UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,

     PLAINTIFF

V.   Case No.: 19-38-BAJ-EWD

     HUGO GOMEZ
     DEFENDANT

EXPERT REPORT
OF
KYLE K. HEYEN

I. PERTINENT QUALIFICATIONS OF KYLE K. HEYEN
(see Curriculum Vitae at end of report)

II. CASES IN WHICH EXPERT WITNESS HAS
TESTIFIED WITHIN THE LAST FOUR YEARS

Coley & Hall v City of Bossier City, U.S. District Court, Western District of Louisiana, Shreveport Division Civil Action No.: 17-1553   August 2019

White v City of Vineland, NJ U.S. District Court, District of New Jersey Civil
Action No.: 160-08308   July 2019

State of Kansas v Stark,   Criminal Case, December 2018

U.S. v Martinez & Moser, District Court of Guam, Case No.: CR 15-00031 Criminal Case November, 2018

U.S. v Torres-Martinez, U.S. District Court, District of Oregon, Portland Division, Case No.: 3:11=CR=00172-AA Criminal Case   September 2018

U.S. v Martinez & Moser, District Court of Guam, Case No.: CR 15-00031 Criminal Case March, 2018

Indiana v MacKenzie,   82-Do3-1701-F2=000438   Criminal Case January 2018

Crespo v Beauton, U.S. District Court, District of Connecticut, Case No.: 3:15-CV-00412(WWE)   Civil Action, January 2018

State of Kansas v Harris, Saline, KS County Court, Case No.: 17CR316   Criminal Case, October 2017

State of Kansas v Aitch, Saline KS County Court, Case No.: 15CR1033   Criminal Case August 2017

Goodwin v Ohio State Highway Patrol, Court of Claims of Ohio, Case No. 2016-00864 Civil Action   May, 2017

Cumberland County Prosecutors Office, In-Custody Death Investigation RE: Phillip White, Officer Platania, Criminal Case   November 2016

State of Minnesota v Larson,   unknown case information   Oct., 2016   Criminal Case

Boisclair v Moore & Orange County, FL, U.S. District Court, Middle District of Florida, Orlando Division, Case NO.: 6;15-cv-02076-CEM-TBS   Civil Action   Sept., 2016

III.   BASIS FOR OPINIONS EXPRESSED IN THIS REPORT

The opinions expressed in this report, are based on Kyle K. Heyen's training, experience and qualifications, professional experiences in training over 500 service dog teams utilized in various aspects of law enforcement, and personal reading of documents supplied regarding the case. Mr. Heyen's association with, training and assistance in developing service dog units and policies has also made him familiar with canine policies and deployment standards for canine units. As a full-time police officer Mr. Heyen was a Field Training Officer, a tactical team member and has taught officer survival to new police officers as well as new and experienced patrol dog handlers. The opinions stated in this report are based on a reasonable degree of certainty within the law enforcement drug dog detection profession.

IV.   COMPENSATION FOR TIME EXPENDED

The Court has agreed to compensate Mr. Heyen at an hourly rate of $200 for time spent studying documents related to the case and for preparing a report outlining his opinions. Travel time, if necessary, will be compensated at a rate of $200 an hour. If called on to testify for suppression hearing, deposition or trial, compensation will be based on an hourly rate of $300 per hour with a four-hour minimum.

V.   ANALYSIS

I have been asked to analyze the below listed information and provide an opinion regarding the reliability of the sniff of a vehicle operated by Mr. Gomez and conducted by the drug dog team of K9 Exon and Deputy Mire on February 6, 2019.

VI.   DOCUMENTS AND MATERIALS REVIEWED

Dash Camera Video of the Sniff of Vehicle Driven by Mr. Gomez
K9 Exon Certifications for Previous Handler Deputy Hebert
2018 K9 Exon Certification for Deputy Mire
Deputy Mire's Written Report
Iberville Parish Sheriff's Office K9 Policy
Previous Certificates for K9 Smokey and Deputy Mire
NDDA Certification Books for Deputy Mire and K9 Exon (2018, 2019)
K9 Exon & Deputy Mire Training record: 2.3.2017 thru 2.1.2019
University of California at Davis Scientific Study, Feb. 23, 2011
Expert Report of Wendall Nope
National Narcotic Detector Dog Association Certification requirements
November 8, 2019 Transcripts of Evidentiary Testimony of Deputy Mire
Certificates for Billy Jordan

VII. SYNOPSIS OF INCIDENT

On February 6, 2019 Deputy Mire of the Iberville Parish Sheriff's Department made a traffic stop on a vehicle operated by Mr. Gomez for a purported traffic violation. Deputy Mire asked for permission to search the car and Mr. Gomez refused to authorize a search of the car. Approximately 30 minutes after the stop Deputy Mire initiated a free-air sniff around the vehicle, after which Deputy Mire and others searched the vehicle and found suspected methamphetamine inside the vehicle.

VIII. NOMENCLATURE

ALERT: physical reaction or response of a dog upon recognition of an odor that it is trained to detect.

Illustrations of an alert are: change in breathing (faster/slower), change in tail wagging (faster/slower/circular), body stiffening, head snap, change in ear position (up/down), squaring to the search area. These changes are similar to a bird hunting dog that gets "birdie" when it smells a bird it is trained to hunt. The reactions/responses are completely individual to the dog.

An alert informs the handler that an odor which the dog is trained to detect is present. An alert is not a trained response, but a natural response from the dog and would be comparable to a bird hunting dog getting "birdie" in the field. It is imperative that the handler immediately recognize the dog's alert. The alert is the single most important aspect of a well-trained and reliable and properly maintained detector dog because it means that the dog is smelling the odor of the substance it is trained to detect. An Objectively Observable Trained Final Response (OOTFR) without an alert is meaningless. Additionally, the most important skill of a dog handler is to be able to immediately recognize the dog's alert, categorize it and continue their job so as not to consciously or subconsciously, by accident or intent, cue the dog into giving an OOTFR.

Objectively Observable Trained Final Response (OOTFR): (sometimes referred to as an Indication). After alerting to an odor it is trained to detect, when/if the dog pinpoints the source of the odor it will give an objectively observable trained final response (OOTFR) at the source of the odor without influence (cueing) from the handler. **The dog is then trained to stay at the source of that OOTFR until released, or rewarded, by the handler.**

There are two acceptable OOTFRs: passive (sit, point, down, stand) or aggressive (scratch, dig, bite, chew, bark) and would be similar to a bird dog that either points or flushes. The OOTFR is the conclusion of that sniff/search. The handler may have other sniffs/searches to conduct but they are separate sniffs/searches. A dog must remain at the source of the odor until released by the handler via command or reward.

When a hunting dog is "birdie" it will hunt to the source and then, through training and its natural drives, will either flush or point the bird(s). There are two reasons for any trained hunting dog (birds or drugs) to leave the area it has given its trained final response (passive/aggressive) or it gives no trained OOTFR:

1) The birds have left and it was smelling residual odor OR
2) Because of improper and/or inadequate initial and/or maintenance training the dog leaves and continues on a journey.

A well-trained and reliable drug detector dog will indicate one time after alerting to an odor it is trained to detect and retain that OOTFR (passive or aggressive) at its source until released or rewarded by the handler. Because a well-trained and reliable drug detector dog has then given law enforcement reasonable suspicion to believe that the odor of illegal drugs that the dog is trained and certified to detect, is present, the dog should not be allowed to leave the OOTFR and continue around the vehicle. Leaving the trained OOTFR is erroneous and indicative of a dog that is not well-trained or reliable and a handler that has not properly maintained a well-trained and reliable drug detector dog. A well-trained and reliable drug detector dog does not leave a final OOTFR without being released or rewarded by the handler. A dog that repeatedly leaves an OOTFR is not performing to the standard of a well-trained and reliable drug detector dog. K9 Exon left his sit every time during the sniff of Mr. Gomez's vehicle. This is evidence that Deputy Mire is not a well-trained or reliable detector dog handler and that Exon is not a well trained and reliable drug detection dog.

