

## **STREET OFFICERS & K-9**

**By Terry Fleck**

I'm often asked by street officers about a K-9's capabilities and its usage. This article addresses these commonly asked questions.

### **What can a street officer expect from a K-9?**

Even in 2008 technology, the K-9 is the most effective olfactory (scenting) device available. No machine in the world can match a K-9's olfactory capabilities. As such, you can expect:

- The K-9 will find his target odor even though it is hidden from your view. However, the K-9's nose must get into the odor he is trained to detect. That is the handler's responsibility. There are rare search conditions where target odor is not available to dog's nose. If that situation occurs, the dog will not be able to find the target.
- It is much safer for you to use a K-9 to search for a suspect or explosive device. The intent of using a K-9 is to transfer as much risk onto the dog as possible, minimizing risk to human officers.
- The K-9 will save you search time. K-9's are so effective, they are typically equated to ten (10) human officers. This is a tremendous search time savings, freeing up patrol officers for other calls for service.

You are encouraged to freely solicit the use of a K-9. K-9's are trained to find a wide variety of things / people. Each K-9 team's

capabilities vary. Therefore, a pre-plan of knowing your particular team's capabilities is important.

#### Evidence searches:

If your K-9 team is evidence (article) search trained, numerous cases has been solved or assisted by calling for an evidence search K-9 team. There have been many cases where a suspect has discarded or hidden a weapon, unbeknownst to the officer, and a K-9 has recovered it.

#### **What should an officer consider prior to calling a K-9?**

##### Suspect searches:

It is best to call for a K-9 team as soon as possible. Odor dissipates over time and the faster response, the better the odds of the K-9 finding the odor. This is particularly true in a tracking a suspect and evidence recovery.

##### Contraband searches:

If you are conducting a vehicle stop, detention time is our enemy. Most courts state that an officer may only detain the vehicle long enough to conduct the normal business of a traffic stop. Therefore, a K-9 sniff must occur within this time constraint. Most courts state you have approximately ten (10) to fifteen (15) minutes to conduct the normal business of a traffic stop.

An investigative stop and/or detention of a vehicle for an exterior K-9 sniff must be supported by reasonable suspicion or consent. Drug

courier profile, without more, does not create reasonable suspicion. Failure to consent to search cannot form any part of basis for reasonable suspicion. If the officer develops reasonable suspicion that the vehicle or occupants are involved in contraband trafficking or use, the officer may now detain them for approximately forty-five (45) minutes for a K-9 sniff.

Upon the K-9's arrival, you will need to order the occupants out of the vehicle. K-9 teams do not search an occupied vehicle, as that is inherently dangerous:

**Maryland v Wilson** (519 U.S. 408 (1997) U.S. Supreme Court:

A police officer making traffic stop may order passengers to get out of the car pending completion of stop

Once the K-9 completes his sniff and you complete your stop related business, order the occupants back into the vehicle:

**United States v Jamal Williams** (419 F. 3d 1029 (2005) U.S. Court of Appeals, Ninth Circuit:

An officer effecting a lawful traffic stop may order the driver and passengers out of the vehicle. Officer could order passenger who voluntarily got out of lawfully stopped vehicle back into the vehicle without violating passenger's Fourth Amendment rights.

Heat affects the working duration of any K-9. The higher the temperature, the less K-9 search time you will have, prior to either cooling the dog or replacing him with another K-9 team.

## **What can an officer do prior to the K-9's arrival to facilitate the investigation?**

### Suspect searches:

Get the highly visible containment perimeter immediately set-up. Think “we” versus “I” thinking. You and the K-9 team will be working as a team. If you can get the suspect contained and force him to ground, the K-9 will find him. “We” will have a successful search. Try not to contaminate a search area. Stay out of the search area and wait for the dog's arrival.

### Contraband searches:

Do not order occupants to do anything, not related to the stop. As an example, do not order occupants to roll up windows, close doors, modify their vehicle's air conditioning system, turn off the engine, etc. This does not preclude your personal officer safety issues. If there is an officer safety issue, do as you would normally do on the stop.

The handler will evaluate the search condition upon his arrival. This would include location of stop, distractions, presence of potential K-9 safety issues, etc.

