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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of April – 2024

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People v. James H. Kendricks, 2023 IL App (4th) 230179, December 19, 2023. Denial of Motion to Suppress (Various Cannabis Offenses) - - Affirmed.

THE CASE: A K-9 alerted to the outside of Kendricks' car. A search of the car revealed illegal cannabis. Did the Officer act in good faith in allowing his K-9 to conduct a drug sniff of the suspect car and the search the car after the K-9 alerted?

FACTS: On the day in question, the arresting Officer, with a K-9 kenneled in his squad car, passed a red Kia automobile with Alabama license plates. He turned around and followed the Kia to a nearby gas station. The Officer parked on the opposite side of the pump as the Kia and went into the gas station. He asked the man who had been driving the Kia, defendant Kendricks, if he would consent to a dog sniff of the car. The Officer knew he did not need consent to do an exterior dog sniff in a public place. Nevertheless, he liked to find out if the person maybe had something to hide. Kendricks answered that he did not consent. The Officer exited the gas station and ran the dog around the Kia anyway. The dog sniff was videoed by the surveillance system of the gas station. The K-9 finished his sniff and alerted. The Officer searched the car and discovered a large amount of cannabis (ten pounds). [Interesting enough, the K-9 was trained to identify the odors of methamphetamine, cocaine, and heroin; but not cannabis.].

Kendricks was charged with various Cannabis offenses. Prior to his trial, Kendricks moved to suppress. A video of the K-9 sniff, and the subsequent search was played in the suppression hearing. After playing the video, the prosecutor asked the Officer questions about it. The Officer testified that a mere "two seconds after starting the sniff," the dog "went into odor." The passive alert, the Officer explained, was only the final alert, signifying that the dog had found the area of the Kia where the odor was strongest. Initially, however, before giving the passive alert, the dog went into odor, "show[ing] the distinct change of behavior at the driver's door, a quick head snap." "Once he goes into odor," the Officer explained, "he's trying to find the source of that odor." So, as soon as the dog perked up and became interested—or went into odor—the Officer inferred that the dog had detected the smell of methamphetamine, cocaine, or heroin seeping out of the Kia. Then the only remaining question was specifically where in the car the contraband was located, a question that ultimately would be addressed, supposedly, by the passive alert. After going into odor, the dog was occupied with "detailing," trying to find where on the Kia the odor was most intense. In the Officer's description of this detailing, the dog "[b]egan sniffing the rear door and made his way back to the trunk. Same thing, detailing the trunk, came back around to the driver—or to the front bumper and he pulled me right to that driver's door. Pressed his nose against the door handle. Put his paws up on the door and passenger door, detailed the scene, lowered into a sit." After the dog had almost instantaneously picked up a scent and was going at the unoccupied car this way to find out where the scent was most powerful, defendant and his brother, Fred Kendricks, came out of the gas station. They protested. Defendant Kendricks demanded that the Officer state his badge number. The Officer replied he would give them his badge number as soon as he was finished with the dog sniff.

Thereafter, a jury found Kendricks guilty of various cannabis offenses. This appeal followed.

ARGUMENTS: Before the appellate court, Kendricks complained that the circuit court erred by denying his motion for the suppression of evidence based upon the fact that the dog sniff and the subsequent warrantless search of his car violated the Fourth Amendment. In response to these arguments, the Appellate Court declined to determine whether the Officer's act of allowing his K-9 to sniff Kendricks' car and then searching it violate the Fourth Amendment or whether the Officer's act of allowing his K-9 to "trespass" onto Kendrick's car rendered the subsequent search of that car illegal. Rather, the Court concluded that the "good faith" exception to the warrant requirement could determine the outcome of this case without having to resort to a determination of constitutional rights.

APPELLATE COURT FINDINGS: The Appellate Court found that:

1. the Officer could have believed, in good faith, that dog sniff of the exterior of a car parked in public place was neither a search nor a seizure within the meaning of the Fourth Amendment, and
2. the Officer could have believed, in good faith, that the dog's "going into odor" upon approaching Kendricks' car, before making any physical contact with car, created probable cause to search the car.

FIRST ARGUMENT: Kendricks first argued that the dog sniff was an unconstitutional seizure of the Kia, a car that was in his possession. According to Kendricks, the fourth amendment allowed the Officer to seize the car for a brief investigation only if he were aware of "specific articulable facts" that would justify a suspicion that the car contained narcotics. The dog sniff itself, Kendricks argued, was such a seizure—and it was an unreasonable seizure, he continued, a seizure unsupported by specific, articulable facts to justify an inference that the car contained narcotics. Since the fourth amendment prohibits unreasonable searches and seizures, the trial court should have granted him motion to suppress.

CONCLUSIONS AND REASONING: The appellate court concluded that on the basis of binding appellate precedent the Officer could have believed, in good faith, that the dog sniff of the exterior of the car parked in a public place was neither a search nor a seizure within the meaning of the Fourth Amendment, permitting the application of the good-faith exception to the exclusionary rule concerning the cannabis found in the car's trunk.