IX. FUNCTION AND PURPOSE OF A DRUG DETECTOR DOG TEAM

The function and purpose of a well-trained, reliable and properly maintained drug detector dog is to quickly and efficiently determine if the odor of illegal drug contraband that it is trained and certified to detect is or is not present. The purpose of a drug dog handler is to quickly and efficiently have the well-trained, reliable and properly maintained drug dog sniff the air coming from a vehicle to determine if such odor is or is not present without humiliating, embarrassing, inconveniencing or infringing on the rights of individuals by making an erroneous and illegal search. If the dog detects an odor it is trained to detect it must give an OOTFR to inform and confirm to the handler and observers that drug odor is present. The drug dog must remain in that OOTFR until released or rewarded by the well-trained, reliable and properly trained drug detector dog handler. K9 Exon did not remain in the OOTFR until released by Deputy Mire. K9 Exon did not perform to the standards of a well-trained and reliable drug detector dog.

Recognition of the trained odors should trigger an alert from the dog, and if the dog is able to pinpoint the source of that odor, it should to give an OOTFR, be it aggressive or passive, on their own without any cueing or enforcement from the handler. The job of the well-trained, reliable and properly maintained handler is to direct the dog through the search/sniff in an efficient manner while keeping an eye on the dog so that they are immediately able to recognize any/all alert(s) given by the dog, and allow the dog to

work to the source or assist by continuing a proper search pattern. But the handler cannot alter their search pattern in any way (i.e., slowing, changing directions, stopping and staring for long periods, changing voice tones/speed) as any change may be perceived as a cue by the dog to show more interest or to indicate.

Three imperative characteristics of a well-trained and reliable drug dog sniff/search are:

1)   a. the dog alerts only to the odors it is trained to detect while it disregards all other odors,
b. the dog stays with the odor and pinpoints or attempts to pinpoint the source of that odor then clearly exhibits an OOTFR,
c. the dog remains in the OOTFR until released/rewarded/removed by the handler.

2)   The handler immediately recognizes their dog's alert and responds by allowing the dog to work to the source or assists the dog by guiding it with an appropriate search pattern and without changing their voice, search pattern or speed.

3)   The handler does not cue the dog, consciously or subconsciously, by accident or intent, into giving an OOTFR.

An OOTFR without an alert is erroneous and undoubtedly the result of improper maintenance training or the handler cueing the dog, consciously or subconsciously, by accident or intent, to indicate or through erroneous pattern training of the dog. This behavior was exhibited by Exon and clearly reveals that the Exon/ Mire dog team is not well-trained or reliable.

Stringent detector dog certification and deployment standards, implemented to ensure reliable results that protect people from accidental or intentional government intrusion, mandate that it is unacceptable (or a failing score in a certification exercise) for a detector dog to indicate and then leave the OOTFR on its own.

Although alert responses/reactions of dogs are frequently generalized by handlers and trainers, each dog will have a different and distinct alert. Each handler must be able to recognize and articulate the response/reactions of their dog when it does alert to an odor it is trained to detect. Accurate descriptions of the dog's alert and OOTFR behavior should be written in training, street deployment reports, and affidavits. The recognizable alert and OOTFR determine if there is probable cause to search a vehicle. There are no records from Deputy Mire that provide a description of K9 Exon's alert behavior or OOTFR.

Well-trained, reliable and properly maintained detector dogs will alert to the odor of drugs during a search/sniff *OR* they won't alert to the odor of drugs during a search/sniff. Dogs don't "show an interest." They don't "kind of alert." A well-trained and reliable handler is taught to read the alert of their dog and recognize when the dog

is or is not alerting to the odor of drugs they are trained to detect. A well-trained and reliable handler must immediately recognize the dogs alert during a sniff for drugs. The handler's recognition of an alert by their dog must also be identifiable but the handler cannot change their actions/movement because any change by the handler may, consciously or subconsciously, by accident or intent, cue the dog to give an unwarranted OOTFR. A well-trained and reliable drug detector dog handler will articulate in their training logs and written report the alert actions of their dog, thus proving they know the alert behavior of their dog. There is no evidence that Deputy Mire ever did this or recognized Exon's alert or OOTFR.

A well-trained, reliable and properly maintained detector dog handler will move around the vehicle quickly and efficiently on the street as they do in training and certification sniffs. A dog handler who concentrates or focuses their search pattern in a specific area (i.e. trunk seam) and spends numerous seconds at that location may, consciously or subconsciously, by accident or intent, cue the dog into giving a false, fixation or frustration OOTFR.

If the handler is unsure that the dog alerted to the odor of contraband drugs coming from the vehicle, or if the dog has not given an objectively observable trained final response after alerting to the odor of contraband drugs it is trained to detect, there should be no search of the vehicle.

A well-trained and reliable drug detector dog's alert and OOTFR behavior exhibited in training should be the same during certification and/or during a street sniff/search. A well-trained, reliable and properly maintained handler's actions during a sniff/search should be the same in training and certification sniffs as on the street. Any change in search pattern, tone of voice or body movement will cast a shadow of doubt on the integrity of the sniff results.

A well-trained, reliable and properly maintained handler and dog make a "sniff" appear effortless. The dog's job is to sort through the many odors entering the olfactory system to find the odor of the drugs it is trained to detect and disregard all other distracting odors, then inform the handler that it has smelled the odor of a substance it is trained to detect by indicating when it has found the source of the of the odor.

The handler's job is to guide the dog around the vehicle at a constant speed and a loose leash, making sure the dog follows a search pattern, to read the dog's alert if/when it smells the odor of drugs, maintain the basic search pattern throughout the search/sniff, and not influence or attempt to influence the dog by changing their body movements, voice or search pattern in any way. Even the slightest change in the handler's body movement or voice can cue a dog to indicate.

Poorly trained and unreliable drug dog handlers alter their search pattern when they observe the dog pay interest to an odor/area. This action · or inaction · by the handler can erroneously lead the dog to sniff harder (the dog thinking the handler

"thinks" there is odor) or indicate because the dog is being cued, consciously or subconsciously, by accident or intent, by the handler.

It is my opinion that Deputy Mire altered his search pattern, consciously or unconsciously, by accident or intent, numerous times during the sniff of Mr. Gomez's vehicle, the result is that K9 Exon sat a minimum of five (5) times during the sniff. Thus, the performance of Deputy Mire was not that of a well-trained or reliable drug dog handler. Accordingly, the results of the sniff are unreliable.

The sniff of a vehicle exterior frequently starts with a fast-paced trip around the vehicle exterior. It is common for the dog to be ahead of the handler at this time which allows the handler to view all that the dog does. The length of time it should take a well-trained drug dog team take to sniff the exterior of a vehicle cannot be put into specific length of time such as 23 seconds. But the handler should move with speed and purpose while watching the dog. The dog should be motivated and actively sniffing the vehicle and air around the vehicle. Sniffing the exterior of a vehicle for longer than necessary could trigger a false response (such as a frustration OOTFR) from the dog or lead one to believe the handler is attempting to cue the dog to indicate. An erratic or repetitive pattern, such as repeatedly going over the same area of a vehicle multiple times, can also trigger a false response such as a frustration OOTFR. In my opinion both of these mistakes were made during the sniff of Mr. Gomez's vehicle.

A third search pattern around the entire vehicle may be performed by a handler if the dog missed areas of the vehicle in the previous passes but the handler must take care not to influence or cue the dog, consciously or subconsciously, by accident or intent, to indicate just because they "suspect" drugs are in the vehicle. Before the end of the sniff a well-trained and reliable handler will know if the dog alerted to the odor of drugs or not, and the handler's recognition should be distinguishable to the trained professional. Furthermore, a well-trained and reliable handler should articulate in their written report what the dog did and where the dog alerted on the vehicle prior to its OOTFR. This vital information should be but is not included in Deputy Mire's report.

