L., et al., *Handler beliefs affect scent detection dog outcomes*, 14 *Anim*

Cogn. 3, 387-394 (2011). Of the 18 canine teams, all but *one* alerted in at least some of the trials, and since all alerts were deemed incorrect responses, the researchers concluded that handler beliefs “that scent was present potentiated handler identification of detection dog alerts.” *Id.* The researchers also concluded that human “more than dog influences affected alert locations,” confirming that “handler beliefs affect outcomes of scent detection dog deployments.” *Id.*² This result is not an outlier. Additional studies addressed further in this brief reflect that dog/human relationship, while necessary to the dog’s use in law enforcement, creates unique reliability concerns about that use.

History of canine use in law enforcement

The armies of ancient Egypt trained and deployed canines for battle, to guard army encampments, and to carry messages. These duties are depicted in preserved ancient hieroglyphics. Handy, William, Harrington, Marilyn, Pittman, David, *The K-9 Corps: The Use of Dogs in Police Work*, 52 J. Crim. L. Criminology & Police Sci. 628 (1961). In the early 14th century, dogs were used to enforce curfew and guard the docks and naval installations in St. Malo, France. The dogs were employed for these law enforcement-type

² The dubious pseudo-science underpinning the utility of dogs as objective detection tools stretches back to, and taints, long-ago events like the Salem Witch Trials, when dogs were fed “witch cake” made of rye and the suspected witch’s urine—the dog’s reaction indicated whether the person was or was not a witch. See *Narratives of the Witchcraft Cases, 1648-1706*, (Scribner’s & Sons, George Burr, ed., 1914), at 162-163 (“Mr. Parris’s Indian Man and Woman made a Cake of Rye Meal, and the Childrens [*sic*] water, baked it in the Ashes, and gave it to a Dogge, since which they have discovered, and seen particular persons hurting of them.”), available online at <https://shorturl.at/zPO72> (last accessed Nov. 20, 2025).

duties for several hundred years. *Id.* at 328.

In 1895, dogs were deployed by law enforcement to control the gangs that then roamed Paris. *Id.* Seeing the success of this program, Germany began experimenting with the breeding, training, and overall use of dogs for police work shortly thereafter. *Id.* In 1920, a training facility for instructing canine officers was established in Greenheide, Germany establishing basic obedience, tracking and searching. *Id.* Even today, modern canine training systems continue to use the Greenheide method with only limited modification.³ *Id.*

The idea underpinning the move to train canines, particularly for tracking and searching duties, derives from our understanding that dogs have a superior sense of smell. That understanding is absolutely accurate. Dogs have about 220 million olfactory receptors, compared to a human's five million, which creates a greater ability to detect scents. A dog's nasal passages are designed to separate sniffing from breathing, allowing them to "sample" the air more efficiently, accumulating a continuous stream of new scent molecules.⁴ These attributes may make canines excellent investigative tools. And, as discussed more thoroughly herein, they have been harnessed for that purpose. What that

³ In 1907, New York City initiated the first police canine unit but it was disbanded in the early 1920s when the animals injured several innocent civilians. *Id.* at 329.

⁴ <https://www.ebsco.com/research-starters/veterinary-medicine/canine-substance-detection>. (Last viewed, 11/22/2025)

olfactory prowess should not do is replace the need for probable cause or a warrant as contemplated under the Fourth Amendment.

Interestingly, studies have observed marked behavioral differences between untrained dogs and those trained to assist law enforcement. Counterintuitively, that research has found that trained police dogs actually demonstrate reduced self-control. Zachary Silver, *et al.*, *Training Does Not Uniformly Increase Canine Self-Control*, 15 *Animals* 3, 320 (2025). Specifically, one study found that police dogs exhibited inferior ability to exercise self-control on the delayed gratification test. *Id.*

At bottom, the data suggests that, although the training specific to locating narcotics for a detection canine may be useful, it is not sufficient within the confines of the Fourth Amendment. That is, although there is *some* degree of context-specific self-control in scent work, scientific studies provide ample “evidence against the belief that dogs can transfer self-control from the context in which it is trained into day-to-day situations.” *Id.* at 8.