WHY: *At the time the Officer ran his dog around the car, there were decisions by the Illinois Appellate Court holding that a canine sniff of the exterior of a motor vehicle parked in a public place was neither a search nor a seizure; the car was not the defendant's home, therefore, it required no extra ordinary protection for searches and seizures as do the home of a suspect; and the Officer did not detain the defendant or his car by means of physical force or a show of authority before conducting a dog sniff, nor did the Officer carry away the defendant's personal property and keep it for a long time before conducting the dog sniff.* U.S. Const. Amend. 4; Ill. Const. art. 1, § 6.

SECOND ARGUMENT: Kendricks also argued that because the dog placed its paws on his car and its snout underneath his car in an attempt to find the drugs, the dog sniff was a trespass upon his car and therefore an unconstitutional search of his car: a warrantless search unsupported by probable cause.

CONCLUSIONS AND REASONING: The appellate court concluded that on the basis of binding appellate precedent, a state trooper could have believed, in good faith, that the dog's conduct upon approaching Kendricks' car, before making any physical contact with the car, created probable cause to search the car, permitting the application of the good-faith exception to the exclusionary rule.

WHY: *The trooper knew at the time that a dog trained and certified to detect methamphetamine, cocaine, and heroin with 100% accuracy went into odor when approaching car, a reasonable police officer in the Officer's circumstances could have concluded that dog's going into odor was enough to create probable cause to search the car, and the Appellate Court would decline to engage in an evaluation of whether the dog should have used an alternative means to indicate the presence of drugs.* U.S. Const. Amend. 4; Ill. Const. art. 1, § 6.

RESULT: The appellate court held, first, that the trooper could honestly rely on Illinois case law that a dog sniff of the exterior of a car parked in a public place was neither a search nor a seizure within the meaning of the fourth amendment (U.S. Const., amend. IV). Second, the Court held that, as soon as the trained, certified drug detection dog went "into odor" two seconds after approaching the defendant's car, the trooper could honestly believe he had probable cause to search the car—before the dog touched the car. Therefore, under the good-faith exception to the exclusionary rule, the appellate court affirmed the circuit court's judgment.

QUIZ QUESTIONS FOR THE MONTH OF APRIL – 2024

People v. James H. Kendricks, 2023 IL App (4th) 230179, December 19, 2023.

1. As a general rule, does allowing a K-9 to conduct a sniff while standing in the front porch of a home constitute a search of that home?
 - a. Yes.
 - b. No.

2. Illinois law provides that, as a general rule, allowing a K-9 to sniff the outside of a vehicle that is legally parking a public place does not constitute a seizure or search of that vehicle.
 - a. True.
 - b. False.

3. Kendricks complained that the Officer's act of running his K-9 around Kendricks' legally parked vehicle constituted an illegal seizure of that vehicle. Therefore, the evidence against him should have been suppressed. Did the appellate court agree with that argument?
 - a. Yes.
 - b. No.

4. Kendricks also argued that while conducting his sniff, the K-9 placed its paws on the suspect car. According to Kendricks, this conduct constituted an illegal trespass that invalidated the following search of the car. The appellate court agreed with this argument.
 - a. True.
 - b. False.

QUIZ QUESTIONS AND ANSWERS FOR THE MONTH OF APRIL – 2024

People v. James H. Kendricks, 2023 IL App (4th) 230179, December 19, 2023.

1. As a general rule, does allowing a K-9 to conduct a sniff while standing in the front porch of a home constitute a search of that home?

a. Yes. As the Supreme Court declared, ““physically entering and occupying” a home—including its curtilage, which was “part of the home itself”—to conduct a canine sniff was a search within the meaning of the fourth amendment. *Florida v. Jardines*, 569 U.S. 1, 5-6, (2013).

2. Illinois law provides that, as a general rule, allowing a K-9 to sniff the outside of a vehicle that is legally parking a public place does not constitute a seizure or search of that vehicle.

a. True. The appellate court determined that at the time (the Officer) ran the dog around the Kia, there were decisions by the Illinois Appellate Court holding that a canine sniff of the exterior of a motor vehicle parked in a public place was neither a search (*People v. Ortiz*, 317 Ill. App. 3d 212, 223, (2000)) nor a seizure (*People v. Thomas*, 2018 IL App (4th) 170440).

3. Kendricks complained that the Officer’s act of running his K-9 around Kendricks’ legally parked vehicle constituted an illegal seizure of that vehicle. Therefore, the evidence against him should have been suppressed. Did the appellate court agree with that argument?

b. No. The Court concluded that the Officer acted in good faith when he, believing that Illinois law allowed such a sniff, allowed the K-9 to perform the sniff. Therefore, the exclusionary rule did not apply in this case.

4. Kendricks also argued that while conducting his sniff, the K-9 placed its paws on the suspect car. According to Kendricks, this conduct constituted an illegal trespass that invalidated the following search of the car. The appellate court agreed with this argument.

b. False. The appellate court rejected this argument by finding that the K-9 had already provided probable cause to search Kendricks’ car prior to placing its paws on that car. Therefore, the conduct of the K-9 did not invalidate the subsequent search.