To conclude the sniff/search the dog must exhibit an objectively observable trained final response, distinguishable to the untrained eye and it must remain in that position until released by the handler (or the handler removes the dog because of safety concerns). It is my opinion that Exon exhibited no common alert behavior during the sniff of Mr. Gomez's vehicle but reacted to cues, accidental or intentional, given by Deputy Mire.

Additionally, in his written report submitted as evidence Deputy Mire states that K9 Exon gave two final OOTFRs (the drivers and passengers rear door). Deputy Mire fails to state that K9 Exon indicated **four (4) times** on *the passenger side* during the sniff of the vehicle and possibly twice on the driver's side.

A well-trained, reliable and properly maintained detector dog does not leave the odor of a substance it is trained to detect on its own, after it has given a final OOTFR. A handler might pull the dog away from an alert but if so, the dog wants to return to the

odor to pinpoint the source. Training or allowing a dog to leave odor, by accident or intent, is a serious error on the part of the handler, supervisor and/or trainer, and will lead to performance issues on the street, such as the dog smelling and leaving the odor, diminishing the dogs alert behavior and possibly lead to frustration OOTFRs. A well-trained, reliable and properly maintained detector dogs alert and desires to pinpoint the source should be obvious, identifiable and articulable by the handler and visible to the professional. It is my opinion that during this sniff Exon did not have a desire or interest to return to any area even when directed back to an area several times by the handler.

A well-trained, reliable and properly maintained detector dog gives an objectively observable trained final response after it alerts to an odor it is trained to detect and when it pinpoints the source of that odor, then stays with/at that source until removed by the handler. A well-trained, reliable and properly maintained detector dog does not leave the source on its own. A well-trained, reliable and properly maintained detector dog handler does not allow a dog to leave the source in training or on the street (except for factors previously mentioned). In this sniff it is apparent that Exon did not, remain at the location of any of the five (possibly six) sits he exhibited when sniffing the car. Leaving the sit is a sign of a dog that is not smelling drug odor but simply wants its toy/reward from the handler and proof that the dog is not well-trained or reliable. No training logs were provided that shows Deputy Mire, or the previous handler, Deputy Hebert, ever performed even one session of basic OOTFR exercises with K9 Exon despite the fact that the previous handler noted on one of the logs that additional OOTFR training should be conducted This is again evidence that K9 Exon was not well-trained, reliable or properly maintained. The fact that Deputy Mire did not perform even the most basic of training with K9 Exon, is evidence that Deputy Mire is a not well-trained and reliable detector dog handler.

X. METHODS OF DETECTOR DOG TRAINING AFFECT RELIABILITY

Dogs can be trained to detect different substances/odors but there are only two methods of detector dog training: Primary Reward and Secondary Reward.

SECONDARY REWARD detector dog training is defined as: the reward usually does not come from the source and the reward usually does not have the odor of the drug on it.

An example of secondary reward detector dog training is when the handler rewards the dog for finding marijuana with an item (tennis ball, food, towel, Kong ball, tug toy) that does not have the odor marijuana on it and the reward does not come from the source of the odor. Usually the handler carries that reward with them during training and street searches and rewards the dog when it indicates. There is a proclivity for secondary reward detector dogs to give frustration, fixation and false OOTFRs. Secondary reward trained dogs have a tendency of looking to the handler for the reward because they know the handler has it. Once the dog knows the handler has the reward, the dog

knows that to get the reward all it has to do is give the desired OOTFR (passive/aggressive) and it will be rewarded. This improper training creates an unreliable detector dog. Secondary reward training was developed by humans and not developed/based on Mother Nature.

PRIMARY REWARD detector dog training is defined as: The reward always has the odor of the drug on/in it and it always comes from the source (in training).

Primary Reward training was developed by Mother Nature. If a wolf in the wild is hunting and smells a rabbit and tracks the odor of the rabbit to a hole in the ground, its reward will come from the ground and will be the rabbit. The focus of the wolf will be on the hole in the ground. Mother Nature does not throw the wolf a tennis ball or leg of lamb. If the wolf is hungry it will dig in the hole after the rabbit (aggressive) or wait until the rabbit pops up/out (passive). A bird dog only gets "birdie" when it smells a bird it is hunting for. Its reward is when it points or flushes the bird and the hunter shoots it so the dog can retrieve the bird and return it to the hunter (hopefully). Both are examples of primary reward.

A bird dog does not get "birdie" if it does not smell a bird because there is no reward for pointing (or flushing) where there is no bird. A wolf does not dig a hole in the bare ground trying to get a rabbit that is not there because it will not be rewarded with a rabbit. In nature animals are rewarded with the item/odor of what they have been hunting and it does not come from a human but from the source (rabbit in hole, bird in weed clump). The same is true with a well-trained, reliable and properly maintained primary reward detector dog.

Within primary reward training there are two methods of rewarding a dog once it has pinpointed the source of the odor: *Direct Reward* and *Sleight of Hand*. A properly trained primary reward dog will find its "odored" toy during training in the search area and only occasionally (less than 10% of the time) will the dog be rewarded with the sleight of hand method where the handler (or another) becomes a magician and makes the reward appear where the dog has pinpointed the source. Unlike always using a tennis ball as a reward in secondary reward training, as an example, in primary reward training the reward can be any object (arm rest, tire, coffee mug, back pack) as long as that object has the odor of a substance the dog is trained to detect. The "odored" item is in the search area and not carried by the handler. The object used should always change (shape, size, texture), only the drug odors remain consistent. This keeps the dog focused on the source of the odor instead of looking to the handler for the reward and it virtually eliminates false responses.

Dogs trained by secondary reward methods give false, fixation, and frustration OOTFRs if not properly maintained, resulting in unreliable detector dog team performance. Proper maintenance training for Secondary Reward Dogs and Handlers is time consuming and MORE imperative in ensuring the reliability of a secondary reward dog.

K9 Exon is a secondary reward detector dog. The evidence reviewed, including the few training records provided, clearly shows that K9 Exon and Deputy Mire are not a reliable and well-trained detector dog team.

XI.   CUEING A DRUG DETECTOR DOG

A drug detector dog handler cueing a drug detector dog is erroneous and proof that a handler is not well-trained or reliable. The slightest change in a search pattern by a handler can be perceived by the dog as a cue. Furthermore, an unscrupulous handler can cue or command the dog to indicate. Some handler actions, be they intentional or accidental, conscious or subconscious, that can be interpreted by the dog as cues are:

- Change in speed such as slowing down (the dog may "think" that the handler believes there is something in this area so I better pay more attention so I don't miss it),
- Changing or reversing direction of the sniff in one area (frequently done repeatedly),
- Repeatedly presenting the same area to the dog, or a back and forth search pattern of the same area,
- "Marching" in place as the dog is in an area,
- Changing their voice to an excited tone,
- Speaking in a quiet, suspicious, whispering voice (this can cause a dog to tilt its head to hear better, and may be deemed as part of an alert)
- Breaking the search pattern by moving away from the search area (vehicle side, wall, trunk to side of car) to allow the dog to move past (it then appears that the dog is working into odor when it may not be)
- Changing leash hands,
- Tightening or loosening the leash.

If the above movements/actions are not practiced in training and documented in meticulous training records, they cannot be performed on the street as they may cue the dog to indicate.