Canine training in Ohio

Minimum standards for certification of law enforcement canine units is established pursuant to OAC 109:2-7-03 and R.C. 109.73. These provisions require the Ohio peace officer training commission to recommend rules to the attorney general surrounding minimum qualifications and requirements for certification of dogs used by law enforcement. The canines must demonstrate proficiency through a certification process in:

(a) obedience; (b) building search; (c) area search; and (d) criminal apprehension. OAC 109:2-7-03 (B)(4). For inclusion in a specialty unit, additional certification is required for one or more of the following purposes: (a) tracking; (b) article search; (c) narcotics detection; (d) explosives detection; and (e) any other topic designated by the executive director. OAC 109:2-7-03(C)(4).

The State of Ohio does not operate a training program for canines. Rather, it partners with private enterprises who administer the training and certification process. These programs are brief, running from approximately three weeks, for a single-purpose (narcotics detection only) canine, up to five weeks for a dual-purpose canine. See generally <https://www.tristatek9.com/police> (OPOTA certified training program), <https://excelk9.com/training/> (OPOTA certified training program).

A recent paper by Serhil Klepatskyi, Senior Lecturer with the Department of Cynology at the Bohdan Khmelnytskyi National Academy of the State Border Guard Service of Ukraine, analyzed canine unit operations that included training of those who handled service dogs. Klepatskyi, Serhil, *Specific Features of the Training Content for Future Officers of Canine Units*, 73-91. That analysis concluded that the canine handlers required far more training than what they were receiving.⁵

⁵ In the study's wake, the author espouses implementing educational programming for cynological units of the Ukrainian Border Guard Service that would be approximately 26.7% of the total instructional hours received or approximately 4 years of instruction. *Id.* at 80, 82. Included in this instruction would be professional activities of the canine units, a

Standard canine training for narcotics detection begins with play. Trainers employ a toy or towel that they consistently use to play with the dog. Robert C. Bird, *An Examination of the Training and Reliability of the Narcotics Detection Dog*, 85 Ky. L.J. 405, 411 (1999). Trainers then wrap the narcotics in the towel and play fetch. *Id.* at 412. As the dog repeatedly retrieves its toy, it begins to make the association between the toy and the scent of the drug. *Id.* The trainers then take the toy away and just hide the drug. *Id.* The dog then searches for the toy to find the drug, *Id.* Upon successfully locating the drug, the trainer provides the dog with the toy further solidifying the association of the toy with the scent. After the canine learns to locate one drug, the trainer repeats the steps with other narcotics, with ongoing reinforcement of the drug identifications previously mastered. *Id.* By the training's end, the goal is to have taught the dogs how to detect most common illegal narcotics.

cynological focus including: zoopsychology, ethology and higher nervous activity, fundamentals of service cynology, methodology of training specialists for canine units, training of an instructor-methodologist in service cynology for border control units, methodology of teaching service cynology disciplines and usage of cynology units in operational and service activities. *Id.* at 80-82. "The logical culmination of the third year of study is practical training. . .the aim of this training is to foster and develop the ability to make independent decisions in professional settings, to deepen and consolidate the theoretical knowledge of cadets and to acquire and improve practical skills and professional qualities for the subsequent performance of duties. . ." *Id.* at 82. Based upon the analysis conducted, additional classroom training was required to understand the fundamentals of cynology with a reduced emphasis on practical training which lacked "logical consistency and raises concerns regarding the potential for the effective development of the defined competencies and learning outcomes." *Id.*

Handler training is more complex and time consuming because the handler needs to learn how each individual dog responds to the targeted narcotics. *Id.* Distractions are introduced including noisy environments and competing/dominating scents. *Id.* at 413. The unit will also train in various natural elements, such as rain or snow, and difficult environments to see how the canine will respond. *Id.*

The training focuses on the canine and its ability to perform the designated task, e.g. narcotics detection. The handler is also singularly focused on the successful completion of that task because their certification depends on it. According to Homeland Security training materials, there exists concern that inadvertent, non-verbal cues are sent to a canine when in or approaching the target area if the canine handler knows or even anticipates the target location. *Best Practices for Detection Canine Training and Testing, Homeland Security Science and Technology*, https://www.dhs.gov/sites/default/files/publications/best_practices_for_detection_canine_training_testing_508.pdf.

