



POLICE / PROSECUTOR UPDATE

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The Court of Appeals recently issued an opinion relating to the law regarding **dog sniffs** that is significant whether or not the case makes it to the Supreme Court. The court stated that a dog sniff of a *private residence* does not violate the Fourth Amendment to the federal constitution. However, under the Indiana Constitution, due to the Indiana Supreme Court's placing overriding weight on the need to restrict arbitrary selection of persons to be searched, *reasonable suspicion* is needed to conduct a dog sniff of a private residence.

The Supreme Court has already established the reasonable suspicion restriction to limit those persons whose trash may be searched. This reasonable suspicion is essentially the same as is required for a "Terry stop" of an automobile. Reasonable suspicion for a Terry stop of a vehicle exists when "specific and articulable" facts known to the police officer at the time of the stop are such as to warrant a man of reasonable caution to believe that an investigation is appropriate.

Again in the trash search context, the Supreme Court has stated that the subject search have engaged in violations of the law that might reasonably lead to evidence in the trash. Thus, in the dog sniff of a private residence situation, the police officers probably must know "specific and articulable" facts that the subjects of the search have engaged in violations of the law and the dog sniff would lead to evidence in the residence, and then a search warrant could be sought. The Court of Appeals also noted that police officers must be lawfully on the premises. That is, they should take the route which any visitor to the residence would use.

This case allows us to review the law involving dog sniffs in other situations. The United States Supreme Court has held that the Fourth Amendment does not require reasonable, articulable suspicion to justify using a drug-detection dog to sniff a vehicle during a traffic stop. However, the traffic stop must be executed in a reasonable manner, including the length of the stop. Our Court of Appeals has held that the burden is on the State to show that the length of the traffic stop was not increased *due to* the canine sniff. While a canine sweep is not a search, upon completion of the traffic stop, an officer must have reasonable suspicion of criminal activity in order to proceed with the investigatory detention. Thus, the critical facts in determining whether a vehicle is legally detained at the time of the canine sweep are whether the traffic stop was concluded, and, if so, whether there was reasonable suspicion *at that point* to continue to detain the vehicle for investigative purposes.

As a general rule, the exposure of luggage, located in a public place, to a sniff test by a trained narcotics detection dog is not a search, so long as there is reasonable suspicion the luggage contains drugs.

There is no seizure of a mailed package within the meaning of the Fourth Amendment when it is briefly detained for a canine sniff if its delivery is not substantially delayed. Law enforcement officers need not possess reasonable suspicion. The alert of a trained narcotics dog provides the probable cause necessary to obtain a search warrant to open the package.

Hoop v. State, 909 N.E.2d 463 (Ind.App. July 14, 2009).