Detector dogs may be alerted to subtle human cues that direct dog responses without formal training, including pointing, nodding, head-turning and gazing. Studies have shown that a dog handler who goes into a search believing that drugs/drug odors are present can, by accident or intent, consciously or subconsciously, influence a dog into giving an erroneous or false OOTFR.[1]

XII.   IPSO K9 UNIT DRUG SNIFF POLICY NOT FOLLOWED

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[1] Handler Beliefs Affect Scent Detection Dog Outcomes
UC Davis study Published on line: January 12, 2011 Lisa Lit
A copy is attached hereto for the Court's convenience.

The Iberville County Sheriff's Department (IPSO) K9 Policy was provided for review. Section 06.03-01 states in part:

> "It is the policy of this department to utilize properly trained canine teams to supplement patrol and investigative functions."

According to the training records provided, Deputy Mire never received any "initial training" with K9 Exon, thus they were not a "properly trained canine team".

Section 6-03.20   REFRESHER TRAINING

> "The success of an effective police canine unit lies, in large part, with both handlers and dogs of the organization; therefore, it is important that the benefits gained through the initial training period be continuously developed."

Dep. Mire's training records clearly indicate that he did not "continuously" develop that initial training, which he never received with K9 Exon.

> "In order to maintain a high standard of efficiency, both handlers and dogs are to be given in-service refresher trainings, averaging on *(sic)* day every month."

According to the records provided for review, Dep. Mire did not average one day per month of drug training with K9 Exon.

> "This training is under the supervision of the Captain."

No records were provided to show that the Iberville Parish Sheriff's Department Captain supervised the Mire/Exon team.

> "However, much of the responsibility for maintaining the work ability and efficiency of the dog rests with the handler alone. The team must constantly apply themselves to ensure maximum performance."

There are no training records to substantiate that Deputy Mire followed or documented this portion of the policy.

XIII.   IBERVILLE PARISH SHERIFF'S OFFICE K9 DRUG SNIFF POLICY IS INADEQUATE TO INSURE RELIABILITY

An agencies drug dog policy should be written to protect the rights of people from illegal searches and seizures and ensure that the team(s) are well-trained and reliable. A proper policy should state:

- ❖ the criterion necessary prior to sniffing vehicles;
- ❖ that a dog must indicate prior to searching the vehicle;

- ❖ that the handler's reports/affidavits must be accurate and contain vital details about the sniff, alert behavior and location and the dog's independent OOTFR;
- ❖ that the team must be well-trained, reliable and properly maintained to professionally accepted standards;
- ❖ the nomenclature and definitions of to be used in reports/affidavits;
- ❖ that critical task training such as OOTFR, distraction and search pattern training be performed and documented on a regular basis;
- ❖ that maintenance training be supervised by a properly trained and credentialed detector dog trainer;
- ❖ that department training forms be accurately filled out and reviewed by the noted supervisor/superior;
- ❖ that handlers receive continual update training regarding the Constitutional limitations on the use of a drug detector dog;

A K-9 Unit Drug Sniff/Search Policy should be established and written to protect people from unreasonable government intrusion by implementing and enforcing stringent safeguards and an over-watch system of a drug dog handler by a properly trained professional to include but not limited to review of all recorded videos (not just sniffs that resulted in drug seizures, in-car and body cameras), review of training and training records and implementing stringent, difficult and realistic drug dog certifications to protect the rights of individuals whose property may be sniffed by their drug detector dog team and ensure the team(s) are well-trained, reliable and properly maintained.

In my opinion, based on my training and experience, a review of the IPSO Policies and Procedure, the actions of Deputy Mire and Exon in this case show that such safeguards have not been implemented in the IPSO K9 Unit Drug Sniff/Search Policy.

XIV.   CERTIFICATIONS

Certifications should TEST the skills of the team: evaluate the dog's abilities to hunt for the substances/odors under realistic conditions, and disregard a plethora of distractions (olfactory, auditory, visual), alert to the odor of all contraband drugs/odors the team claims to be trained for, exhibit the dog's objective observable final trained response as well as the handler's search skills and their ability to read the dog's alert. The score sheet for a certification should have the date, location of every sniff, where the drug was placed, list all distractions (olfactory, auditory, visual) as well as the name of the qualified evaluator/judge. The exercises may be standardized or changed to meet the needs of a specific dog team such as for a drug dog that only searches school interiors or for a handler that mainly sniffs vehicles such as a Trooper of member of a drug interdiction task force.

Agency, organization or association detector dog team certifications should not be explicitly flawed, faulty, or lax but written and designed to test the dog team's abilities and skills in street like situations to help ensure the team is well-trained and reliable and

prepared to work the street according to court recommendations/guidelines thus protecting citizens from unreasonable government intrusion, humiliation, embarrassment and having their rights invaded. Certifications should not be so easy that a dog or handler with a few days of training can pass them and should not be a "rubber stamp" for all to pass.

Additionally, the individual(s) evaluating the dog team should have the appropriate credentials and training to do so. A judge or evaluator should have sufficient experience as a dog handler, then receive months of training to become qualified as a trainer and finally trained as a judge or evaluator. Furthermore, they should have the experience of having trained several detector dog teams from beginning to end and maintain dog teams so that they see and learn some of the situations that can occur with a dog team· a process that takes time and experience.

While an agency or association certification process may show that a dog team performed to acceptable levels on the date(s) of the certification, to properly critique an evaluation/certification one must know the credentials and training of the certifying judge, the specific exercises conducted for the certification, the written standards which a judge is evaluating when scoring the dog and handler, the number of dog teams that participated in the certification, and the identity and scores of any/all dog teams that failed the certification. Additionally, a judge(s) should write notes on the certification score sheet regarding the handler's search skills, leash handling and ability to read the dog's alert as well as the dog's hunting, alerting and OOTFR skills in case their memory and testimony is required in civil or criminal proceedings.

Vehicle sniff certifications should be based on realistic conditions that occur prior to and during drug dog sniffs, such as the German Police Drug Detector Dog standards. Realistic distractions such as moving vehicles, animals in the vehicle (dog, cat, etc.), odiferous human food (fried chicken, sausage), animal odor distractions, should be part of the vehicle certification exercises.

Furthermore, though teams are required to sniff building interiors, the size of the rooms and the maximum time allowed to search do not push the limits of endurance for the team. A dog that is not properly maintained and tested for endurance will usually have difficulty in long searches and frequently give a frustration or false OOTFR, thus it is not well-trained, reliable or street ready.

Certification by the National Narcotic Detector Dogs Association (NNDDA)

The NNDDA certification standards are vague, faulty, lax and do not even require a drug detector dog team to be evaluated while performing a sniff of multiple vehicles for the presence or absence of the odor of illegal drug contraband permitting drug dog teams that are not well-trained, not reliable and not properly maintained to be certified by the NNDDA. The NNDDA "standard" does not, nor is it designed to, ensure that an NNDDA certified team is well-trained or reliable.

According to the records provided, Deputy Mire began handling and performing drug dog sniffs with K9 Exon in December 2016.   There is no evidence the Mire/Exon drug detector dog team participated in any drug dog certification prior to September 2018. The Mire/Exon team was certified by the NNDDA on September 28, 2018, nearly two (2) years after the team began working the street sniffing for drugs, to detect **marijuana and cocaine**.

The NNDDA website states:
> "the handler is responsible for notifying the judges of the type of alert (aggressive or passive), the judges can expect. There will be only one (1) negative response allowed. The handler will be notified of positive or negative response."

Despite allowing for "one negative response" the NNDDA fails to define the term. It is unknown if "negative response" means the dog:
- ✓ can smell and leave an odor/drug without a final OOTFR,
- ✓ can miss one odor,
- ✓ did not respond to one odor or,
- ✓ gave a false OOTFR when there is no odor.

No drug detector dog team terms are defined in the NNDDA certification. The NNDDA term "alert" appears to be the same/equivalent to the term OOTFR that I utilize in this report. NNDDA utilizes a Pass/Fail standard but fails to provide any details whatsoever. The lack of objective, discernible criteria and well-defined terms by the NNDDA makes it impossible to determine whether a dog team is well-trained and reliable by looking at the NNDDA's so-called "score sheet".