In the real world, the handler's attention is not only divided by the scenario's circumstances, but there is, at a minimum, an anticipated target location. In a traffic stop, for example, the anticipated target location is the confines of the motor vehicle. As for the handler's attention, it is not unilaterally focused on the canine partner, as it was during their specific training exercises. Rather, the handler must gather information from other law enforcement officers, make observations about the scene, and focus attention on the

stopped vehicle and its occupants.

Based upon the canine's training and experience with the handler, the dog is attuned to the handler's behavioral characteristics. Those cues include changes in gaze – directed at the stopped vehicle – as well as changes in the handler's posture, body position relative to the canine, tension on the lead, and any nodding or pointing. Canines do not instinctively seek out narcotics. But they do instinctively seek pleasure through the form of play and rewards and through accomplishing tasks that please their pack leader or, in this case, the handler. When inadvertent cues to a canine cause it to invade a space to obtain a better opportunity to sniff, that action, whether it is instinctive or not, derives from the handler, not the canine.

Because unconscious cuing by human K-9 handlers is unavoidable, it undermines the objectivity of an alert, so the mere fact of an alert is insufficient to establish probable cause.

There is a duality in the relationship between a dog and their handler.⁶ A well-established bond between the pair is necessary for an effective team in the field. That bond, however, creates in the dog a need to please its handler. Dogs have a demonstrated ability to read their human's behavior and apply observed cues to accomplish a task. *Id.*

Canine-human communication begins with eye contact. *Id.* Dogs will behave

⁶ Jaskinia, Molly Maria, Meta-Analysis of Scent Detection Canines and Potential Factors Influencing Their Success Rates, University of Montana Graduate Student Theses, Dissertations, & Professional Papers, 12142 at p. 5 (2023), <https://scholarworks.umt.edu/etd/12142>.

differently if their handler's gaze, head, or body orientation is directed elsewhere. *Id.*

Research has shown that dogs can interpret human gestures such as pointing, gazing, nodding, head turning and glancing better than apes or chimpanzees. *Id.*; see also Payne et al., at 71 (cited in footnote 1). If the handler knows, or simply believes they know, where the target is then the dog is most likely to alert to that location. Jaskinia, *Meta-Analysis*, at 6. Even the handler's inadvertent cues will prompt the dog to follow suit due to the shifted behavior of their human.

Because dogs can read and interpret even subtle human gestures or behaviors to achieve whatever goal their handler seeks, their handlers can influence a canine to alert even realizing. *Id.* at 33.

The paired t-test revealed a statistically significant and very strong correlation between the dogs' success rate and whether it was a bind- or known- experiment. This means that the handlers are more than likely giving away the target's location and, since dogs occasionally rely on their human's gestures over their own sense of smell the dogs appear more successful during a search.

Id. at 34. This is particularly true in breeds described in the "Cooperative Worker" group such as herding dogs, which includes most narcotic detection canines, that respond to human cues better than breeds in the "Independent Worker" group. *Id.* at 34.