## **Are there safety tips for a street officer?**

Remember that these K-9's are working dogs. As such, their behavior while working is typically different than when they are at the office, not working, etc. Minimize sudden movements around the dog. Minimize yelling.

Do not get near the K-9 patrol vehicle, if the K-9 is inside. Many K-9's are territorial over their vehicle.

Acting as a cover officer:

The handler will conduct a pre-op briefing to insure that you are comfortable around dogs and then assign your role in the search.

If asked by the handler to act as a cover officer, you need to do exactly that, cover the K-9 team. A K-9 handler cannot cover himself while conducting a K-9 search. That is the cover officer's job.

Therefore, do your job. Do not be distracted by the dog, watch the dog, etc.

You are the handler's cover and gun. Your mind-set is: I'm the handler's gun. That means you need to be within an arm's reach of the handler, parallel to him, at all times. Follow the instructions from the handler exactly. Upon a suspect contact, don't rush in. If you are in front of the dog, particularly moving, you may get bit.

If you are accidentally bitten by the dog, attempt to remain as still and quiet as possible. The handler will remove the dog as quickly as possible and in a fashion where the bite injury will be minimized.

Please, do not shoot the K-9.

In the event a suspect starts to kill a K-9, do not use deadly force to protect the dog. K-9's are classified under case law as "property" and you can only use deadly force to protect yourself or another person.

In this event, the handler will instruct you on what to do, typically acting as the designated deadly force operator, while the K-9 handler tries other less lethal options to assist the dog.

In the event of a handler down, immediately request medical aid and another K-9 handler, using the closest one, even if he is from an allied agency. Many K-9's will try to protect the handler. Upon the other handler's arrival, follow his instructions.

### **Are there other K-9 issues a street officer should be aware of?**

#### Use of K-9 force:

If the dog is used as a use of force, the handler must evaluate and answer these three (3) justification elements:

#### **Graham v Connor** 490 US 386 U.S. Supreme Court (1989)

1. The severity of the crime at issue;
2. Whether the suspect poses an immediate threat to the safety of the law enforcement officers or others;
3. And whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

Therefore, the handler will determine if the K-9 may be used as a use of force, not the patrol officer or patrol supervisor. As the leading expert of that K-9, the handler should have ultimate authority not to deploy his K-9.

If a suspect is bitten, the cover officer will be expected to render immediate medical care to the suspect, immediately after the scene is

secured. As such, remember to have your universal precautions, such as medical gloves, etc, with you.

K-9 warning announcements:

Suspects must be afforded an opportunity for peaceful surrender, prior to using the K-9 as a use of force:

**Kuha v City of Minnetonka** (365 F. 3d 590 U.S. Court of Appeals Eighth Circuit 2004):

The court stated, “We agree that officer safety is paramount but disagree that requiring a verbal warning will put officers at increased risk. To the contrary, such a practice would likely diminish the risk of confrontation by increasing the likelihood that a suspect will surrender. While there may be exceptional cases where a warning is not feasible, we see no reason why officers could not have placed themselves out of harms way, and given a loud verbal warning that a police dog was present and trained to seize by force.”

In the field, the vast majority of suspects surrender upon the mere presence of a K-9. The K-9 is the best deterrent law enforcement has in getting suspects to surrender. Normally, the mere presence of a K-9 prevents and deescalates a use of force, making it safer for officers, bystanders and suspects.

The handler may ask you to make a K-9 warning announcement. If so requested, here are the three (3) elements of that warning:

1. Your authority;
2. The request and opportunity for peaceful surrender;

3. The consequence, a dog bite.

It is your responsibility to state these three elements in the K-9 warning announcement.

Report writing:

Never comment about a K-9 search in your report. We never allow non-K-9 personnel to comment about what a K-9 specialist, the handler, does. Simply stop your report and refer to the K-9 handler's report or supplemental report for information regarding the K-9 search, etc.

Summary:

K-9's are a powerful tool. As such, try to put "ego" aside and not only request a K-9, but also wait for the K-9 team to arrive. Remember, it is safer for you to call for, wait for and utilize a K-9 team.