The NNDDA certification is an odor recognition-based certification that is not designed to test teams under street realistic conditions to determine if the team is well-trained and reliable.   NNDDA certification merely determines if a dog recognizes the odor of marijuana and cocaine. Other drugs are optional but no other drugs are listed for the Exon/Mire drug dog detection team, therefore even under the lax standards of the NNDDA there is no evidence that Exon is trained or certified to detect methamphetamine.

As stated previously, no notes from any judge were provided and it is unknown if Exon/Mire team had a false OOTFR, no response to a drug/drug odor, or a "negative response" during the NNDDA drug dog odor recognition certification. Because no notes were written on the score sheets by a judge it is unknown, and could not be recalled by a judge from the certification forms provided: what alert behavior Exon exhibited before pinpointing and indicating at the source, what type of OOTFR (passive or aggressive) Exon gave, where the OOTFRs were given upon pinpointing an odor it is trained to detect, if he gave a false OOTFR, or missed any drug during the searches, what drug odor that might have been, if the handler read Exon's alerts or whether the handler cued the dog to give an OOTFR.

The NNDDA certification fails to mandate "real world" distractions such as urine, feces, dog food, vehicle traffic, animals (alive or dead), human food (such as pizza and/or fried chicken). Inclusion of such real-world scenarios would help ensure the teams are well-trained, reliable, and not affected by such distractions. Implementing such distractions would help establish that a team was well-trained and reliable, thus greatly reducing "false alerts" and false OOTFRs.

The NNDDA certification standards utilized to "certify" Deputy Mire and Exon are not written to ensure "certified" drug dog teams are well-trained, reliable and do not unreasonably intrude into a person's legitimate expectation of privacy. Instead, in my opinion they are intentionally designed to quickly pass drug dog team(s) with a minimum of training and without adequate examination. This opinion is based, in part, on the fact that the NNDDA:

> - does not state/describe what constitutes ideal performance from the dog and/or handler,
> - judge's score sheets fail to require that the judge write notes regarding the performance of the dog and the handler,
> - does not state what a judge is to evaluate during the search (search pattern, search skills, reading the dog, leash, alert of dog, etc.)
> - does not detail what is a "pass" evaluation or a "fail" evaluation,
> - written description(s) of the certification exercises to be performed are minimalistic in nature and are not designed to prove that the team is well-trained or reliable,
> - written descriptions of the criterion that the judge(s) must evaluate and note, were not provided for review,
> - certifying evaluator's credentials were not provided for review,
> - does not state specific requirements to become a judge,
> - certification fails to provide any information regarding the dog's or handler's performance during the certification search,
> - fails to test or certify the "narcotic" teams around/in vehicles,
> - certificate/booklet provided fails to deliver any information which shows that this team is well-trained and reliable,
> - fails to require all drug dog teams be certified on all drugs/odors the dog is supposedly trained to detect,
> - did not test the Mire/Exon team on vehicles.
> - certified Deputy Mire and Exon only on the drugs/odors of marijuana and cocaine in September 2018 and no certification at all for 2017,
> - fails to properly and adequately test each team in street realistic environments with each drug/drug odor upon which the team seeks certification.

The fact that no records from the certifying Judge concerning certification of the Exon/Mire team is further evidence that an NNDDA certification does not reflect that the team was well trained and reliable. A qualified and properly trained drug detector dog Judge should be evaluating the dogs search, alert, and OOTFR skills and is also

evaluating the handlers search and leash skills and their ability to read the dog during deployment of each sniff/search. Detailed records must be made and retained by the certifying person/people, not only for purposes of later review with the handler to focus on problem areas and strengths, but to provide accurate records for comparison over time of the team's performance. However, as no such records from the certifying "judge" have been provided. It is presumed the NNDDA does not require such records from its Judges or evaluators.

My opinion is that the failure of the NNDDA to require and provide such information is further proof that the team was not well-trained or reliable and that certifying the Mire/Exon team to their "standards", calls in to question the "bona fide" status of the NNDDA.

Deputy Mire and K9 Exon were certified only on the odors of marijuana and cocaine by the NNDDA on September 28, 2018. At the time of the Mr. Gomez was stopped, the Mire/Exon team were *not certified* to detect methamphetamine. The Mire/Exon team had **no previous certification** by any bona fide association/agency. For a drug dog team to locate and indicate on drugs/drug odors on the street that it is not certified on (methamphetamine), proves that the team is not well-trained and reliable.   It was not until approximately seven (7) months *after* the sniff of Mr. Gomez's vehicle (September 2019) that the Mire/Exon team was "certified" by the NNDDA on methamphetamine.

According to the evidence provided for review, the Mire/Exon team worked the street sniffing countless vehicles (no records provided) from December 2016 to September 2019 without being certified to detect methamphetamine or its odor, or heroin and its base odor and derivatives.

XV.   JUDGING CRITERION AND CREDENTIALS

Detector dog team organizations and law enforcement agencies have or utilize or should have and utilize certifications standards to ensure those certified detector dog teams are well-trained, reliable and properly maintained. Those standards should be created to properly and adequately test the detector dog teams in street realistic conditions to protect the constitutional rights of people from unreasonable searches and seizures and ensure the team is well-trained, reliable, and properly maintained. A certification should help ensure that the performance of the team is beyond the appearance of impropriety. However, no matter how well the certification standards are, the quality of training and credentials of the individuals judging/evaluating the stringent certification standards must also be beyond the appearance of impropriety.

The integrity of Drug Detector Dog Teams depends on the actions and qualifications of the judges that evaluate and certify the individual teams.   The judge(s) must be experienced, well-trained, well-qualified, and above all they must ensure the integrity of the profession by safeguarding the rights of the public by means of meticulously analyzing the dog and handler who is attempting to be certified. A careless, untrained,

or unscrupulous judge destroys the credibility of all drug detector dogs teams nationwide.

The credentials of the NNDDA "judge" were not provided for review.

The certification sheet does not provide any information regarding the searches conducted: the performance of the dog or handler; where the drugs were located; if the team sniffed vehicles during the certification; if the dog alerted to the odor of contraband drugs; if the dog gave an objectively observable trained final response or what that that response was, if the handler changed their search pattern, if the handler spent an inordinate amount of time in an area prior to the dog giving a final response, etc. No notes from the "certifying official" are on the certification forms provided for review.

The NNDDA does not list the requirements a person must meet prior to becoming a judge such as: trained detector dog handler for three years, then receive extensive training to become a trainer, then two years as a trainer. Nor does the NNDDA list the criterion the judge is to assess during the "certification".

Through training and experience every judge has, or should have, a mental picture of a theoretically perfect performance by the dog and handler. Additionally, a every judge candidate, through training and experience, should have a mental picture of erroneous performance by the dog and handler. However, without extensive training and experience the mental picture may be out of focus or non-existent. A written standard for the judge to follow, clearly stating what portions of each exercise (search pattern, alert, OOTFR, handler skills, etc.) must be evaluated, with notes written by the certifying official, to assist in recalling details of the sniff/search should the need arise. From the information provided the NNDDA fails to provide such requirements of their detector dog judges.

If the sniff of the vehicle in question had been a certification exercise, a properly trained detector dog judge would opine that Exon visibly sat at least **five** times on camera (and possibly six).

After reviewing the video, they would see that the handler changed his search pattern every time on the passenger side prior to K9 Exon sitting. Because of the poor search skills exhibited during the sniff, Deputy Mire would have received a failing score for his poor handler skills. And K9 Exon would have failed the exercise because it sat so many times after Deputy Mire changed his search pattern.