In 2011, a study of both drug and explosive detection dogs, was undertaken to determine what influence a handler's knowledge or beliefs would have on the location of

a dog's alert.⁷ The handlers that participated in that research were advised that the scent locations were marked by a piece of red construction paper. In fact, there were no legitimate scent targets for the dogs to detect, so every alert would be a false positive. *Id.* at 1165. Additionally, the researchers placed unwrapped "Slim Jim" meat sticks along the course. *Id.*

The study found that 85% of the searches resulted in at least one alert – all of which were false. *Id.* at 1165-1166. There were two possibilities for the false alerts – the "Slim Jim" for the dog and the red construction paper for the handler. The paper targets resulted in twice as many false alerts as the Slim Jims. *Id.* at 1166. Each of the tested teams was in some way certified in either drug or explosive detection. Yet, their results were terrible when the handlers were falsely informed that there was reason to believe drug odors would be found. The researchers determined that some possible cues given by the handlers include: "the handler's proximity to the dog in relation to the scent location, their gaze and gesture cues, and postural cues, all of which may have been learned by the dog during its initial training." *Id.* at 1166, n. 150.

Also in 2011, the Chicago Tribune examined three years of data from the suburban

⁷ Handler beliefs affect scent detection dog outcomes, *Animal Cognition*, Volume 14, Number 3 (2011), 387-394 (available at <http://www.springerlink.com/content/j477277481125291>). See, Andrew Scott, Taking a Bite Out of Forensic Science: The Misuse of Accelerant-Detecting Dogs in Arson Cases, 48 J. Marshall L. Rev. 1149, 1165 (2015) discussing this research.

police departments in the Chicago area. Hinkel, Dan & Mahr, Joe, Tribune analysis: Drug-sniffing dogs in traffic stops are often wrong, THE CHICAGO TRIBUNE, JANUARY 06, 2011(available at http://articles.chicagotribune.com/2011-01-06/news/ct-met-canine-officers-20110105_1_drug-sniffing-dogs-alex-rothacker-drug-dog). That article revealed that only 44% of alerts by the dogs on automobiles led to the discovery of drugs or paraphernalia. *Id.*⁸

The intuitive conclusion drawn from all of this work is that in many cases a drug dog is more likely to alert when an officer has some belief, justified or otherwise, that a given driver possesses something illegal, and/or simply wants very much to access the inside of a particular vehicle. This evidence also undercuts the notion that a canine's olfactory senses, however keen, do not necessarily render them wholly reliable or objective detectors for the presence of contraband.

For all these reasons, this Court should decline the State's invitation to dilute the Fourth Amendment by extending *Caballes* beyond its narrow holding and instead reaffirm the Amendment's core protection against warrantless physical intrusions. When a police-

⁸ Another disturbing fact from the Chicago Tribune report was that narcotics or paraphernalia was discovered in the possession of only 27% of Hispanic suspects. *Id.* The false positives on African American drivers was also higher than the general false alert numbers. *Id.* Assuming, *arguendo*, that the dogs themselves are not directly influenced by the race of a suspect, the seemingly obvious conclusion is that a handler's racial preconceptions – however unconscious – must have influenced the likelihood of an alert.

controlled K-9 dog breaches the interior of a vehicle during a traffic stop, the intrusion is no less constitutionally significant than the placement of a GPS tracker in *Jones* or the warrantless search of a cell phone in *Riley*. The bright-line rule urged by Ms. Barton simply gives practical effect to these principles: a drug-dog sniff that enters the interior of a vehicle is a search, and absent probable cause, consent, or a warrant, it is an unreasonable one. Given the numerous problems related above with the basic reliability of K-9 dogs as *tools* of law enforcement, this intrusion cannot even reliably form the basis for probable cause, because it is by no means clear that a K-9 alert “probably” indicates the presence of contraband.

CONCLUSION

In light of the foregoing, undersigned amici ask this Court to reverse the judgment of the First District Court of Appeals and fully adopt Appellant's Proposition of Law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 2025, the foregoing Brief of *Amicus Curiae* the Offices of the Cuyahoga County and Ohio Public Defenders, the Summit Legal Defenders, and the Ohio Association of Criminal Defense Lawyers in support of Appellant Danielle Barton was served by email to counsel for the parties and *amici* at the email addresses indicated on the cover of this document.

Respectfully Submitted,

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