The NNDDA score sheet, if it can be called such, does not provide any information regarding the searches conducted, the performance of the dog or handler, where the drugs were located, if the team sniffed vehicles during the certification, if the dog alerted to the odor of contraband drugs, if the dog gave an objectively observable trained final response or what that that response was, or if the handler altered their search pattern at all during the certification exercise, if the handler recognized the alert and believed the dog when it did indicate. No notes from the "certifying official" are on the certification

form provided for review. It is my opinion, based on my training and experience, that the %certifying official+ could not replicate the sniffs and searches performed or recall the actions of the dog and handler during the certification exercises, based on the forms provided.

The %gold standard+ in drug dog detection certifications and training, is the German Police Drug Dog Certification standards. The internationally recognized German Police Drug Detection Standards (PSP2) requires 10 searches with 14 finds, mandates distractions and is designed to test the abilities of the drug dog team thus helping protect people from unreasonable searches and seizures. By comparison the NNDDA certification requires a search with two odors to be certified as a %narcotic+ detector dog team.

XVI. WELL-TRAINED AND RELIABLE

Annual certification exercises are supposed to establish a degree of reliability for the day(s) of the certification. Nonetheless, drug dog teams need continued, properly performed and supervised maintenance training. Training should include basics such as OOTFR skills, search pattern training, long difficult searches, and varied and intense distraction training. Training on these skills improves the dog teams efficacy and reliability on the street and helps protect against unlawful invasion of privacy.

A properly trained and certified canine team requires proper maintenance training to retain its efficacy. Proper maintenance training and the filing of meticulous records of every sniff/search is critical in helping to establish the efficacy and reliability, or lack thereof, of a detector dog team, and aid an agency in supervising the canine team and the early detection of any problems which a team is experiencing, even if the handler, who has received minimal training, does not know or recognize there are errors being committed.

Accurate records which truthfully state the details of every street sniff/search conducted by the detector dog team (find or no find) should be maintained, and reviewed by a properly trained professional, to further establish the reliability and efficacy of the dog team. No such records have been maintained by the IPSO or Deputy Mire.

The quality of work performed by a law enforcement drug detector dog team should not be %good enough for government work+. Rather the team and employing government entity should strive for and establish policy and practice for the teams performance to be beyond the appearance of impropriety. There should be no question as to the integrity of the team. Handlers and law enforcement agencies should strive to ensure the civil rights of individuals are protected. It is my opinion that the performance of the Exon/Mire team was not good enough for government work. The handlers performance was not reliable and brings forth the appearance of impropriety. K9 Exon did not indicate one time and stay in that trained position until released or rewarded by

the handler. Nothing in the video evidences a well-trained and reliable drug detector dog team.

A.   Lack of Deployment Records Affects the Finding of Reliability of a K9 Team

Departmental policy should mandate that every sniff be recorded and provide the result of each sniff to help protect people from unreasonable government intrusion into their legitimate expectation of privacy. This documentation would allow an agency to track the activity and accuracy of the dog team and allow a properly trained and qualified detector dog team evaluator to track and evaluate the team's performance. Failing to mandate proper and adequate street deployment (and maintenance training) forms exposes an agency to liability and subjects' innocent people to embarrassment and inconvenience and may result in the illegal search and seizure of innocent people. No street deployment records/reports, or videos (dash/body worn) for the Mire/Exon team were supplied for review.

If there is a chance that some aspect of a detector dog team's performance will be scrutinized or become part of a court case the handler and agency have an obligation to make sure that the records are complete. The records must include faults or errors committed by the team (dog or handler).

Deployment sniff/search reports should clearly state if, where and how the dog alerted, if the dog gave an objective observable trained final response, if and where drugs were found. If no drugs were found but an occupant of a vehicle offers a reason for the dog's alert and/or objective observable OOTFR, the individuals(s) names and contact information should be recorded so they can be contacted by the administration or a trained and qualified K9 professional to verify the story and cross-check the handler's records.

Additionally, as a form of checks and balances, the video of every sniff should be reviewed by a properly trained K9 professional to ensure the dog team is working properly. Without proper and adequate records of every sniff and the results of those sniffs neither a law enforcement agency, nor properly trained and qualified drug dog team evaluator, can adequately supervise the drug dog team's performance on the street. The handler and the agency should strive to ensure the civil rights of individuals are protected. No other videos of other sniffs conducted by the Exon/Mire team have been provided for review.

It is unknown if Deputy Mire documents, maintains and forwards the results of every drug dog sniff/search deployment to a properly trained supervisor and if such records, to include in-car and body camera video and audio recordings, are reviewed by a qualified and properly trained professional as no such records have been provided for review. Such records would greatly aid in determining the accuracy and reliability of the dog team.

B.   Lack of Adequate Maintenance Training and Training Records Affects the Finding of Reliability of a K9 Team

i.   Lack of Detailed Records

It is the industry standard that handlers keep accurate notes and training records during basic and weekly maintenance training sessions to assist them in properly maintaining the dog. No records or class syllabus have been provided in regards to Deputy Mire's initial training with K9 Exon. There is no way to determine the dog's alert behavior; how/if the dog indicated at the source of the odor; if the dog remained in the objectively observable trained final response until released or rewarded by the handler; how long each search was or the number of times the team went around a vehicle before alerting and indicating to an odor during training from the training logs provided for review. The failure to provide such valuable information is evidence that Deputy Mire is not well-trained or reliable. Such information would communicate that Deputy Mire was observing the actions of K9 Exon in training and could then carry that information forward to street deployment sniffs/searches.

Failing to mandate proper and adequate maintenance training and street deployment forms exposes an agency to liability and puts at risk its citizenry to a poorly performing detector dog team. Every time a drug dog is deployed for training or on the street, the search or sniff should be recorded. It should not be the agencies standard to record a street sniff only when drugs are found. Departmental policy should mandate that every sniff be recorded and the result of each sniff.

A detector dog handler's maintenance training records should accurately record each and every exercise the team participates in (to include but not limited to: length of each individual search, where the drug is located, type of drug, handler's evaluation of the dogs alert & OOTFR, how the dog was rewarded); how the dog and handler performed during each training exercise, note if the dog is or is not responding according to required standards; details of the dogs alert (ears down/up, intense sniffing/holding breath, tail wagging or stopped, where it alerted); if the dog indicated on its own or if it required enforcement; how did the dog indicate (sit, down, scratch, bite), did the dog maintain the OOTFR until released or rewarded by the handler or did the dog break from the OOTFR prematurely; what distractions (olfactory, auditory, visual) were present and the response of the dog to those distractions, how many times the team sniffed the exterior of a vehicle and adequately list any and all measures taken to correct any/all faults in the team's performance. The meager number of training records provided for the Mire/ Exon team provide no such detailed information and are therefore insufficient to support an opinion that K9 Exon's alert and OOTFR was reliable.

Additionally, and obviously, the record should also provide commentary if the dog does perform according to standards, in the eyes of the handler's limited training. In other words, each training record should satisfactorily describe the performance of the dog team in every exercise and should contain sufficient information so that the exercise can be replicated.

In this case, from the records provided for review, Deputy Mire was never trained with K9 Exon by a professional detector dog trainer, or by any trainer.

Deputy Mire's "Narcotic Training" logs for 2017, 2018 and 2019 frequently are not completely filled out. Information requested on the form includes, but is not limited to: plant time, start/finish time, type of packaging material, length of time drug was hidden/planted, alert times, total time, negative odors and positive alerts. Deputy Mire never wrote a description of the sniff/search that he performed with K9 Exon and never specified how many vehicles were sniffed. The failure to include such vital information in written documentation is additional proof that Deputy Mire is not well-trained and that the Mire/Exon team is not well trained or reliable.

      ii.   Lack of Regular Maintenance Training and Review

Proper detector dog maintenance training involves actual training of the dog every week. Keeping track of the time, the handler spends driving to/from training or waiting around while others work their dog, cannot be claimed by the handler to describe the number of hours a dog was trained during a week, month, year. Handlers do/can learn from watching other handlers work a dog, but dogs do not learn during that time. What is important is the length of time the dog is worked in each of the previously described critical tasks. In other words, each training record should satisfactorily describe the performance of the dog team in every exercise and should contain sufficient information so that the exercise can be replicated. Deputy Mire's log do not provide any such critical information concerning the performance of the dog or handler and thus do not prove that the dog team is well-trained and reliable but show that they are not well-trained or reliable.

A well-trained and reliable canine supervisor should regularly evaluate the written records, prepare and maintain records of their own concerning the detector dog team(s) efficacy, periodically view the detector dog team during training and, if possible, on the street to insure the accuracy of the records and determine, when necessary, if remedial training from a professional detector dog trainer is necessary. In my opinion a competent, well-trained expert monitoring the Sheriff's Department K9 Unit would have noticed that the training forms were not completely and properly filled out by Deputy Mire and initiated corrective measures or remedial training regarding the forms, if in fact they were being reviewed within the agency or a contracted expert (trainer/judge).

If adequate training forms were produced, maintained and reviewed by a well-trained canine unit supervisor or a well-trained detector dog trainer, an expert in the field could evaluate the performance of the dog or handler, determine the details of the exercise performed and, most importantly, establish if critical tasks were performed to industry standards to determine if the team is well-trained and reliable. Critical tasks include but are not limited to: handler leash skills, handler search skills, search pattern training, long hard searches, OOTFR exercises, distraction training, written description of the dog's alert behavior. Adequate training records were not provided for review and thus the

records cannot be utilized to determine if the Mire/Exon drug dog detector team is well-trained and reliable.

iii. Lack of Detailed Records of Trainer or Judge

As indicated above there is no proof that Deputy Mire and K9 Exon were ever trained together as a drug dog team.

A "trained" drug dog handler's critique of their dog's performance during training or on the street is jaundiced. The clear eyes of an experienced and properly trained professional will not be clouded by a personal relationship with the dog or handler. Obviously, the handler should take notes, evaluate and describe the exercise and how they feel the performance of the dog went, but the properly qualified dog trainer and/or qualified evaluator/judge will critique the performance of the dog and handler through the eyes of a trained and unbiased professional. The critique of a properly qualified K9 trainer or judge may be written on the handler records or in a separate log maintained by the trainer/judge. No trainer's critique or evaluations by any K9 supervisor, trainer or judge has been provided for evaluation.

iv. Lack of Detailed Training Logs

Training logs should specifically state how many times the dog team went around each vehicle in training, how fast or slow the team went during these passes, if and why they reverse directions during a sniff/search and why/when they do reverse search pattern directions and the actions of the dog on each pass. This information can be utilized to insure the handler is working properly on the street and not, consciously or subconsciously, accidentally or intentionally, cueing or influencing the dog to give a response that the handler wants so that the vehicle can be searched regardless if the dog did not smell the odor of illegal drug contraband it is trained to detect but rather responded to conscious or subconscious, accidental or intentional cues of the handler. No record provided for review contained this type of valuable information.

Training forms should include performance details such as:
1) when each sniff started and ended during each training session;
2) how long each sniff/search was to build endurance of the team and ensure the dog is not being pattern trained;
3) the dog's alert behavior in each search/sniff conducted;
4) a complete description of the dog's OOTFR (sit, down, scratch, bite) to include if the handler or another assisted;
5) where and what distractions (olfactory, audio, visual) were in place during the search/sniff;
6) if the dog remained at the source when and after it indicated;
7) if the dog indicated at the source;
8) if the dog broke the objectively observable trained final response and pursued its toy/reward before delivery or left the OOTFR for any reason and why;

9) what type of reward the dog was given for proper performance.

As stated earlier the purpose of training forms is to detail what the dog and handler did during the search to show to the courts, administration and others that the team is well-trained and reliable to work the street with minimal if any concerns/problems (and those would be identified in the training, diagnosed and remedial training implemented) that would prevent the dog team from working the street. The records should prove to the courts that this team's performance will not infringe upon the rights of the people because the team's performance is beyond the appearance of impropriety. In fact, the incomplete and absent training forms prove that Deputy Mire and K9 Exon are not well-trained or reliable.

v. Lack of Detail in Deputy Mire's Report

A Law Enforcement Officer's (LEO's) written report and/or affidavit should be a statement of facts presented in chronological order and every document authored by that LEO about an incident should be consistent in its content. A written report/affidavit by a well-trained LEO reminds them of the events of an incident/occurrence and must state facts, not opinions, for use in criminal, civil and departmental proceedings. Prosecutors rely on and presume that a dog handler's report/affidavit is factual and utilize the information in the report/affidavit as a basis to bring criminal charges against those involved.

A dog handler's report should contain, but not restricted to:

1. the legal reason for the traffic stop;
2. the reason why the handler deployed the dog;
3. the activities of the suspect that made the handler believe there was reasonable suspicion to conduct a sniff or if the sniff was conducted without detaining the driver past the initial reason for the stop;
4. an accurate and concise description of the actions of the dog and handler, before, during and after the sniff;
5. a description of the actions of the dog which told the handler that the dog alerted to the odor of illegal drugs in the area;
6. where the dog gave its objective observable trained final response or; why, when and where the handler prevented the dog from giving an objective observable trained final response.

Deputy Mire's report simply stated:
"K9 Exon gave a positive alert to the passenger and driver side rear doors, for the presence of narcotic odor."

Deputy Mire's report fails to mention numerous significant facts to include but not limited to:
- K9 Exon sat at least five (5) times during the sniff and broke that sit every time on his own,

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- o Deputy Mire changed his search pattern every time before K9 Exon sat,
- o Deputy Mire made minor changes in his positioning/movement during the sniff of Mr. Gomez's vehicle, just prior to each time K9 Exon sat,
- o Deputy Mire slowed his pace on the driver and passenger side of the vehicle,
- o Deputy Mire spend 52% of the sniff time in a limited area on the passenger's side,
- o Deputy Mire spend 36% of the sniff time in a limited area on the driver's side.

C.   Analysis of Deputy Mire/K9 Exon Detector Dog Background

In forming my opinion I analyzed and evaluated several criteria, including the following:

1) Initial Canine Handler Training with K9 Exon:

No information was provided for any training of Deputy Mire with K9 Exon. No class syllabus, training records or notes during initial training were provided.

2) Initial Canine Training Methodology:

No information was provided regarding the training methodology of K9 Exon.

3) Maintenance Training:

Other than the vague and sporadic training logs provided (Feb, 2017 thru Feb, 2019) no information has been offered to prove that Deputy Mire and K9 Exon are a well-trained and reliable drug detector dog team.

4) Deployment History:

No deployment search/sniff forms were provided for review.

5) Certifications Passed:

Only one certification prior to the sniff of Mr. Gomez's vehicle was provided, the September 28, 2018 NNDDA "certification" for marijuana and cocaine.

Regrettably, little, if any, of the above information was provided for review, thus I must assume there are no such records. The above information is vital in helping to establish a baseline to determine if the team is well-trained and reliable. Because such information, is not available the team cannot be deemed well-trained, and reliable to hunt for, alert to, and indicate on/to the odor of methamphetamine, a drug/odor that it had not been certified to search for, alert to and indicate on by any bona fide agency or

organization while it was deployed with Deputy Mire prior to the sniff of the vehicle operated by Mr. Gomez.

XVII. ANALYSIS OF DOG SNIFF RECORDED ON IN-CAR CAMERA VIDEO

In my opinion every sniff of a vehicle conducted by a drug dog team should be recorded and evaluated by a properly trained professional to help monitor the efficacy and reliability of the team and ensure the team is performing to professionally accepted standards of a drug detection dog team. No records have been provided that show that the team of Exon/Mire ever had a video recorded sniff evaluated by a trained professional.

Deputy Mire's in-car camera recorded the sniff of the vehicle on February 6, 2019 and was produced for review. It is important to note that the audio portion of the video was present during the time that Deputy Mire was questioning Mr. Gomez and his passenger. It is also important to note that prior to Deputy Mire retrieving K9 Exon to conduct the sniff of the vehicle, the audio portion of the recording provided for review, stops. There is no audio during the sniff of the vehicle. The noise/breathing of K9 Exon cannot be reviewed. Any talking that Deputy Mire may have made cannot be reviewed. That no audio portion of the sniff is provided on the video raises concerns, such as but not limited to:

> Did the handler change his voice to make the dog become excited?
> Did the handler give the dog a verbal obedience command to sit?

Normally the speed of the drug detector team is rapid while moving around the vehicle, similar to a bird dog running through a field hunting quail. When a rapidly moving dog catches the odor, it is trained to detect, the alert is sudden and easy for the handler (or hunter) and others to see. Handlers frequently described such action as a head snap, change in breathing, change in tail wagging, not wanting to leave the area, squaring the body to the search area. Arguably there are times when Exon walks past the handler and is %in the lead+, his tail begins wagging faster, and he does sit numerous times on camera during the sniff. Important to note however, is that because there is no audio during the sniff of the vehicle, one cannot determine if Deputy Mires changed his voice to elicit excitement from Exon which made his tail wag faster; nor can it be determined if Deputy Mire gave K9 Exon a verbal command to sit. It can be seen on the video that Deputy Mire changed his search pattern position along the vehicle and %opened up+ and allowed K9 Exon to go past him, that Deputy Mire's arm positioned changed during the sniff . before the sits of K9 Exon, and that on one occasion, the final sit, Deputy Mire stepped back, made a quick movement with his leg, K9 Exon looked back at Deputy Mire, then backed up and sat just in front of Deputy Mire.

These actions make it likely that K9 Exon sat based on the behavior/actions of Deputy Mire and is not evidence of an appropriate OOTFR.

A properly trained drug detector dog's head will be moving up and down, below the frame of the vehicle to the upper limits its head can reach with all feet still on the ground, while it is moving around the vehicle (unless it catches the odor of drugs and stands to pinpoint or investigate). From the video it appears that Exon is not distracted by outside noises or traffic.

The video shows that Deputy Mire is either not well-trained and reliable or, for whatever reason, chose not to conduct a proper sniff around Mr. Gomez's vehicle as he should have been trained to do. He does not execute a thorough search pattern around the vehicle but rather stops his search pattern and steps back numerous times during the sniff. Deputy Mire's actions are improper and resulted in his performance being below the industry standard.

The actions of Deputy Mire were not consistent with those of a well-trained and reliable detector dog handler. K9 Exon's multiple actions to sit during the sniff were more likely to have occurred because of Deputy Mire's actions and/or to get his secondary reward rather than K9 Exon having detected the odor of methamphetamine. Deputy Mire's actions cued, consciously or subconsciously, by accident or intent, K9 Exon prior to the sits during the sniff.

Exon sat several times on camera. It is assumed that K9 Exon has been trained to sit as his OOTFR. However, in each instance K9 Exon left the sit and moved to the handler or just left the area. Had this sniff been part of a certification evaluation based on any standard to show that a dog is well-trained and reliable when detecting the odor of drugs, it is trained and certified to detect, K9 Exon would have failed.

It is my opinion, based upon my review of the sniff, that Deputy Mire, consciously or subconsciously, by accident or intent, cued Exon to indicate on the vehicle several times because of his lack of an efficient and proper search pattern, lack of proper and subsequent maintenance training for the dog, handler and team, or because Deputy Mire believed there were drugs in the vehicle and he wanted to search it, or a combination of these items. It is also my opinion that Deputy Mire did not perform sniff/search skills to minimally accepted professional levels of proficiency to show that the team is well-trained and reliable. While each of the above items individually would support my opinion that the team (Exon/Mire) is not well-trained or reliable, when taken together there is no question that there was no evidence of a reliable alert and OOTFR to contraband to justify the subsequent search of Mr. Gomez's vehicle.

It is my opinion that a well-trained and reliable drug detector dog will disregard cueing from its handler because the handler conducts such cueing training during regular and frequent maintenance training to insure the dog will ignore such behavior in the field. There is no evidence in any of the records that Deputy Mire ever conducted such training in his training logs, nor notes and details regarding the results of such training.

An objective, well-trained and reliable detector dog handler or Judge will immediately recognize that K9 Exon was responding to the cues Deputy Mire during the traffic stop of Mr. Gomez's vehicle.

In addition to evidence from the video recording and other reasons already discussed, I also considered the following in reaching my opinion:

- ❖ Deputy Mire turned off the audio portion of the video.
- ❖ Deputy Mire never conducted Objectively Observable Trained Final Response training even after the previous handler stated that such training was necessary.
- ❖ Deputy Mire & K9 Exon were not certified to detect the odor of methamphetamine at the time of the sniff of Mr. Gomez's vehicle.
- ❖ Deputy Mire and K0 Exon were not certified on methamphetamine until seven (7) months after the sniff was conducted.
- ❖ The lack of effective and meaningful regular training and meaningful certification.

According to the evaluator training that I received, Deputy Mire would have received failing scores for his skills had this been a drug dog certification exercise. I would have determined that the Mire/Exon drug dog team was not well-trained and reliable in part due to Deputy Mire's improper search pattern, changes in his search pattern and the numerous times that K9 Exon sat and left that obedience position.

XVIII. CONCLUSION

Deputy Mire did not perform his search pattern and handling of K9 Exon to the level of a well-trained and reliable drug detector dog handler.

Deputy Mire failed to maintain K9 Exon to IPSO K9 Unit standards or the standards of a well-trained and reliable drug detector dog handler.

Deputy Mire's repeated search pattern of the passenger's and driver's side cued K9 Exon to repeatedly sit and thereby give the impression of making an OOTFR.

Deputy Mire's written report is lacking and does not coincide with video footage provided for review. Deputy Mire failed to mention his repeated search of the sides of the vehicle. Deputy Mire errantly failed to state that K9 Exon sat **six** times during the sniff.

K9 Exon's multiple sits around the vehicle, combined with the poor search skills of Deputy Mire, evidences an unreliable dog team whose findings cannot be relied upon with a reasonable degree of certainty.

The Iberville Parish Sheriff's Department failed to establish and supervise the Exon/Mire drug dog team, insure that the team was properly certified at all times, and to insure that Exon/Mire conducted mandated training.

The NNDDA certification exercises are not designed to test the skills of a drug detector dog team and does not establish that the Exon/Mire drug dog team was well-trained and reliable.

No evidence of the training and requirements of the NNDDA Judge Billy Jordon was provided so no opinion can be made as to whether the Exon/Mire team is well-trained and reliable.

The training records, certification and deployments records do not provide sufficient evidence to prove that K9 Exon is a well-trained and reliable drug detector dog.

It is my opinion, after review of the information provided, that the team of Exon and Deputy Mire did not perform to minimally accepted professional standards of a well-trained, reliable, properly maintained and certified detector dog team in that the team did not perform a thorough search pattern and that the dog found odors (methamphetamine) that it was not certified to detect. It is my opinion that Deputy Mire knew or should have known that the sits exhibited by K9 Exon were a result in changes made by Deputy Mire, be they accidental or intentional, conscious or unconscious, prior to each sit that was visually recorded.

My opinions are based on the information reviewed in this case; my education, training and experience (as stated in section III, supra and my curriculum vitae, attached to this report.); and for reasons set forth in certain detail throughout this report and listed above.

Date: December 5, 2019

Respectfully submitted,

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KLYE K. HEYEN